



Medicaid Estate Recovery: Updates on Analyses and Draft Recommendations

Medicaid and CHIP Payment and Access Commission

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Overview

- Background
- Updates on analytic work
- Themes from stakeholder interviews
- Draft recommendations
- Next steps

Background

- 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
- 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

Background Continued

- 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

Updates on Analytic Work

- Received survey responses from 10 states
- Reviewed state plan information for all 50 states and DC
- In general, the patterns we reviewed in September in terms of the average size of estates recovered and state use of optional policies did not change

Themes from Stakeholder Interviews

- Views on whether estate recovery should be made optional were mixed
 - Beneficiary advocates and elder law attorneys favored eliminating estate recovery or making it optional
 - Medicaid and other state officials noted it would be difficult to forgo the revenue it brings in
 - Many stakeholders supported making estate recovery optional or eliminating it, citing equity concerns
- Estate recovery can negatively affect access to LTSS

Themes from Stakeholder Interviews Continued

- Awareness and understanding of estate recovery policies by the general public and by Medicaid beneficiaries is low
 - Information on estate recovery may get lost in the fine print of Medicaid applications at time of eligibility
 - Beneficiaries may not share information with heirs
- Beneficiaries with greater resources are more likely to avoid estate recovery

Themes from Stakeholder Interviews Continued

- Hardship waivers also raise equity concerns
 - Awareness of hardship waivers is low
 - Ability to prove hardship usually requires the assistance of an attorney
 - Variation in state policies
- Estate recovery for MLTSS capitation payments are difficult to understand and inequitable

Draft Recommendation 1: Making Estate Recovery a State Option

- 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 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 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 2: Allowing States to Pursue Recovery Based on the Cost of Care

- Congress should amend Section 1917 of Title XIX of the Social Security Act to allow states with managed long-term services and supports programs to pursue estate recovery based on the cost of care provided to beneficiaries.

Draft Recommendation 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 remove a barrier to enrollment for individuals who only need small amounts of care
- Gives states greater flexibility in administering their estate recovery program

Draft Recommendation 2: Implications

- Federal spending
 - Less than \$50 million per year between 2022–2030
 - \$1 billion between 2021–2030
- States
 - States that take up this option would see some decreased collections
- Beneficiaries
 - Removes enrollment barrier
 - Easier to explain to beneficiaries and their heirs
 - Estates could be pursued for more or less than under current policy, depending on circumstances
- Plans and providers
 - Little to no effect on plans
 - No effect on providers

Draft Recommendation 3: Set Minimum Standards for Hardship Waivers

- The Secretary of the Department of Health and Human Services should set minimum standards for hardship waivers. The Secretary should consider factors in current guidance: (1) if an estate claim would remove the sole income-producing asset of survivors, and the asset produces only limited income; (2) if the home is of modest value, which is roughly half the average home value in the county; or (3) other compelling circumstances.

Draft Recommendation 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: Implications

- Federal spending
 - Below \$50 million per year between 2022–2030
 - \$1 billion between 2021–2030
- States
 - States may see a reduction in revenue if more estates qualify for waivers
 - Reductions would be somewhat offset by reduced administrative costs
- Beneficiaries
 - More estates will likely qualify for waivers
 - Could protect heirs from economic hardship
- Plans and providers
 - No effect

Next Steps

- January 2021 meeting
 - Review draft chapter
 - Vote on recommendations
- Publication of chapter in March 2021 report



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