Medicaid Estate Recovery: Draft Chapter and Recommendations

Medicaid and CHIP Payment and Access Commission

Kristal Vardaman and Tamara Huson

Overview

- Draft chapter for the March report to Congress
- Draft recommendations

Draft Chapter

- Long-term services and supports (LTSS) financial eligibility
- Legislative history and requirements
- Program administration
- State variation in estate recovery policies
- Estate collections
- Effects of estate recovery on seeking Medicaid coverage

LTSS Financial Eligibility

- States are generally required to cover beneficiaries who receive Supplemental Security Income (SSI), and all states also cover individuals through at least one or more optional pathways
- Optional pathways include poverty-related, medically needy, Katie Beckett, Medicaid buy-in, special income level, and Section 1915(i)
- These pathways have various income thresholds and asset limits
  - Most common asset limits match SSI: $2,000 for an individual and $3,000 for a couple

LTSS Financial Eligibility: Treatment of Income and Assets

- Countable income includes earned income (e.g., wages) and unearned income (e.g., Social Security benefits, trusts)
  - Some income is excluded, such as the first $65 of monthly income plus one-half of the remaining amount
- Countable assets include cash and other liquid resources (e.g., stocks and bonds)
  - Some assets are excluded, such as a primary residence and one automobile
- There are also rules pertaining to post-eligibility treatment of income and spousal impoverishment

LTSS Financial Eligibility: Assets Held by Older Adults

- For low-income beneficiaries, their homes represent a large majority of their assets
- Data from the Health and Retirement Study show assets of deceased Medicaid enrollees age 65 and older are quite modest, with a substantial proportion of individuals having little to no wealth
  - Average net wealth (2016 dollars) was $44,393
  - Average home equity was $27,364

Estate Recovery Requirements

- The Omnibus Budget Reconciliation Act of 1993 (OBRA 93, P.L. 103-66) mandated that states pursue estate recovery for certain beneficiaries who:
  - Were permanently institutionalized;
  - Received Medicaid when they were age 55 or older; or
  - Held long-term care insurance policies under certain circumstances
- For beneficiaries age 55 and older, OBRA requires states to seek recovery for:
  - Nursing facility services
  - Home- and community-based services (HCBS)
  - Hospital services and prescription drugs related to a nursing facility stay or while receiving HCBS

Key Findings of Analytic Work

- Estate recovery programs vary by state, with some more expansive than others
- States recovered a total of $733.4 million in fiscal year 2019
- Average recoveries are modest and few hardship waivers are granted
- Stakeholders said people with significant means can avoid estate recovery through estate planning, and estate recovery can deter individuals from seeking Medicaid coverage for LTSS

Draft Recommendation 3.1

- Congress should amend Section 1917(b)(1) of Title XIX of the Social Security Act to make Medicaid estate recovery optional for the populations and services for which it is required under current law.

Draft Recommendation 3.1: Rationale

- Would give states increased flexibility
  - Some may consider return on investment low
- Difficult to determine state response
  - Prior to 1993, only 22 states had estate recovery programs
  - States with low collection amounts or those that only pursue mandatory benefits might be more likely to cease recovery
- For heirs of beneficiaries with modest means, retention of a small estate such as an inherited home could provide protection from poverty or housing instability

Draft Recommendation 3.1: Implications

- Federal spending
  - $50-250 million per year between 2022–2030
  - Less than $1 billion between 2021–2025
  - $1-5 billion between 2021–2030
- States
  - States that take up this option would see some decreased collections
  - Reductions in recovery would be offset by reduced administrative costs
- Beneficiaries
  - Could increase pursuit of Medicaid-covered LTSS
  - Could protect heirs from economic hardship and address equity concerns
- Plans and providers
  - No effect

Draft Recommendation 3.2

- Congress should amend Section 1917 of Title XIX of the Social Security Act to allow states providing long-term services and supports under managed care arrangements to pursue estate recovery based on the cost of care when the cost of services used by a beneficiary were less than the capitation payment made to a managed care plan.

Draft Recommendation 3.2: Rationale

- Would avoid circumstances in which individuals' estates are pursued for more than the cost of care that was provided to them
- Easier for heirs to understand
- May increase willingness to seek services for individuals who only need small amounts of care
- Gives states greater flexibility in administering their estate recovery program

Draft Recommendation 3.2: Implications

- Federal spending
  - Would increase federal spending by modest amount
- States
  - States that take up this option would see some decreased collections
- Beneficiaries
  - May increase willingness to seek services
  - Easier to explain to beneficiaries and their heirs
- Plans and providers
  - Little to no effect on plans
  - No effect on providers

Draft Recommendation 3.3

- Congress should amend Section 1917 of Title XIX of the Social Security Act to direct the Secretary of the U.S. Department of Health and Human Services to set minimum standards for hardship waivers under the Medicaid estate recovery program. States should not be allowed to pursue recovery for: (1) any asset that is the sole income-producing asset of survivors; (2) homes of modest value; or (3) any estate valued under a certain threshold. The Secretary should continue to allow states to use additional hardship waiver standards.

Draft Recommendation 3.3: Rationale

- Addresses some concerns about how estate recovery may perpetuate poverty
- Provides for more consistent treatment of heirs across states
- States could continue to use their own criteria in addition to minimum standards

Draft Recommendation 3.3: Implications

- Federal spending
  - Would increase federal spending by modest amount
- States
  - Collections would likely decrease
- Beneficiaries
  - More estates will likely qualify for waivers
  - Could protect heirs from economic hardship
- Plans and providers
  - No effect

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