

Medicaid's New Adult Group and Estate Recovery

Since 1993, state Medicaid programs have been required to pursue recovery from the estates of deceased beneficiaries for long-term services and supports (LTSS) benefits paid on their behalf. Although there are no requirements for recovery for other types of services, 35 states and the District of Columbia have elected to do so. Twenty-three of these states and the District of Columbia have also expanded Medicaid to non-disabled adults under the Patient Protection and Affordable Care Act (ACA, P.L. 111-148, as amended). Media reports have highlighted concerns that some newly eligible adults may choose not to enroll in Medicaid due to fears of the risk of estate recovery. This brief provides an overview of current Medicaid policy on estate recovery and its rationale, including states' and the Centers for Medicare & Medicaid Services' (CMS) efforts to limit estate recoveries.

Current Law

Since the inception of the program, state Medicaid programs have been permitted to recover assets from the estates of certain beneficiaries as reimbursement for the care provided to them. In 1993, the Omnibus Budget Reconciliation Act (OBRA, P.L. 103-66) made estate recovery mandatory for three categories of beneficiaries under certain circumstances¹: (1) individuals who were expected to be permanently institutionalized; (2) individuals who received Medicaid when they were age 55 or older; and (3) individuals with long-term care insurance policies. In a hearing prior to the passage of OBRA, supporters of mandated estate recovery testified that such a policy would ensure that Medicaid funding was used for the truly needy, and could also supplement Medicaid funding by recouping funds spent on deceased beneficiaries (Goldberg 1993, Rohlfs 1993). Since that time, state officials have said that the revenue brought in from estate recovery would allow states to spend more on Medicaid, and would help states avoid service reductions when budgets are tight (Karp et al. 2005).

Beneficiaries who receive LTSS qualify through eligibility pathways that include assets tests. Estate recovery requirements are an additional method to insure that assets available to beneficiaries are used to pay for their care, while protecting their use of some of those assets (e.g., their homes) during their lifetimes.

For beneficiaries age 55 or older receiving Medicaid, OBRA specified benefits for which Medicaid programs are required to seek recovery (Table 1). Specifically, Medicaid programs are required to seek recovery for amounts at least equal to benefits paid for nursing facility services, home and community-based services (HCBS), and related hospital and prescription drug services (those provided during a stay in a nursing facility or while receiving HCBS).

In addition, states are allowed the option of seeking recovery for any other items or services under their state plan, including capitated payments made to managed care plans. As of 2014, 35 states and the District of Columbia pursued estate recovery for non-LTSS services (Morgan 2014). Recoveries may not exceed the total amount spent by Medicaid on the individual's behalf at or after age 55.



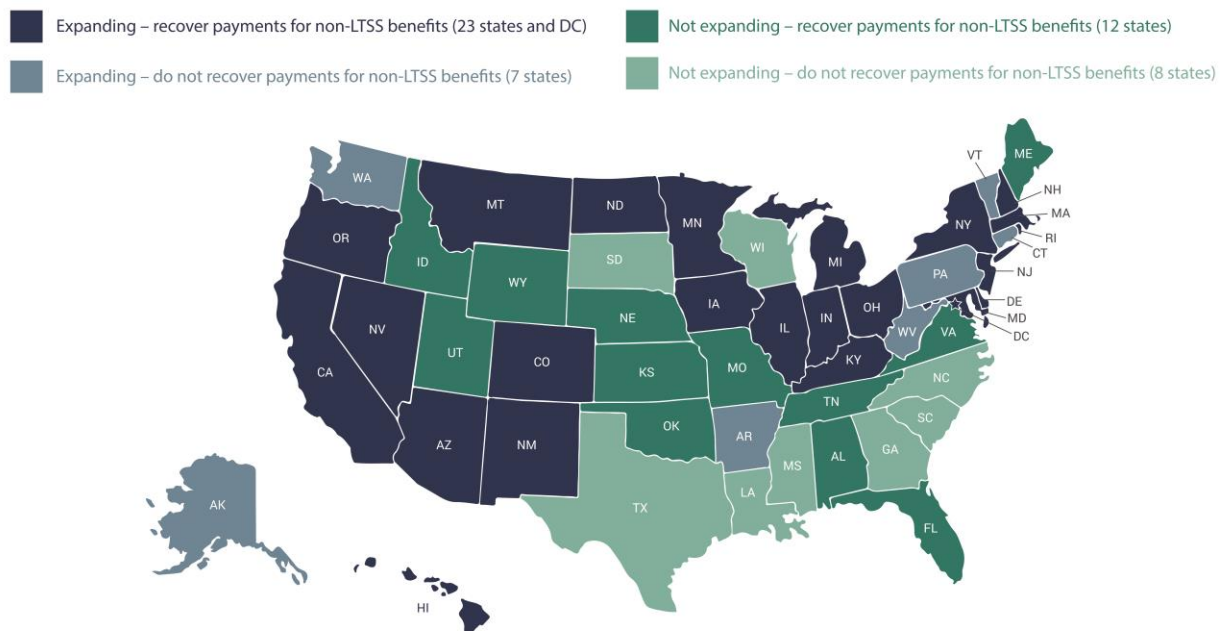
TABLE 1. Current Requirements for Benefit Categories States Must Pursue for Estate Recovery

Requirement	Benefit categories
Mandatory	Nursing facility services Home and community-based services (HCBS) Hospital and prescription drug services related to care in a nursing facility or HCBS
Optional	Any or all other items and services under the state plan (excluding Medicare cost-sharing)

Source: MACPAC analysis of the Social Security Act, as amended by OBRA.

Policy Questions Surrounding the New Adult Group

In the 23 states and the District of Columbia that have expanded Medicaid, and where policies exist to pursue estate recovery for the optional non-LTSS benefits, a new dynamic is potentially in play (Figure 1). Individuals now eligible for Medicaid under the new adult group could be subject to estate recovery for benefits they receive when they are age 55 or older.

FIGURE 1. States That Have Expanded Medicaid and Pursue Estate Recovery for Benefits Other Than LTSS, November 2015

Notes: Oregon only pursues estate recovery for any non-LTSS benefits when LTSS services were also received by a beneficiary.

Sources: MACPAC analysis of Morgan 2014, CMS 2015a, CMS 2015b, DEHPG 2015, CMS 2014a, CMS 2014b, CMS 2014c, CMS 2014d, CMS 2014e, CMS 2014f, CMS 2014g, CMS 2014h, CMS 201i, CMS 2014j, CMS 2014k, CMS 2014l, CMS 2014m, CMS 2014n, CMS 2014p, CMS 2014q, CMS 2014r, CMS 2014s, CMS 2014t, CMS 2014u, CMS 2014v, CMS 2013a, CMS 2013b, CMS 2013c, CMS 2013d, DPW 2015, Office of the Attorney General 2012, Office of Governor Bill Walker 2015, Office of Governor Steve Bullock 2015, and Office of Governor Jack Markell 2012.



Seeking recovery from the estates of beneficiaries eligible under the new adult eligibility rules and age 55 or older raises a number of questions, including:

Is estate recovery a barrier to enrollment for the new adult group?

Recent media reports suggest that some individuals in states that have expanded Medicaid to low-income adults are not enrolling because of fears of estate recovery (Aliferis 2015, Armour 2015, Brown 2014, Mullen 2014, Schilling 2015). Although data are not available to assess how widespread this fear is and its overall effect on enrollment, individuals that forgo Medicaid coverage for this reason would be exposing themselves to individual mandate penalties and the health and financial risks of remaining uninsured.

Do estate recovery rules conflict with the intent of the ACA MAGI rules?

Individuals in states that have expanded Medicaid are deemed eligible based on modified adjusted gross income (MAGI). Unlike most Medicaid populations who qualify for the program under pathways that give them access to LTSS, they are not subject to an assets test. The purpose of eliminating assets from eligibility determination for the new adult group was to align determinations of eligibility with subsidies for the exchange coverage. Given that there is no requirement to “spend down” assets to be eligible for Medicaid coverage for the new adult group, pursuing their estates for repayment may be inconsistent with the eligibility determination.

Do estate recovery requirements create inequity between Medicaid enrollees and those in the exchanges?

Pursuing estate recovery for non-LTSS benefits raises questions of equity between individuals qualifying for Medicaid and those who receive subsidized coverage through the exchanges. Individuals who receive subsidized coverage through the exchanges are not subject to estate recovery. This means that only the lowest income individuals who qualify for Medicaid rather than exchange subsidies (those under 138 percent of the federal poverty level) would be subject to estate recovery.

State and Federal Responses

States have flexibility to change their policies regarding pursuing estate recovery for non-LTSS benefits. A number of states that have expanded Medicaid have recently taken steps to do so. Connecticut, Colorado, and Washington have made amendments to their Medicaid state plans to eliminate recovery for non-LTSS benefits, and Oregon now only pursues recovery for non-LTSS services if LTSS services were also received (DEHPG/CMCS/CMS 2015).

In addition, in 2014 CMS sent a letter to state Medicaid directors stating that the agency was exploring options to use its available authorities to eliminate recovery of Medicaid benefits consisting of items or services other than LTSS and related services for individuals in the new adult group (CMS 2014o). However, the agency has not taken any further action since that time.



Endnote

¹ Recoveries may not exceed the total amount spent by Medicaid on the individual's behalf at or after age 55. States must exempt or defer recovery if a beneficiary has a surviving spouse, a child who is under 21, or a child of any age who is blind or disabled. In addition, exceptions are made to specifically disallow liens on homes when the home is occupied by a sibling of the deceased, or a son or daughter who provided care to the individual that delayed their placement in an institution. OBRA also required states to establish procedures for waiving estate recovery requirements due to hardship.

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