



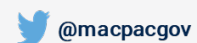
Update on Medicaid Estate Recovery Analyses

Medicaid and CHIP Payment and Access Commission

Kristal Vardaman and Tamara Huson

September 24, 2020

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Overview

- Prior MACPAC work
- Background
- Review of state plans
- Aggregate estate recovery collections
- State survey
- Interviews
- Policy options

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Prior MACPAC Work

- November 2015 issue brief on estate recovery and the new adult group
 - Raised questions about potential effect on enrollment in Medicaid expansion states and conflict with intent of modified adjusted gross income rules
- December 2019 presentation
 - Commissioners requested updated data and insights on whether estate recovery has a chilling effect

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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, 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

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Benefits Included in Recovery

- 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
- States must recover some or all of the premiums when these benefits are provided through managed care
- States can seek recovery for any other items or services under their state plan

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Exemptions

- States must exempt or defer recovery if a beneficiary has a surviving spouse or a child who is under age 21, blind, or disabled
- States may waive recovery where they determine it is not cost effective
- States must establish a process to grant hardship waivers; have flexibility in criteria
 - CMS has provided sample criteria

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Review of State Plans

- Reviewed state plans for 38 states and DC
- Most states do not place liens on property
- Most states seek recovery for additional state plan services for individuals age 55 or older
- A minority of states pursue recovery for other optional populations or services
- Long Term Care Partnership Programs often excluded from recovery

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Review of State Plans

- Information on hardship waivers is difficult to compare across states
 - States use CMS sample criteria or come up with their own
- State cost-effectiveness thresholds vary
 - Many states pursue any estate where the amount of recovery exceeds the administrative cost
 - Others use thresholds such as \$500 or \$1,000

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Aggregate Collections

- In fiscal year (FY) 2019, Medicaid programs reported collecting approximately \$733.4 million from beneficiary estates
 - The five states with the largest estate collections—Massachusetts, New York, Pennsylvania, Ohio, and Wisconsin—accounted for 38.5 percent of all recoveries
- Estate recoveries as a proportion of national Medicaid fee-for-service long-term services and supports (LTSS) spending ranged from 0.53 to 0.62 percent during FYs 2015-2019
 - 24 states have managed long-term services and supports (MLTSS), so figures would be even lower if all LTSS costs were included

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State Survey

- Only estimate of national average recovery amount per estate: \$8,116 in FY 2003
- We sought updated figures directly from a sample of 15 states
 - States (with and without MLTSS) represented a range of aggregated collections and estate recovery policies
- We asked states about:
 - the number, range, and average size of estates;
 - the number of hardship waiver applications reviewed and waivers granted; and
 - program administration costs

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State Survey Results

- To date, 6 states have completed the survey
- Average recovery amount ranged from about \$2,768 to \$71,556
 - In general, states that recovered from fewer estates had higher average recovery amounts
 - Differences in cost-effectiveness thresholds may explain this result
- Individual recoveries ranged from one cent up to nearly \$400,000
 - Minimal recoveries could reflect personal needs funds returned from nursing facilities
 - Large recoveries may reflect recoveries from home equity or remaining funds in special needs trusts

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State Survey Results

- Three states provided information on hardship waiver applications or the number granted
 - Number of applications ranged from 27 to 89
 - Number of waivers granted ranged from 17 to 41
- Three states provided information on administrative costs, which were typically under 10 percent of total recoveries
 - States may use third-party contractors paid on a contingency fee basis

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Potential Chilling Effect on Medicaid LTSS Coverage

- Estate recovery could deter individuals with LTSS needs from seeking Medicaid coverage so they can pass assets to heirs
- This has come up in other contexts:
 - Prior to the enactment of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA, P.L. 110-275), estate recovery was noted as a barrier to enrollment in Medicare Savings Programs
 - Estate recovery as a deterrent to Medicaid enrollment was raised as a concern for the new adult group
- Two interviewees said some people choose to forgo Medicaid services due to concern about estate recovery
 - However, as an individual's LTSS needs become more urgent, they may not have other options to cover LTSS

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Policy Considerations

- Differing views of estate recovery point to a range of policy options
 - Some increase standardization of estate recovery policies, which could address equity concerns raised by some stakeholders
 - Others grant states additional flexibility

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Policy Option 1: Eliminate or Limit Assets Subject to Estate Recovery

- Requires congressional action
- Addresses potential chilling effect
- Removes revenue source
- Limitation of assets subject to recovery could take several forms
 - Cost-effectiveness threshold
 - Certain assets not counted in eligibility determinations

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Policy Option 2: Revert from Mandate to a State Option

- Requires congressional action
- Gives states flexibility
- Addresses potential chilling effect
- Removes revenue source
- Increases state variation
- Unclear how many states would opt out
 - One state noted stakeholder and legislator interest but said it would be difficult to forego revenue
 - Two others said they would likely continue recovery

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Policy Option 3: Allow MLTSS States to Pursue the Cost of Care

- Would allow states to pursue recovery based on the actual cost of care rather than all or a portion of the capitation payment
- Potentially achieved through regulatory or sub-regulatory action
- More easily explained to heirs
- Would require cost information from plans

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Policy Option 4: Establish Federal Standards for Hardship Waivers

- OBRA mandated that states should establish procedures to waive estate recovery where its application would cause undue hardship based on criteria established by the Secretary
 - Published criteria are not required
- Would require regulatory or subregulatory action
- Would address some equity concerns

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Next Steps

- Discuss potential recommendations
- December meeting
 - Additional survey results and stakeholder views of potential recommendations
 - Cost implications
- January meeting
 - Draft chapter and vote on recommendations

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