



# Medicaid Estate Recovery Policies



**Medicaid and CHIP Payment and Access Commission**

Kristal Vardaman

# Overview

- Background
- Data on estate recoveries
- Policy considerations
- Policy options
- Potential next steps

# Medicaid Estate Recovery

- Recovers assets from a beneficiary's estate as reimbursement for care provided to them
- The Omnibus Budget Reconciliation Act of 1993 (OBRA) 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

# Recovery Sought for Certain Benefits

- OBRA specified benefits for which states must seek recovery for beneficiaries age 55 and older
  - nursing facility services
  - home- and community-based services (HCBS)
  - hospital and prescription drug services related to a nursing facility stay or while receiving HCBS
- States must recover some or all of the premiums when specified benefits are provided through managed care
- States can seek recovery for any other items or services under their state plan

# Exemptions

- States must exempt or defer recovery if a beneficiary has a surviving spouse or a child who is under 21, blind, or disabled
- States are allowed to waive recovery where they determine it is not cost effective
  - e.g., Texas does not pursue recovery for estates with a value of less than \$10,000, Georgia exempts estates with a value under \$25,000
- Georgia waives first \$25,000 from estates

# Hardship Waivers

- OBRA required states to establish a process to grant hardship waivers
- States have flexibility in setting criteria
  - e.g., if an asset is the sole income-producing asset of survivors
- About 58 percent of hardship waivers were granted in fiscal year (FY) 2005
  - the number of waivers granted varied widely across states, with an average of 27 and a median of 8

# Program Administration

- Estate recovery is a complex process
- OBRA requires states to attempt to recover, at a minimum, all property and assets that pass to heirs under state probate laws
- States might not recover any funds if the estate was first depleted by other, higher priority creditors (e.g., mortgages or unpaid tax bills)
- Program administration costs estimated to be 6.88 percent of total recoveries in FY 2011

# Data on Estate Recoveries

- In FY 2018, Medicaid programs reported collecting approximately \$723.9 million
- Equal to 0.56 percent of fee-for-service spending on long-term services and supports (LTSS)
  - consistent with prior analyses, but more states have managed LTSS
- Only estimate of national average recovery amount per estate: \$8,116 in FY 2003



# Policy Considerations

- Is estate recovery having its intended effect?
- Do the estates of beneficiaries with greater assets often receive waivers or hardship exemptions, or do many of these beneficiaries shield their assets through estate planning?
- Is estate recovery overly punitive to beneficiaries and their heirs with few assets?
- Is variation in estate recovery policies across states equitable?

# Policy Options

- Revert back to state option
- Establish a federal minimum for the size of estates pursued
- Mandate states waive a certain portion of assets from estate recovery
- Establish federal standards for hardship exemptions
- Adopt more proactive approach to informing heirs of hardship exemptions
- Eliminate estate recovery

# Potential Next Steps

- Interview states and other stakeholders
- Compile information on state notification practices and hardship exemption policies
- Survey states on estate recovery program administration costs, the number of and size of estates pursued, and other state policies



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