Chapter 3:

Medicaid Estate Recovery: Improving Policy and Promoting Equity

Medicaid Estate Recovery: Improving Policy and Promoting Equity

Recommendations

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.

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 was less than the capitation payment made to a managed care plan.

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.

Key Points

- States are required to seek recovery from the estates of certain deceased beneficiaries for payments for long-term services and supports (LTSS) and related services. Since 1993, estate recovery has been mandatory for individuals expected to be permanently institutionalized; those age 55 or older when they received Medicaid LTSS and related services; and those with long-term care insurance policies, under certain circumstances.
- Current policy raises several concerns. Pursuit of modest estates contributes to generational poverty and wealth inequity, placing particular burdens on people of color. Variation in state policies treat heirs inconsistently. Estate recovery recoups relatively little—only about 0.55 percent of total fee-for-service LTSS spending. Policies for recovering capitation payments for those covered under managed LTSS programs can also be inequitable.
- Due to restrictions on Medicaid eligibility for LTSS, older adults covered by Medicaid have few assets. Three-quarters of Medicaid decedents had net wealth of less than $48,500.
- Fear of estate recovery may deter some individuals from seeking Medicaid LTSS, however, awareness and understanding of these policies by potential Medicaid beneficiaries is low.
- States should have the option to eliminate estate recovery. This would allow those that determine the return on their investment is low to cease recovery, while permitting states that find estate recovery useful to continue the practice. Changes to recovery of capitation payments would protect beneficiaries who use relatively few services. Clarifying hardship exemption policies would ensure more equitable treatment across states.

CHAPTER 3: Medicaid Estate Recovery: Improving Policy and Promoting Equity

People who use Medicaid-covered long-term services and supports (LTSS) are a diverse group including people age 65 and older and people with disabilities. To be eligible to receive Medicaid-covered LTSS, they must meet both income and asset limits. Asset counting rules allow individuals to obtain Medicaid eligibility while retaining certain assets, such as their primary residence, during their lifetimes. But federal law requires state Medicaid programs to seek recovery from the estates of certain deceased beneficiaries for payments for LTSS and related services. Recovery is sought from assets that were not initially counted when the beneficiary's eligibility for Medicaid LTSS was determined, as well as any additional assets obtained after becoming eligible for Medicaid or newly identified after their death. In fiscal year (FY) 2019, states reported collecting approximately $733.4 million from beneficiary estates. States return a portion of these funds to the federal government based on their federal medical assistance percentage (FMAP).

Estate recovery has been considered both a way to replenish Medicaid funds and a program integrity tool to ensure that people who have resources that could be used to pay for LTSS actually do so, even after death. However, critics have noted that many people with sizeable wealth are able to legally shield assets from Medicaid estate recovery so these can be used for their benefit or passed on to heirs. This leaves the burden of estate recovery to fall primarily on those of modest means; this may also disproportionately affect people of color given disparities in household wealth.

The Commission last engaged on this issue in 2015, when media reports raised concerns that estate recovery could be a barrier to enrollment for the new adult group in states that expanded Medicaid under the Patient Protection and Affordable Care Act (ACA, P.L. 111-148, as amended). MACPAC published an issue brief on the implications of estate recovery for the new adult group, but did not make any recommendations (MACPAC 2015).

Recently, media attention has returned to the broader issue of estate recovery for people who use LTSS and has raised concerns about the policy's effects (Corbett 2019). The Commission decided to look more closely at how estate recovery programs are functioning and their effects. Over the past year, our inquiry included:

- reviewing the literature and federal guidance on estate recovery program operations;
- analyzing the results of a survey on assets held by Medicaid decedents age 65 and older;
- analyzing Medicaid state plans to understand the extent to which states pursue recovery beyond minimum federal requirements;
- compiling aggregate data on estate recovery collections for FYs 2015–2019;
- surveying a sample of states regarding the number and size of estates recovered, hardship waivers granted, and probing as to whether these states would continue to pursue estate recovery if this requirement were made optional, as it had been prior to 1993; and
- interviewing stakeholders and reviewing the literature for insights into whether estate recovery has affected access to LTSS.[1]

As a result of this work and multiple discussions at our public meetings, we have concluded that Medicaid estate recovery policy is in need of reform. The program mainly recovers from estates of modest size, suggesting that individuals with greater means find ways to circumvent estate recovery and raising concerns about equity. As such, we have determined that additional beneficiary protections are needed, and that states should have flexibility to eliminate estate recovery.

Specifically, the Commission recommends the following:

- 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.
- 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 was less than the capitation payment made to a managed care plan.
- 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.

This chapter begins by describing policies that define financial eligibility for LTSS and treatment of assets in eligibility determination. It also includes the result of research on the assets held by those over age 65 and discusses Medicaid planning vehicles. It then provides background on Medicaid estate recovery requirements and program administration before moving on to discuss the results of our analyses of state plans, estate recovery collections data, and state survey results. The next section discusses the effects of estate recovery on access to LTSS. The chapter ends with the Commission's recommendations and its rationale for changes to estate recovery policy.

LTSS Financial Eligibility

To qualify for Medicaid, individuals generally must fit into a specific eligibility category and meet income thresholds. To qualify for Medicaid LTSS such as home- and community-based services (HCBS), they must meet additional standards, which generally include asset tests and functional criteria that are based on an individual's physical or cognitive status. Below we focus on the asset tests that generally apply to Medicaid eligibility pathways for people who are age 65 and older or have disabilities.[2]

Financial eligibility pathways for LTSS

There are multiple eligibility pathways for Medicaid LTSS. Although states are generally required to cover beneficiaries who receive Supplemental Security Income (SSI), all states also cover individuals through one or more optional pathways (Table 3-1). Below we provide a brief overview of these optional pathways, including poverty-related, medically needy, Katie Beckett, Medicaid buy-in, special income level, and Section 1915(i). The income and asset limits below apply to single applicants; for married individuals, additional rules are first applied that protect spouses from impoverishment. Those rules are discussed later in this chapter.

Supplemental Security Income-related eligibility. SSI is a federal income support program for people who have limited income and resources and are also age 65 or older, blind, or have disabilities. To qualify, these individuals may have countable monthly income of no more than the federal benefit rate, which in 2021 is $794 per month for an individual and $1,191 for a couple, or 74 percent of the federal poverty level (FPL) (CMS 2021). The value of countable resources (e.g., cash, bank accounts, stocks and savings bonds, land, vehicles, personal property, life insurance) cannot exceed $2,000 for an individual and $3,000 for a couple (SSA 2020).

In most states, individuals receiving SSI are automatically eligible for Medicaid, including LTSS offered under the state plan (MACPAC 2020a). States, however, have the option under Section 1902(f) of the Social Security Act (the Act) to apply different Medicaid eligibility criteria for SSI recipients (Colello and Morton 2019). States that choose this option are known as Section 209(b) states, a reference to Section 209(b) of the Social Security Act Amendments of 1972 (P.L. 92-603) that established this option. As of 2020, eight states have elected the Section 209(b) option, which allows them to apply more restrictive or more generous income limits, income disregards, asset limits, or definitions of disability than the federal SSI rules (MACPAC 2020a, Colello and Morton 2019, KFF 2019).[3] However, Section 209(b) states must have at least one eligibility criterion that is more restrictive than the SSI criteria (Colello and Morton 2019).

Poverty-related eligibility. This optional pathway allows a state to cover LTSS for individuals with incomes up to 100 percent FPL ($12,880 a year for an individual in 2021) who have disabilities or are age 65 and older. Twenty-three states and the District of Columbia use this option (MACPAC 2020a). In 2018, 12 states used the SSI asset limits of $2,000 for an individual and $3,000 for a couple, eight states had asset limits higher than the SSI amount, and one state had no asset limit (KFF 2019).

Medically needy. This pathway allows states to cover certain individuals who have high medical expenses relative to their income. These individuals would be categorically eligible but have income that exceeds the maximum limit for that pathway. States must cover medically needy pregnant women and children, and they may also choose to extend coverage to other groups. Thirty-two states and the District of Columbia use this option to cover individuals age 65 and older and individuals with disabilities, allowing them to become eligible for Medicaid once they have spent a portion of their excess income on their medical expenses (known as the spend-down requirement) (MACPAC 2020a).

States have flexibility in setting the income threshold and the budget period used in medically needy eligibility determinations. The median medically needy income limit in states with this pathway was 45 percent FPL, or $478.50 per month, for an individual in 2020 (MACPAC 2020a). In 2018, all but one state set their medically needy asset limit at or above the SSI level (KFF 2019).

Katie Beckett pathway for children with disabilities. All states use this option to provide Medicaid services for at least some children with severe disabilities whose family income would otherwise be too high to qualify. Income limits for this population are generally 300 percent of SSI ($2,382 per month for an individual in 2021), with a $2,000 asset limit. Only the child's own income and assets are counted (KFF 2019).

Medicaid buy-in. States have the option to cover individuals with disabilities who work and have incomes too high to qualify for Medicaid via other pathways. In 2018, 44 states and the District of Columbia offered this option, and the median income limit for working people with disabilities was 250 percent FPL for an individual. Eight states do not have an asset limit for this group (KFF 2019). Thirty-four states charge premiums for this group, with most calculating premium amounts using a sliding scale based on income (KFF 2019).

Special income level. States may choose to cover individuals who have income up to 300 percent of the SSI benefit rate and who meet level of care (LOC) criteria for nursing facility or other institutional care; these individuals often receive HCBS through waivers authorized under Section 1915(c) of the Act. LTSS users who are dually eligible for Medicaid and Medicare are more likely to enter under this pathway than Medicaid-only LTSS users (MACPAC 2014). Forty-two states and the District of Columbia offer such coverage (MACPAC 2020a). This pathway also includes an asset limit, typically the SSI amount of $2,000 for an individual and $3,000 for a couple (KFF 2019).

Section 1915(i) state plan HCBS. Section 1915(i) of the Act allows states to offer HCBS under the state plan to people who need less than an institutional LOC. The ACA amended this section to create a new eligibility pathway for individuals with disabilities who are not otherwise eligible for Medicaid. States can cover people with incomes up to 150 percent FPL who meet functional eligibility criteria; there is no asset limit. They can also extend this pathway to people with incomes up to 300 percent of SSI who are receiving Section 1915(c) waiver services. Indiana, Maryland, and Ohio are the only states using Section 1915(i) as a Medicaid eligibility pathway. Fourteen other states use Section 1915(i) to authorize HCBS but require beneficiaries to be eligible through another coverage pathway (KFF 2019).

TABLE 3-1. Overview of Selected Eligibility Pathways and Criteria for Medicaid LTSS Coverage

Eligibility pathway	Definition	Number of states using pathway	Income thresholds	Asset limits
SSI-related	SSI is a federal income support program for people who have limited income and resources and are also age 65 or older, blind, or have disabilities. This is a mandatory pathway. In most states, individuals receiving SSI are automatically eligible for Medicaid.	50 states and DC; 8 states have elected the Section 209(b) option	74% FPL ($794 per month for an individual and $1,191 for a couple in 2021)	$2,000 for an individual and $3,000 for a couple
Poverty-related	Optional pathway that allows a state to cover LTSS for individuals with incomes up to 100 percent FPL who have disabilities or are age 65 and older.	23 states and DC	Up to 100% FPL ($12,880 a year for an individual in 2021)	Typically same as SSI limits, but some states have higher limits
Medically needy	Optional pathway that allows states to cover certain individuals who have high medical expenses relative to their income. These individuals would be categorically eligible but have income that exceeds the maximum limit for that pathway. Individuals become eligible for Medicaid once they have spent down their excess income on their medical expenses.	32 states and DC	At state discretion; median was 45% FPL for an individual in 2020	Typically same as SSI limits, but some states have higher limits
Katie Beckett pathway for children with disabilities	Optional pathway that provides Medicaid services for at least some children with severe disabilities whose family income would otherwise be too high to qualify. Only the child's own income and assets are counted.	50 states and DC	300% of SSI benefit rate ($2,382 per month for an individual in 2021)	$2,000

Eligibility pathway	Definition	Number of states using pathway	Income thresholds	Asset limits
Medicaid buy-in	Optional pathway that covers individuals with disabilities who work and have incomes too high to qualify for Medicaid via other pathways. Many states charge premiums for this group.	44 states and DC	At state discretion; median was 250% FPL for an individual in 2018	Eight states do not have an asset limit for this group
Special income level	Optional pathway for individuals who have income up to 300 percent of the SSI benefit rate and who meet LOC criteria for nursing facility or other institutional care.	42 states and DC	Up to 300% of SSI benefit rate	Typically same as SSI limits
Section 1915(i) state plan HCBS	Section 1915(i) of the Social Security Act allows states to offer HCBS under the state plan to people who need less than an institutional LOC.	3 states	150% FPL for individuals who meet functional eligibility criteria, or 300% of SSI benefit rate for individuals receiving Section 1915(c) waiver services	None

Notes: SSI is Supplemental Security Income. FPL is federal poverty level. LTSS is long-term services and supports. LOC is level of care. HCBS is home- and community-based services. For married individuals, spousal impoverishment provisions are applied first (§ 1924 of the Social Security Act).

Sources: CMS 2021, MACPAC 2020a, SSA 2020, Colello and Morton 2019, KFF 2019.

Income and asset treatment in Medicaid LTSS financial eligibility determinations

As noted above, financial eligibility for Medicaid LTSS is determined by both income and asset limits (also called resources). Section 1612 of the Act (described further in regulations at 20 CFR 416.1112 and 416.1124) defines what counts as income. In general, countable income includes earned income, such as wages, and unearned income, such as Social Security benefits, income from trusts, and unemployment benefits. Some income is excluded, such as the first $65 of monthly income plus one-half of a remaining amount, up to certain limits (Table 3-2).

Countable assets may include cash and other liquid resources (e.g., stocks and bonds). Some assets, as detailed in Section 1613 of the Act, are excluded, such as a primary residence, household goods and personal effects, and one automobile (Table 3-2). Although a primary residence is not considered a countable resource for Medicaid eligibility under SSI program rules, its value can affect eligibility for Medicaid LTSS (Colello 2017). If an individual's home equity is above the state's limit, they will be deemed ineligible to receive Medicaid LTSS; for 2021, the federal minimum home equity limit is $603,000 and the maximum limit is $906,000 (CMS 2021). In 2018, 40 states used the federal minimum limit, nine states used the maximum limit, one state, Wisconsin, set a limit in between, and one state, California, had no limit (KFF 2019).[4] The home equity limit does not apply if a beneficiary has a spouse, a child under age 21, or a child with a disability of any age who resides in the home (Colello 2017).

TABLE 3-2. Examples of Income and Assets Used to Determine Financial Eligibility for Disability and Age-Related LTSS Pathways

Type	Excluded	Counted
Income		
First $65 of monthly earned income plus one-half of remaining amount, up to certain limits	✓	
First $30 of infrequent or irregularly received income in a quarter	✓	
First $20 of monthly unearned income	✓	
Certain need-based assistance, such as rent subsidies and SNAP	✓	
Earned income		
Wages		✓
Net self-employment earnings		✓
Payments for services in a sheltered workshop or activities center		✓
Certain royalties and honoraria		✓
Unearned income		
Social Security benefits		✓
Annuities		✓
Pensions		✓
Trusts		✓
Unemployment		✓
Workers compensation		✓
Assets		
Primary residence	✓	
Household goods and personal effects	✓	
Value of a burial space	✓	
One automobile, if used for transportation of applicant or member of applicant's household	✓	
Burial funds of $1,500 or less	✓	
Life insurance policies with a face value of $1,500 or less	✓	
Cash		✓
Liquid resources (e.g., stocks and bonds, mutual fund shares, etc.)		✓
Equity value of nonliquid resources unless otherwise excluded		✓
Life insurance policies with a face value exceeding $1,500		✓

Notes: LTSS is long-term services and supports. SNAP is Supplemental Nutrition Assistance Program. For married individuals, spousal impoverishment provisions are applied first (§ 1924 of the Social Security Act (the Act)).

Source: MACPAC, 2021, analysis of Sections 1612 and 1613 of the Act and 20 CFR 416.1112 and 416.1124.

Medicaid has additional rules related to income after a beneficiary becomes eligible for Medicaid LTSS, known as post-eligibility treatment of income rules. Generally, beneficiaries qualifying through certain eligibility pathways are required to use their income over certain amounts to help pay for the cost of their care (Colello 2017). However, individuals receiving Medicaid LTSS are allowed to retain a certain amount of income for personal needs, as dictated by federal and state limits. Individuals residing in an institution are permitted a personal needs allowance, which is used to pay for items not covered by Medicaid, such as clothing (42 USC § 1396a(q)). The federal minimum is $30 a month for an individual (used by three states), but states can set an allowance greater than this rate. The median allowance was $50 a month in 2018; Florida had the highest personal needs allowance, at $130 per month (KFF 2019).[5] For beneficiaries residing in the community who receive HCBS services through a waiver, states must establish a monthly maintenance needs allowance but have discretion in setting that amount (42 CFR 435.726).[6] In 2018, the median maintenance allowance was $1,840 per month, with a range of $100 per month in Montana to $2,250 (or 300 percent of SSI) in 20 states (KFF 2019).

Additional rules for married applicants. Special rules apply to the counting of income and assets when determining financial eligibility for Medicaid LTSS for couples when one spouse needs institutional care and the other remains in the community (§ 1924 of the Act). These are known as the spousal impoverishment rules, and are intended to protect the community spouse from becoming impoverished or experiencing housing instability. Previously, states had the option to create similar rules for HCBS, but all spouses of individuals using certain HCBS were granted these protections temporarily by the ACA, and subsequent legislation has extended their application through FY 2023. States must set income and asset amounts that the community spouse may retain while allowing the Medicaid-seeking spouse to become eligible, within federal limits (Colello 2017).[7] When determining the patient pay amount and eligibility for the spouse in need of Medicaid LTSS, federal law exempts all of a community spouse's income that is solely attributable to them.[8] If the community spouse's assets are below the community spouse resource standard, then the institutionalized spouse can transfer their share of the resources until the community spouse's share meets the threshold.[9] All other assets of the Medicaid applicant must be depleted before they can become eligible (Colello 2017).

Asset transfer rules

When determining eligibility for Medicaid LTSS, states are required by federal law to review any assets that an individual divested during a certain time period and determine if that transfer affects their Medicaid eligibility. The purpose of these rules is to discourage individuals from transferring assets in order to qualify for Medicaid LTSS or sheltering assets that could be used to pay for their care (Colello 2017). The Deficit Reduction Act of 2005 (DRA, P.L. 109-171) updated Section 1917 of the Act, requiring a look-back period of five years from the date of application for Medicaid; if during that time an applicant or their spouse divested certain assets for less than fair market value, the applicant's eligibility for Medicaid may be affected (Colello 2017).

If a non-exempt transfer was made during the look-back period, a penalty is imposed on the applicant that delays the payment for Medicaid LTSS by a certain number of months. The penalty period is calculated by dividing the monetary value of the transferred asset by the average monthly private pay rate for nursing facility services in the state.[10] The penalty period begins on either the first day of the month in which assets were transferred, or the date on which the individual would otherwise be eligible for Medicaid and would have been able to receive care in an institution, whichever is later. For example, if a non-exempt transfer of $40,800 is made, and the average monthly private pay rate for a nursing facility is $6,800, then the individual

seeking Medicaid LTSS would have to wait six months before becoming eligible for LTSS. Under certain circumstances, states may waive penalties for asset transfers (Colello 2017).

Not all asset transfers are subject to penalties. For example, asset transfers for fair market value to spouses or children with disabilities are excluded. A home may also be excluded if it was transferred to a spouse, a child under age 21, a child with a disability, or an adult child who has resided in the home and provided care that delayed institutionalization of the qualifying Medicaid applicant (Colello 2017).

Medicaid planning

Estate planning is a process that people undertake, often with the counsel of an attorney, to detail what will happen to their assets after they die. This is often done by writing a will and naming beneficiaries. Individuals engage in estate planning for a variety of reasons, many unrelated to Medicaid eligibility. Furthermore, many wealthy individuals who engage in estate planning may have the means to pay for LTSS privately and never pursue Medicaid LTSS. However, attorneys experienced in elder law and special needs planning can assist older individuals and individuals with disabilities with applying for Medicaid, understanding federal and state laws on Medicaid eligibility, or setting up special needs or other kinds of trusts. We refer to these activities as Medicaid planning.

Individuals who engage in Medicaid planning may be able to legally protect some of their assets, thus keeping assets that would otherwise deem them ineligible for Medicaid LTSS. One technique allowed in some states to reduce the length of the penalty period is known as the reverse half-a-loaf mechanism (GAO 2014). This involves a Medicaid applicant gifting countable assets to someone else and then, after receiving an eligibility determination, having a portion of the gift returned to the applicant to cover the cost of their care during the penalty period. This mechanism can only be used in states that choose to consider a partial return of transferred assets in recalculating the penalty period.[11] Another reverse half-a-loaf mechanism would be for the applicant to gift a portion of their countable resources (usually about 50 percent) to someone and convert the rest of their countable resources into an income stream such as an annuity. This approach also incurs a penalty period for the applicant, but the amount of income generated makes up the difference between the applicant's other income (e.g., Social Security) and the cost of their LTSS, enabling the applicant to pay for their care out of pocket while awaiting the end of the penalty period. A U.S. Government Accountability Office (GAO) report from 2014 found that this mechanism is rarely used; in their review of 294 approved Medicaid application files from 2011 and 2012, they found five applicants used one of these two mechanisms (GAO 2014).

Assets held by older adults

States' ability to recover from an estate the cost of care paid for by Medicaid is limited by the value of the estate upon a beneficiary's death. We reviewed the literature to better understand the value of assets held by older adults and learned that home equity (a non-liquid asset) is their greatest source of household wealth, especially for low-income homeowners.

Home ownership. A 2018 report from the Joint Center for Housing Studies of Harvard University provides some context and data on homeownership and net worth of homeowners. The report found that in 2016, 65 million households were headed by individuals age 50 and older, and 76.2 percent of these households owned their homes. When stratified by race and ethnicity, however, the study found that 81 percent of white households age 50 and older owned their home compared to 57 percent of Black households, 60 percent of Hispanic households, and 71 percent of Asian American and other households with heads in this same age group (JCHS 2018). The report also found that in 2016, 41 percent of homeowners age 65 and older still had mortgages on their homes (JCHS 2018).

Household wealth for deceased Medicaid beneficiaries age 65 and older. Data related to household wealth suggest that recoverable assets are quite limited for individuals who receive Medicaid-covered LTSS. The published literature on the assets held by older adults typically focuses on all individuals over a certain age or those with limitations in activities of daily living (JCHS 2018, Johnson 2016). To gain insight into the population of individuals likely to be subject to estate recovery, we contracted with researchers at the LeadingAge LTSS Center @UMass Boston, to review the Health and Retirement Study (HRS) a nationally representative longitudinal survey of adults age 50 and older. They identified Medicaid beneficiaries in the dataset who participated in the HRS and died during the 2012, 2014, and 2016 survey periods. The team then calculated the net value of total wealth based on reported assets, subtracting out the debts individuals held.

In general, this study found that, with some exceptions, the assets of older adults enrolled in Medicaid are quite modest, with a substantial proportion of individuals having little to no wealth (Table 3A-1). Therefore, the assets that Medicaid programs can recover after a beneficiary's death are limited, particularly for individuals who do not own their homes. More specifically, we found that three-quarters of beneficiaries had net wealth below $48,500; additional details are below.

- At age 65 and older, the average net wealth among Medicaid decedents was $44,393.
  - The lowest quartile of the group had negative net wealth—on average this group's debts exceeded its assets by $14,236;
  - the second quartile had an average of $304 in net wealth;
  - the third quartile held an average of $17,709 in net wealth; and
  - the highest quartile held an average of $173,436 in net wealth.
- Average home equity held by the total sample was $27,364.
  - The lowest quartile of the group had negative home equity (-$6,954);
  - the second quartile had an average of $8 in home equity;
  - the third quartile held an average of $12,880 in home equity; and
  - the highest quartile held an average of $98,694 in home equity.[12]

When these data were stratified by demographic characteristics, we found that the average net wealth varied among different groups of Medicaid decedents. In particular, average net wealth was higher for men than for women, higher for married people than for non-married people, higher for white, non-Hispanic individuals than for other racial or ethnic groups, and higher for people with disabilities than for people without disabilities (Table 3A-2). In addition, wealth was lower for decedents age 85 and older than for decedents in younger age groups.

Legislative History and Requirements

Medicaid programs have been permitted to recover assets from the estates of certain beneficiaries as reimbursement for the care provided to them since the inception of the program (Table 3-3). The Social Security Act Amendments of 1965 (P.L. 89-97) allowed, but did not require, states to pursue recovery from the estates of individuals age 65 or over, but only following the death of a surviving spouse, and only if the beneficiary had no children who were under age 21, blind, or had a disability. This law did not specify the benefits for which states were allowed, or prohibited, to seek recovery. The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA, P.L. 97-248) subsequently allowed states to impose liens on certain beneficiaries' property before death, which had been previously prohibited.

In 1993, the Omnibus Budget Reconciliation Act (OBRA 93, P.L. 103-66) made estate recovery mandatory for three categories of beneficiaries: (1) individuals who were expected to be permanently institutionalized; (2) individuals who received Medicaid when they were age 55 or older—when they received certain services; and (3) individuals with long-term care insurance policies, under certain circumstances. OBRA 93 specifies a number of additional requirements described below, and also provides states with some flexibility in how they administer their estate recovery programs. Later in this chapter we discuss state uptake of the flexibilities OBRA 93 provides.

TABLE 3-3. Legislative History of Medicaid Estate Recovery Requirements

Statute	Estate recovery requirements
Social Security Act Amendments of 1965 (P.L. 89-97)	States were permitted, but not required, to pursue recovery from the estates of individuals age 65 or over. States were permitted, but not required, to impose post-death liens on a beneficiary's property. States were not permitted to impose pre-death liens on a beneficiary's property.
Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248)	States were permitted, but not required, to impose pre-death liens on a beneficiary's property under certain circumstances. Beneficiaries deemed permanently institutionalized are entitled to a hearing to determine whether or not they are likely to ever return home.
Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66)	States were required to pursue recovery from the estates of three categories of beneficiaries: (1) individuals who were expected to be permanently institutionalized; (2) individuals who received Medicaid when they were age 55 or older—when they received certain services; and (3) individuals with long-term care insurance policies under certain circumstances.
Medicare Improvements for Patients and Providers Act of 2008 (P.L. 110-275)	Excluded Medicare cost sharing for individuals enrolled in Medicare Savings Programs.

Source: MACPAC, 2021, analysis of legislation.

For beneficiaries who received Medicaid when they were age 55 or older, OBRA 93 specified that states are required to seek recovery for amounts at least equal to benefits paid on their behalf for nursing facility services, HCBS, and related hospital and prescription drug services (Table 3-4). (Related hospital and prescription drug services are those provided during a stay in a nursing facility or while receiving HCBS.) States can also opt to seek recovery for other benefits under their state plan, except for assistance with Medicare cost sharing provided to individuals dually enrolled in Medicare and Medicaid.

When benefits are covered under managed care, states are required to seek recovery for some or all of the premiums paid for individuals who would have been subject to estate recovery under fee for service (FFS).[13] If a state elects to pursue recovery for all Medicaid services provided to beneficiaries enrolled in managed care, they must pursue recovery for the total capitation payment for the period the beneficiary was enrolled in the plan (CMS 2020). If a state only pursues recovery for some state plan services, they must pursue recovery for the portion of the capitation payment attributed to those services (CMS 2020). Unlike persons who receive Medicaid on a FFS basis, for whom recovery

would be limited to the actual cost of any services used, recovery for persons enrolled in managed care could encompass the full amount of capitation payments made on the beneficiary's behalf, regardless of service use.

TABLE 3-4. Benefit Categories for Which States Must Pursue 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, 2021, analysis of the Social Security Act, as amended by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) and the Medicare Improvements for Patients and Providers Act of 2008 (P.L. 110-275).

If a beneficiary has a surviving spouse, recovery must be deferred until after the spouse's death (CMS 2020). States can also choose to exempt such estates from recovery rather than pursue them after the spouse's death. States must also exempt recovery if a beneficiary has a child who is under age 21 or a child of any age who is blind or has a disability. In addition, a home lien cannot be enforced when it is occupied by a spouse, minor child, child who is blind or has a disability, a sibling of the deceased beneficiary who lived there for at least one year prior to the beneficiary's death, or a son or daughter who resided in the home for at least two years prior to the beneficiary's admission to an institution and provided care that delayed a beneficiary's placement in an institution (CMS 2020).[14]

OBRA 93 also required states to establish procedures for waiving estate recovery requirements due to hardships, based on criteria established by the Secretary of the U.S. Department of Health and Human Services (the Secretary). Guidance from the Centers for Medicare & Medicaid Services (CMS) provides examples of potential hardships, but does not require states to use them. These examples include: (1) if an estate is the sole income-producing asset of survivors, such as a family farm or other family business, and produces limited income; (2) if it is a home of modest value—defined as roughly half the average home value in the county; or (3) other compelling circumstances (CMS 2020). States are also required to designate a cost-effectiveness threshold (i.e., the value of an estate they deem cost effective to pursue relative to the administrative cost of recovery).

OBRA 93 requires states to attempt to recover, at a minimum, all property and assets that pass to heirs under state probate laws; however, both the definition of an estate and the priority of Medicaid's claims against an estate's other creditors vary by state (ASPE 2005). In some cases, state Medicaid programs might not recover any funds from an estate if it is first depleted by other, higher priority creditors (e.g., mortgages or unpaid tax bills) (ASPE 2005).

Rationale for Medicaid estate recovery policy

Estate recovery can be considered a program integrity strategy meant to ensure beneficiaries contribute to the cost of their care when assets are available for recovery after their death. This is done by recouping funds from assets that were previously unavailable to pay for a beneficiary's care, such as home equity that was not counted during the eligibility determination process. Proponents of estate recovery argue that it ensures that Medicaid funding is used for the most needy, supplements Medicaid funding to pay for even more needy individuals by replenishing funds spent,

and is a good return on investment (OIG 1995, Goldberg 1993, Rohlfes 1993). State officials have also indicated that estate recovery allows states to spend more on other aspects of Medicaid (Karp et al. 2005). One of the states we surveyed noted that estate recovery is an important source of funding, reserves Medicaid for those with a true financial need, and ensures that Medicaid is the payer of last resort. An interviewee described estate recovery as an important reminder of the cost of long-term care, for which Medicaid is the nation's largest payer.

Criticism of Medicaid estate recovery policy

Critics of Medicaid's estate recovery policy say that it punishes low-income families and recovers little (Corbett 2019). Medicaid beneficiaries generally have few assets, particularly given that most individuals must meet asset limits to qualify for coverage of LTSS (CHCF 2014). As we heard in our interviews with stakeholders, individuals with greater awareness of estate recovery and resources may protect their assets from estate recovery while preserving Medicaid eligibility, allowing resources to be passed on to their heirs. Stakeholders noted that individuals with little income and few assets besides a home, however, are less likely to be aware of estate recovery or have the resources to obtain an attorney. In addition, unless someone is able to protect assets, Medicaid eligibility rules require they impoverish themselves, except for assets that are not counted toward eligibility, as noted above. As a result, the estates that actually get pursued by states are usually modest in size. For heirs of these modest estates, estate recovery may remove a source of income or a residence which, if retained, would protect the heirs from poverty or housing insecurity. As multiple interviewees commented, this contributes to generational poverty and wealth inequality. The policy may also place an unequal burden on people of color, compounding existing wealth inequalities among racial and ethnic groups. Finally, Medicaid estate recovery policies are unique among federal programs. For example, many people who use LTSS are dually eligible for Medicare and Medicaid, yet as one advocate noted, the federal government does not pursue Medicare costs, which can also be quite high (Corbett 2019).

Program Administration

Estate recovery administration is complex and involves a number of steps to notify potential Medicaid beneficiaries, assess and verify assets, inform survivors of estate recovery claims, initiate recovery through the probate process or other means, and provide exceptions in the case of potential hardships. State agencies can perform these tasks or use third-party contractors to carry out some of this work.

Providing public information and meaningful notice

States are required to provide notice to Medicaid applicants explaining the estate recovery policy. A 2005 survey found that all responding states provided notice at the time of application; a minority of states also provided notice at other points such as during eligibility redetermination or upon admission to a certified facility. Those conducting that survey found that the information provided to beneficiaries lacked detail, raising questions about how well applicants comprehended the notice (Wood and Klem 2007).

Some states use websites, brochures, and toll-free numbers to educate beneficiaries and their representatives on estate recovery requirements. For example, the District of Columbia has a fact sheet on its website with information including the definition of an estate and the procedure for applying for a hardship waiver (DC DHCF 2015). Kansas has a similar fact sheet, and Nebraska's website has a brochure on estate recovery and several related forms (NE DHHS 2020, KS DHE 2017). However, our stakeholder interviews suggest that awareness of estate recovery remains low.

Assessing an estate and verifying assets

The definition of an estate is governed by state probate law. OBRA 93 requires states to attempt to recover, at a minimum, all property and assets that pass to heirs under state probate law. Such laws vary, however. For example, Florida law protects the home from many estate claims (ASPE 2005). In addition, states may broaden the definition of estate to include assets that do not go through probate, such as life insurance payouts (ASPE 2005). The priority of creditors' claims against an estate is also established in state law; therefore, a Medicaid program might not recover any funds from an estate if the estate is first depleted by higher priority creditors (ASPE 2005).

Upon application, states verify reported assets for financial eligibility for LTSS, which can later be used to identify assets for potential estate recovery efforts. Early analyses of estate recovery programs following enactment of OBRA 93 raised concerns about states' ability to verify certain types of assets, particularly those held out of state (OIG 1995). The DRA required states to establish electronic asset verification systems (AVS) that enable data exchange with financial institutions, including those not reported by the applicant. These systems, generally run by contracted vendors, establish portals between state eligibility systems and banks or other third-party systems with electronic access to financial information (MACPAC 2020b). As of October 2020, 41 states and the District of Columbia were fully compliant with federal AVS requirements (MACPAC 2020b).[15]

The probate process, discussed later, may also reveal additional assets following a beneficiary's death that were not discovered by the state at the time of application, or were obtained after a beneficiary's eligibility was last determined.

Providing notices of pre-death liens

In 1982, TEFRA authorized states to impose pre-death liens on real property in circumstances for certain institutionalized beneficiaries. TEFRA liens allow the state Medicaid program to declare its claim on the property so that upon the beneficiary's death the lien must be settled. If the property is sold during the beneficiary's lifetime, any equity would be considered to be part of a beneficiary's assets for eligibility purposes and could make them ineligible for Medicaid until those assets are spent down. TEFRA liens cannot be placed if a home is occupied by a spouse, a child under age 21, a child of any age who is blind or has a disability, or a sibling with an equity interest who has resided in the home for at least one year before the beneficiary was admitted to an institution (CMS 2020).

TEFRA liens are the only type of lien allowed before the death of the beneficiary, based on the assumption that the beneficiary will not be returning home (CMS 2020). Such beneficiaries are entitled to a hearing to determine if they cannot be reasonably expected to be discharged from an institution and return home. If the beneficiary does return home, the TEFRA lien must be dissolved (CMS 2020).

Determining a claim amount

For beneficiaries who received benefits through FFS, states must calculate the costs of the services provided to them. A key part of this calculation is identifying which services are included, based on whether the state pursues recovery for mandated benefits only or additional benefits under the state plan. In the next section of this chapter we describe state variation in pursuit of optional benefits.

The calculation of a claim amount for states with managed long-term services and supports (MLTSS) programs is not as straightforward as it is for states that provide LTSS through FFS. As of 2021, 25 states have implemented MLTSS programs, which cover some or all LTSS benefits and shift risk from the state to managed care organizations (ADvancing States 2021, Figure 3B-1). If a state elects to pursue recovery for all Medicaid services, it must pursue recovery for the total capitation payment for the period the beneficiary was enrolled in Medicaid (CMS 2020). If a state only pursues

recovery for some state plan services (e.g., LTSS and related services), they must pursue recovery for the portion of the capitation payment associated with those services (CMS 2020).

Pursuing recovery for some or all of the capitation payment can result in some estates being pursued for a greater amount than was spent on the beneficiary's care; for those who used more care, recovery may be less than what was spent on their care. For example, the estate of an individual who used only a few hours of HCBS per week that is pursued for the full capitation payment would likely pay back more than the amount spent on their care, while the estate of someone who spent several years in a nursing facility would repay a capitation amount that is likely less than the amount actually spent on their care. It may also be the case that an individual is enrolled in an MLTSS plan but receives no care. A letter sent to the Commission by a group of stakeholders described a circumstance in which the estate of an individual with a disability was pursued for over $200,000 even though that beneficiary had not received any care, as he had also been covered through his parent's insurance plan (Carlson 2020).

A number of stakeholders we interviewed said that they do not think people understand what MLTSS capitation payments are, let alone how they affect the estate recovery claim. These stakeholders said that it is easier for people to understand recovery claims that are derived from the direct cost of care. Additionally, several stakeholders said that recovering capitation payments can create inequities, as amounts recovered from individuals using few services will be more than was actually spent on their care and vice versa.

One state we interviewed expressed interest in pursuing recovery based on the actual cost of care provided to beneficiaries rather than the capitation payment, considering it a fairer method. State officials have had some discussions with CMS regarding whether this could be changed. Federal officials told us they do not think they have the statutory authority to allow states to pursue recovery based on the actual cost of care. They also expressed some concern about whether moving to pursue recovery based on the cost of care could affect other policies based on capitation payments.

Providing notices of claims after death for probate process

Upon a beneficiary's death, there are two ways in which states may provide notice of a claim on the estate as part of the state probate process.

- States may provide notice immediately following the beneficiary's death, before the opening of probate in court. This information could be provided to available contacts, including individuals listed in the Medicaid file or the last known address. However, it is uncertain if the notice would reach the appropriate individuals affected if the probate process has not yet started, and may be difficult for heirs to understand such notices without a lawyer or legal aid services (Wood and Klem 2007).
- Alternatively, states may provide notice following the opening of probate in court. At that point, the notice should reach the appropriate heirs as it will be sent to the court-appointed executor or administrator. However, estates are frequently not probated or there may be a long time before probate is opened, which is why states may choose to send notice immediately following death (Wood and Klem 2007).

Pursuing direct collections

States can recover funds directly from nursing facilities, bank accounts, and any trusts that were approved by Medicaid during the application process under conditions that, after death, remaining proceeds would be turned over to the state (Wood and Klem 2007). Collections from nursing homes may include unspent personal needs allowance funds. In cases of small estates, states can sometimes pursue direct collection from banks

using alternative processes to probate court (Wood and Klem 2007).

Granting hardship exemptions

As noted earlier, states are required to establish procedures for waiving estate recovery requirements when they would cause undue hardship, based on criteria established by the Secretary. CMS does not, however, require states to incorporate any of the examples outlined in its guidance (CMS 2020). We describe variation in state policies on hardship waivers in the next section of this chapter.

Hardship waivers raise equity concerns. As one elder law attorney stated, the ability to prove hardship usually requires the help of a lawyer, which not everyone can afford. This attorney also noted that pursuing such waivers is often not a priority for legal aid programs. Even with legal representation, however, interviewees indicated that an individual's success in getting approval for a hardship waiver depends upon state policies. We spoke with elder law attorneys from five different states, and only two indicated that the assistance of an elder law attorney could improve a person's chance of obtaining a hardship waiver. One stakeholder thought it could be beneficial to set out more specific standards for hardship waivers, while another wanted to see the minimum standard in their state raised. Finally, although one stakeholder who assists states with estate recovery said information on hardship waivers is typically included with materials sent to the representatives of a beneficiary's estate, many stakeholders said that few people are aware of the option to apply for a hardship waiver.

State Variation in Estate Recovery Policies

As noted earlier, states retain some flexibility over certain aspects of program administration such as the benefits for which they pursue recovery, hardship waiver policies, and cost-effectiveness thresholds. To gain insight into variation in state policies, we reviewed Medicaid state plans found on state and CMS websites or obtained from CMS, capturing at least partial information for all 50 states and the District of Columbia. (Some state plans were missing certain information.) Full results of our review of information on liens, populations included in estate recovery, services recovered, and insurance treatment are in Appendix 3C.

Generally, we found that states tailor their estate recovery programs, as no options were taken up by every state, and hardship waiver policies and cost-effectiveness thresholds varied substantially.

Liens

Most states do not place either pre- or post-death liens on beneficiaries' property that would allow them to place a claim on the equity in a beneficiary's property prior to its sale. TEFRA liens were the most common lien type (26 of 51 states plans with this information).

Recovery for additional benefits

Most states (36 of 51) seek recovery for additional state plan services received when individuals were age 55 or older. Of those 36 states, 31 indicated that they pursue recovery for all state plan services, while the other five pursue recovery for a more limited set of services. For certain younger individuals who are permanently institutionalized, 27 of 50 states recover for benefits provided to beneficiaries beyond the costs of care in institutions such as intermediate care facilities for individuals with intellectual disabilities.

Estate recovery for the new adult group

In the 38 states and the District of Columbia that have expanded Medicaid (including those where implementation is underway), states may pursue estate recovery for benefits beyond LTSS received by individuals in the new adult group when they

are age 55 or older. Earlier work by MACPAC found that, in 2015, 24 expansion states (including the District of Columbia) were recovering payments for non-LTSS benefits, and 7 were not (MACPAC 2015). Although the number of expansion states has increased since then, the number pursuing such recoveries has declined. In our recent review of state plans, we found that 20 expansion states and the District of Columbia pursue recovery for non-LTSS benefits for individuals who received Medicaid at age 55 or older, and 18 states do not (Appendix 3C).

Treatment of long-term care insurance

Most states (35 of 38) do not seek recovery or adjustment if an individual has insurance through the Long-Term Care (LTC) Partnership Program. This program, available in all but 10 states as of 2014, is a joint Medicaid-private sector program under which individuals pay premiums and then can retain some assets and remain eligible for Medicaid if they first deplete the insurance benefit (AALTCI 2021). These programs were developed to encourage the purchase of LTC insurance by moderate-income individuals who might not otherwise purchase these policies (CHCS et al. 2007). However, only a small number of states (8 of 37) do not seek recovery from assets or resources when beneficiaries hold other types of LTC insurance.

Hardship waivers

Information on hardship waivers in state plans is not standardized, so it is difficult to make comparisons across states. Most states (36 of 48) consider the sample criteria of whether the asset is the sole income-producing asset of the heir (e.g., a family farm), with some states allowing for it to be a substantial but not the only source of income. Few states (8 of 48) consider waiving recovery for a home of modest value, although some additional states may have protected the home under different circumstances or thresholds.

States have also defined their own criteria for granting hardship waivers. For example, Mississippi will waive recovery if the assets in the estate are less than $5,000 and there is no prepaid burial contract or other money set aside for the burial of the deceased beneficiary (MS DM 1995). A number of states waive recovery if it would leave the heir at risk of becoming eligible for public assistance.

Cost-effectiveness thresholds

State approaches to cost-effectiveness thresholds also vary substantially, as states are only required to have a standard and to provide some justification for that standard. Cost-effectiveness standards often consider the value of the estate, the claim value, and the cost of administration. Of the states we examined, 19 of 48 pursue any estate where the amount of recovery exceeds the cost of pursuing recovery or report having no minimum threshold (Table 3C-3). Among the other 29 states, thresholds of $100 or $500 were common. Georgia and South Carolina had the highest cost-effectiveness threshold at $25,000.

Estate Collections

Estate recovery recoups only a small fraction of LTSS spending. Though recovery amounts may be consequential for states, particularly when budgets are tight, overall, the data do not indicate that the program is having its intended effect. Recoveries vary widely by states and reflect numerous factors, such as cost-effectiveness thresholds, resources for program administration, and state priorities.

Aggregate collections

In FY 2019, states collected approximately $733.4 million from beneficiary estates, as reported on the CMS-64 expenditure reports that states file with CMS (Appendix 3E). The five states with the largest estate collections—Massachusetts, New York, Pennsylvania, Ohio, and Wisconsin—account for 38.5 percent of all recoveries in FY 2019.

Two states, Delaware and Vermont, reported no collections for FY 2016–2019. We do not have any details on why these states reported no recoveries.

We sought to compare aggregate collections to national Medicaid LTSS spending, although potential claims may be less than total LTSS spending given the variety of exemptions in federal law and state policy. As a proportion of national Medicaid FFS LTSS spending (managed care data is not reported by service on the CMS-64), recoveries ranged from 0.53 to 0.62 percent during FYs 2015–2019. This is consistent with reports published in the mid-2000s, although amounts have grown in absolute dollars. For example, an AARP study found that estate recoveries were 0.61 percent of LTSS spending in FY 2005 (Wood and Klem 2007). At the state level, estate recovery as a proportion of Medicaid FFS LTSS spending in FY 2019 varied, ranging from a high of 14.49 percent in Iowa to 0.02 percent in Hawaii, Louisiana, and West Virginia. Only eight states recovered more than 1.0 percent, while 28 states recovered less than 0.5 percent of what was spent on FFS LTSS for Medicaid enrollees in that year.

Although our data do not include capitation payments made to MLTSS plans or the claims these plans pay for LTSS, we expect that if such data were available, estate recoveries as a proportion of national and state LTSS spending would be even lower.

State collections are affected by the size of claims, size of beneficiary estates, variation in state policies and administration of estate recovery programs, and where Medicaid stands on the priority creditor list. Research suggests that states do not recover all they could—one study estimated states could have collected 5.5 times more from 2002 to 2011 if all their efforts matched those states that were most effective at estate recovery (Warshawsky and Marchand 2017). However, the study did not factor into its estimate factors such as differences in state probate laws that might limit recoveries, or the costs of program administration that would accompany more aggressive collections.

Number and size of recovered estates

Relatively little information is available on the number and size of estates from which states have sought recovery. The most detailed data available are for FY 2003, when the national average recovery amount per estate was $8,116, with recoveries attempted from 3,242 estates for 42 states and the District of Columbia for which data were available (Karp et al. 2005).

Methodology. To gain more detail than available from state reports to CMS on aggregate collections, we developed a survey regarding the estate collections; hardship waivers; and program administration costs of states. We asked that states provide us with this data for a three-year period. We chose a sample of 15 states that represented a range of aggregate collections and estate recovery policies, and included states with and without MLTSS. Ten states responded to our survey. Several noted that they do not collect certain data (e.g., hardship waiver applications) or were unable to provide customized reports. Thus, the examples below are illustrative and are not completely comparable.

Number and size of recovered estates. Among the states responding to our survey, the number of estates recovered and the average recovery amount, which we calculated using the total recoveries and number of recovered estates, ranged widely (Table 3-5). The average recovery amount ranged from about $2,768 in Missouri to $71,556 in Alaska. In general, states that recovered from fewer estates had higher average recovery amounts, which may be due to differences in cost-effectiveness thresholds across states. For example, Alaska has a cost-effectiveness threshold of $10,000 and had a small number of collections and a higher average recovery amount than others. (Even with a minimum cost-effectiveness threshold, a state may collect an amount below that level for several reasons. For example, the remaining estate may have been smaller than the claim or other estate creditors may have a prior claim that reduces the amount Medicaid is able to recover.) In contrast,

states recovering from several thousand or more estates each year tended to pursue recovery from any estate where the recovery would exceed the administrative costs or indicated there was administrative discretion in determining which estates to pursue.

The survey results also demonstrated a wide range of recovery amounts. Although we did not ask states for details on any particular cases, our interviews provided some potential explanations for the wide variation in values. An estate recovery contractor we spoke with suggested that minimal recovery amounts (e.g., a few cents) could reflect funds from personal needs accounts held by nursing facilities, which generally must return any remaining funds to the state after a resident's death, no matter how small. They could also represent estates that were depleted by higher priority creditors. By contrast, several stakeholders told us that large collection amounts could represent assets held in special needs trusts, which allow individuals with disabilities under 65 to draw down funds for their benefit (e.g., education, supplemental care not covered by Medicaid). However, after a beneficiary dies, funds remaining in the trust must be made available for recovery.

TABLE 3-5. Number and Size of Recovered Estates by Surveyed State

State	Year	Number of estates pursued	Number of estates recovered	Recovery amount			
				Total recoveries	Average	Minimum	Maximum
Alaska	SFY 2018	240-480[1]	12	$858,674.69	$71,556.22	$2,029.00	$125,104.79
	SFY 2019	240-480[1]	8	235,257.47	29,407.18	15,243.31	73,975.09
	SFY 2020	240-480[1]	9	408,139.16	45,348.80	846.66	169,194.06
Arizona	SFY 2018	1,132	176	2,449,952.77	13,920.19	0.13	145.420.48
	SFY 2019	899	188	2,140,842.48	11,387.46	0.03	159,537.96
	SFY 2020	4,008	185	2,905,233.23	15,703.96	0.30	210,474.22
Georgia	FFY 2017	1,177	112	3,966,766.85	35,417.56	937.91	232,230.82
	FFY 2018	2,766	127	4,200,580.34	33,075.44	351.80	168,329.03
	FFY 2019	2,988	108	3,970,013.82	36,759.39	90.00	132,644.30
Iowa	SFY 2018	15,736	3,532	27,189,569.89	7,698.07	0.01	898,392.26
	SFY 2019	15,291	3,359	27,303,246.14	8,128.39	0.01	387,639.19
	SFY 2020	16,279	3,397	25,321,637.73	7,454.12	0.01	428,018.57
Maryland	CY 2017	2,256	363	5,376,302.79	14,810.75	770.00	3,271,183.14
	CY 2018	2,545	456	7,354,961.22	16,129.30	132.81	366,384.08
	CY 2019	2,378	498	7,723,169.43	15,508.37	168.64	485,150.24
Missouri	SFY 2018	1,215[2]	4,812	13,321,042.00	2,768.30	2.40	156,869.94
	SFY 2019	2,201[2]	4,198	14,607,628.00	3,479.66	7.44	327,387.86
	SFY 2020	2,300[2]	4,772	15,580,521.00	3,264.99	3.10	144,849.63

State	Year	Number of estates pursued	Number of estates recovered	Recovery amount			
				Total recoveries	Average	Minimum	Maximum
New York[3]	CY 2017	35,707	6,763	57,652,078.06	–	0.01	455,670.63
	CY 2018	36,146	4,754	53,583,269.15	–	0.01	524,064.08
	CY 2019	28,870	4,222	59,748,611.28	–	0.01	500,373.00
Oregon	Not specified	10,568	4,227	32,700,000.00	7,735.98	0.01	395,000.00
Tennessee	CY 2017	–	1,169	21,845,632.00	18,687.45	–	–
	CY 2018	–	1,162	26,853,611.00	23,109.82	–	–
	CY 2019	–	910	27,692,950.00	30,431.81	–	–
Wisconsin	SFY 2018	7,596	5,125	28,023,523.67	5,468.00	0.01	211,192.30
	SFY 2019	9,882	6,206	31,052,855.37	5,003.68	0.01	358,788.31
	SFY 2020	8,406	6,005	31,690,799.72	5,277.40	0.01	181,540.70

Notes: SFY is state fiscal year. CY is calendar year.

– Dash indicates that the state did not answer this question or said the answer was unknown.

[1] Based on estimate of demands for notice filed each month.

[2] Missouri indicated this only includes newly opened cases, so it is less than the total number of estates recovered that year.

[3] Information provided on the number and size of estates excludes New York City, so we could not calculate an average recovery amount. New York City is accounted for in total recoveries.

Source: MACPAC, 2021, survey on Medicaid estate recovery.

Hardship waivers. Nine of the 10 states that responded to our survey provided information on hardship waiver applications and the number granted (Appendix 3F).[16] These too vary widely among states. The highest number of applications received by a state in one year was 89 (Iowa), and the lowest number was four (Maryland). Iowa also had the highest number of waivers granted by a state in one year (57), in a year when the state recovered from 3,359 estates. Alaska and Missouri reported granting no hardship waivers over a three-year period, and Maryland and New York (New York City excluded) reported approved hardship waivers in the single digits in any given year. Given what we heard from stakeholders regarding hardship waivers, the numbers of hardship waiver applications and approved waivers reported by states suggest that beneficiaries are not aware of the policy, and that it is difficult to complete such applications without assistance.

Administration costs. Only five states provided information on administrative costs. These ranged from about $35,500 in a single year in Alaska to approximately $3 million in one year in Iowa (Appendix 3F). Administrative costs were typically under 12 percent of total recoveries. It is important to note that states that use third-party contractors for estate recovery administration may pay them on a contingency fee basis. We did not ask states to specify whether administrative costs included these arrangements.

Effects of Estate Recovery on Seeking Medicaid Coverage

A criticism of estate recovery policies is that they reduce access to Medicaid-covered LTSS. In our stakeholder interviews, beneficiary advocates, elder law attorneys, and state officials all commented that some people choose to forego or delay Medicaid LTSS for fear of estate recovery and losing their home. As one interviewee noted, this can lead to poor health outcomes.

Although stakeholders could not quantify how many individuals are deterred from seeking Medicaid LTSS due to estate recovery, prior research noted it as a barrier to enrollment in Medicare Savings Programs (MSPs), which provide assistance with Medicare cost sharing (Nemore 2007, Sanchez 2007). As such, the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA, P.L. 110-275) barred estate recovery collections for premiums, deductibles, and coinsurance made on behalf of individuals participating in MSPs. In addition, as noted earlier, estate recovery as a deterrent to Medicaid enrollment was also raised as a concern for the new adult group when the Commission last explored this issue (MACPAC 2015, Schilling 2015, Brown 2014). A number of states subsequently eliminated estate recovery from populations that they are not required to pursue (MACPAC 2015).

Although fear of estate recovery may deter some individuals from seeking Medicaid LTSS, awareness and understanding of estate recovery policies by the general public and by Medicaid beneficiaries is low. As noted previously, individuals may first learn about estate recovery during the Medicaid application process, as information is included in the rights and responsibilities section of the application. Two stakeholders, however, noted that this can get lost in the fine print of long applications, and questioned how many people read or understand that information. Additionally, interviewees noted that individuals who have urgent needs for services may not have the time or ability to consider estate recovery policies. Finally, one stakeholder pointed out that even though a Medicaid beneficiary may be aware of estate recovery, if they do not pass that information along to the beneficiaries of their estate, it can come as a shock to those individuals after the enrollee's death.

Commission Recommendations

As the Commission deliberated on estate recovery we drew several conclusions. First, estate recovery does not appear to be effective in recouping assets from the estates of beneficiaries with substantial means. Instead, the modest average recovery amounts reported in our survey and comments from stakeholder interviews suggest that states primarily collect from estates of modest size. Because wealthier beneficiaries have found ways to protect assets so they can be passed on to their heirs, current Medicaid estate recovery policy places an unfair burden on beneficiaries with limited means, whose heirs would likely receive substantial protection from poverty or housing insecurity if they were able to retain an estate of even modest size. While seeking ways to correct this situation, the Commission sought to introduce greater state flexibility and ensure minimum federal protections for beneficiaries and their heirs.

The Commission's deliberations resulted in three recommendations. Congress could take up these recommendations independently of each other, but if the first recommendation is adopted, then the second two would only apply in states that continue recovery. Below we share our rationale and implications for these recommendations. We also share estimates by the Congressional Budget Office (CBO) of how these recommendations would affect the federal deficit. As is typical for MACPAC recommendations, CBO produced estimates within specified ranges because the recommendations did not include legislative language that would enable a more detailed estimate.

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.

Rationale

Reverting estate recovery back to a state option would give states increased flexibility, allowing them to cease recovery if they determine the return on their investment is low, while still permitting states that find estate recovery useful to continue the practice. This echoes a similar recommendation the Commission made in 2019, when recommending that Congress make the Medicaid recovery audit contractor program optional given its administrative burden relative to the amount of recoveries (MACPAC 2019). Another concern about current policy is that states may face a compliance risk due to difficulties in recoveries that may not be well understood by the U.S. Department of Health and Human Services Office of Inspector General. Making recovery optional would mitigate this risk.

A number of stakeholders supported making estate recovery optional, noting that the current policy does not affect beneficiaries with sizable resources in their estates after their death and instead affects beneficiaries with modest means. For heirs of those beneficiaries, retention of an inherited home of modest value could provide some protection from poverty or housing instability.

During the Commission's deliberations, a concern was raised that allowing states to discontinue estate recovery would essentially exempt all home equity below the minimum home equity asset standard (currently set at $603,000) used for eligibility determination. Ultimately the Commission decided that issues and concerns related to eligibility determination should be taken up separately from estate recovery.

Were Congress to take this step, we expect that some states would opt out. Prior to OBRA 93, 22 states had estate recovery programs (OIG 1995). A few states were resistant to OBRA's mandate: West Virginia lost a lawsuit against the federal government on the matter, and Michigan began estate recovery only after it faced a potential loss of Medicaid funding (Corbett 2019, Smith 2012). States most likely to opt out would be those with lower collection amounts relative to other states or those that only pursue recovery for mandated benefits. For example, in FY 2019, eight states recovered less than $500,000 each. (The national average amount recovered per state was about $14.4 million.) States choosing to continue estate recovery would likely include those that have recovered larger amounts in recent years, or those whose home equity limits for LTSS eligibility are higher than the federal minimum (KFF 2019). States that view estate recovery as a program integrity tool may also choose to maintain their programs.

Beneficiary advocates and officials from one state were in favor of making estate recovery optional for states, while the elder law attorneys we spoke with favored eliminating the program altogether. All were concerned about the current inequities of estate recovery. In particular, the elder law attorneys we spoke with acknowledged that although planning for and assisting clients with estate recovery is part of their business, they all supported eliminating the policy.

Medicaid officials varied in their views. Although estate recovery does not bring a lot of money back to the state, one interviewee said the policy sends an important message about the substantial cost for LTSS and that Medicaid finances the majority of the nation's LTSS. One state official noted it would be difficult to forego the revenue from estate recovery, echoing comments received through our state survey. Another expressed equity concerns about estate recovery and would be interested in discussing the issue with stakeholders if the policy were made optional.

Implications

Federal spending. CBO estimates that this recommendation would reduce estate recovery

collections from state Medicaid programs, which would increase federal spending on Medicaid. Federal spending would increase by $50–250 million per year between 2022 and 2030, less than $1 billion between 2021 and 2025, and $1–5 billion between 2021 and 2030.

States. States that cease recovery would forgo the revenue. Reductions in recovery would be somewhat offset by reduced administrative costs.

Beneficiaries. If states cease recovery, some individuals may seek Medicaid-covered LTSS who would not have done so previously. In addition, the inheritance of an estate of even modest size could protect heirs from poverty. Given that estate recovery likely only occurs for those without the resources and awareness to avoid it through estate planning, making it optional will help address equity concerns we heard in our interviews.

Plans and providers. This policy change would have no effect on providers and plans.

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 was less than the capitation payment made to a managed care plan.

Rationale

Allowing states to pursue recovery for the actual cost of care where it is less than the capitation payment would avoid circumstances in which individuals' estates are pursued for more than the cost of care that was provided to them. Beneficiaries are likely unaware of the amount of capitation paid on their behalf. Moreover, they cannot change their behavior (e.g., by using fewer services) to avoid having their estates recovered for greater amounts, a strategy that would be possible under fee-for-service arrangements. Even if a Medicaid beneficiary over age 55 receives no care from their managed care plan, under current law, the state still retains the right to pursue the beneficiary's estate for the entire cost of all capitation payments paid to the plan by the state. This differs from other federal programs for which there is no recovery. For example, an individual could enroll in a zero-dollar cost-sharing Medicare Advantage plan and never receive care, but would not have their estate pursued for capitation payments.

This approach would be more equitable and easier for heirs to understand, and may remove a barrier to enrollment for individuals who only need small amounts of care. It would also give states greater flexibility in administering their estate recovery program. This recommendation would not allow states to pursue care for more than the capitation payment for individuals who had higher costs, so beneficiary estates would never be worse off under this recommendation.

Implications

Federal spending. CBO estimates that this recommendation would reduce estate recovery collections from state Medicaid programs, which would increase federal spending on Medicaid. CBO was unable to provide a specific estimate for us as the fiscal effects of this recommendation would depend on whether Congress makes estate recovery optional, as it would apply to either all states or just those that continue recovery. We believe the effects would be modest given the data provided by states on the size of recovered estates under current policies.

States. States that opt to pursue recovery based on the actual cost of care would see decreased collections, as they would collect less for beneficiaries for whom the cost of care is lower than the premium. In addition, for those beneficiaries, states would no longer be able to collect the portion of the premium that pays for a health plan's risk and profit margins regardless of beneficiaries' costs of care.

Beneficiaries. This recommendation may remove a barrier to care for individuals who only need small

amounts of care, and would be easier to explain to beneficiaries and their heirs. For beneficiaries who used small amounts of care, a lower amount may be pursued compared to current law.

Plans and providers. There should be little effect on plans as many already submit to states the type of information that would be needed for the state to seek recovery based on the cost of care. There would be no effect on providers.

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.

Rationale

Setting specific federal standards for hardship waivers would address some concerns we heard about how estate recovery perpetuates poverty, and would provide more consistent treatment of heirs across states. CMS could begin this process by requiring states to follow the sample criteria it currently describes (CMS 2020). For example, current CMS guidance describes the loss of the sole income-producing asset of survivors as a potential hardship. Because it is likely that the loss of the sole income source for heirs would be a hardship regardless of their state of residence, CMS could require all states to grant waivers in these circumstances. In this case, waiving estate recovery would have a clear effect on heirs' economic stability. CMS also describes a potential hardship as a claim against a home of modest value, which the agency defines as roughly half the average home value in the county. Requiring such a waiver would establish the same policy across states while acknowledging that home values are sensitive to local real estate markets. This would also protect heirs for whom the retention of a family home may reduce housing instability. Under this recommendation, states could also continue to use their own criteria that would exceed these minimum standards.

Regarding the recommended estate minimum threshold, during the discussion Commissioners expressed support for protecting estates of some modest value from estate recovery, even if no other hardship criteria applied. Such a policy would help alleviate an inequity in pursuing estate recovery for people who use LTSS but not for those using other services that may also be quite costly to the program. In addition, other federal means-tested programs (e.g., the Supplemental Nutritional Assistance Program) do not have recovery requirements. Finally, estate recovery is a regressive form of program financing, particularly given federal tax policies that provide substantial protection for those with more assets. Having a minimum threshold would not eliminate this concern but would address concerns about the effects on those with extremely modest means.

Only one state currently has a similar policy to a minimum threshold; Georgia has a cost-effectiveness threshold of $25,000 (higher than all other states) and also waives the first $25,000 in value of larger estates. The Commission chose not to recommend a specific level, noting that Congress or the Secretary would be better suited to determine the exact threshold. Our analysis of HRS data on distribution of wealth among Medicaid decedents could inform their decision making, however. For example, based on the data obtained from the analysis of the HRS, it was determined that 75 percent of Medicaid decedents had less than $48,500 at the time of death.

Implications

Federal spending. CBO estimates that this recommendation would reduce estate recovery collections from state Medicaid programs and

increase administrative costs, which would increase federal spending on Medicaid. CBO was unable to provide a specific estimate for us as the fiscal effects of this recommendation would depend on whether Congress makes estate recovery optional, as it would apply to either all states or just those that continue recovery. In addition, the costs would depend on factors we are leaving to Congress or the Secretary to determine, such as the estate value threshold. We believe the effects would be modest given the data states provided us on the size of recovered estates under current policies.

States. States may see a reduction in revenue if more estates qualify for hardship waivers.

Beneficiaries. If the minimum standards for hardship waivers are increased, more beneficiaries will likely qualify for exemptions. Standards would also ensure that classes of assets, such as homes, are treated the same across states, even if the value of those assets varies. In addition, the inheritance of an estate of even modest size could protect heirs from poverty. These changes could also make individuals more willing to seek care given the removal of the recovery threat.

Plans and providers. This policy change would have no effect on providers and plans.

Looking Ahead

Given the aging population and the high cost of LTSS, Medicaid will continue to play a key role as the nation's largest payer for LTSS. The Commission recognizes the growing financial pressures on the LTSS system, and that one way of addressing that pressure could be to explore mechanisms for people with substantial means to fund their own LTSS (e.g., private insurance) instead of seeking Medicaid. As noted above, during the Commission's various discussions on estate recovery policy, a concern was raised about potential abuses of Medicaid planning activities that allow individuals to shield assets to gain Medicaid eligibility. Given that this is a wholly separate issue from estate recovery, the Commission agreed to defer further discussion of that issue for now and explore later whether there is a need for policy improvements related to eligibility. MACPAC will continue to monitor LTSS trends and proposals for LTSS financing reform, and assess whether Medicaid eligibility rules need updating to promote improved equity and access.

Endnotes

[1] We conducted nine interviews with AARP, the Centers for Medicare & Medicaid Services (CMS), estate recovery contractor HMS, retired elder law attorney Jason Frank, Justice in Aging, the National Academy of Elder Law Attorneys, the National Association of Medicaid Directors, and state officials from Oregon and Tennessee.

[2] For other groups, including children, pregnant women, parents, and adults without dependent children, states must use modified adjusted gross income (MAGI) standards for counting income and household size. These groups may not be subject to an assets test for the purposes of Medicaid eligibility.

[3] The states with Section 209(b) programs are Connecticut, Hawaii, Illinois, Minnesota, Missouri, New Hampshire, North Dakota, and Virginia (MACPAC 2020a).

[4] California is out of compliance and has not implemented any of the provisions of the DRA (Carlson 2021, Miller 2015). As such, the state exempts a person's primary residence when determining Medicaid eligibility (California Welfare and Institutions Code § 14006).

[5] Florida had the highest personal needs allowance in the continental U.S. Alaska is an outlier with an allowance of $1,396 per month in 2018 (KFF 2019).

[6] States may set the maintenance needs allowance at any level, as long as the deduction amount is based on a reasonable assessment of needs and the state establishes a maximum deduction amount that will not be exceeded for any individual under the waiver (42 CFR 435.726).

[7] For 2021, the minimum monthly maintenance needs allowance is $2,155 for all states except Alaska and Hawaii and the maximum is $3,259.50. The community spouse monthly housing allowance is $646.50 for all states except Alaska and Hawaii. And the minimum community spouse resource standard is $26,076 and the maximum is $130,380 (CMS 2021).

[8] For community spouses with limited income, the institutionalized spouse is allowed to transfer income to the community spouse up to the maximum monthly maintenance needs allowance set by the state.

[9] When considering resources available to the community spouse, the minimum allowed by federal law is the greater of the minimum community spouse resource standard or one-half the couple's resources, up the maximum amount for that year. All resources of the couple are combined, counted, and split in half, regardless of which spouse has ownership of the resources (Colello 2017).

[10] States have the option of using the rate of private patient nursing facilities in the community in which the individual is institutionalized at time of application rather than the statewide average monthly rate (§ 1917(c)(1)(E)(i)(II) of the Act). If a state chooses this option, it would be documented in the state plan.

[11] Prior to the DRA, individuals could use the half-a-loaf mechanism, which involved transferring a portion of their assets and waiting out a penalty period before applying for Medicaid coverage. The DRA, however, changed the start date of the penalty period to the date of application, as opposed to the date that the assets were gifted (GAO 2014).

[12] Negative home equity includes housing debt such as mortgages or home loans.

[13] Under managed care, states make monthly capitation payments on behalf of beneficiaries, whether or not the beneficiary uses any services.

[14] The child must be legally residing at the home and have been there continuously since the beneficiary was admitted to a medical institution.

[15] States that do not comply within 12 months of approval of a corrective action plan face a non-compliance penalty outlined at Section 1903(i)(24).

[16] Our results were consistent with a 2005 survey which found that the most common factor states considered was whether the estate was an income-producing asset that was essential to the survivors' livelihood (Wood and Klem 2007). The same survey also obtained information from states on the percent of hardship waiver requests that were granted in 2005, and found that about 58 percent of hardship waivers were granted. However, the number of hardship waivers received by states varied widely, with an average of 41 but with some states having fewer than 10 submitted.

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Commission Vote on Recommendations

In MACPAC's authorizing language in Section 1900 of the Social Security Act, Congress requires the Commission to review Medicaid and CHIP policies and make recommendations related to those policies to Congress, the Secretary of the U.S. Department of Health and Human Services, and the states in its reports to Congress, which are due by March 15 and June 15 of each year. Each Commissioner must vote on each recommendation, and the votes for each recommendation must be published in the reports. The recommendations included in this report, and the corresponding voting record below, fulfills this mandate.

Per the Commission's policies regarding conflicts of interest, the Commission's conflict of interest committee convened prior to the vote to review and discuss whether any conflicts existed relevant to the recommendations on Medicaid estate recovery. It determined that, under the particularly, directly, predictably, and significantly standard that governs its deliberations, no Commissioner has an interest that presents a potential or actual conflict of interest.

The Commission voted on Recommendations 3.1, 3.2, and 3.3 on January 29, 2021.

Medicaid Estate Recovery

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.

Yes:	Bella, Barker, Brooks, Carter, Cerise, Davis, Douglas, George, Gordon, Gorton, Milligan, Szilagyi, Weno	13	Yes
No:	Burwell, Scanlon	2	No
Abstain:	Lampkin, Retchin	2	Abstain

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 was less than the capitation payment made to a managed care plan.

Yes:	Bella, Barker, Brooks, Burwell, Carter, Cerise, Davis, Douglas, George, Gordon, Gorton, Lampkin, Milligan, Retchin, Scanlon, Szilagyi, Weno	17	Yes

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.

Yes:	Bella, Barker, Brooks, Carter, Cerise, Davis, Douglas, George, Gordon, Gorton, Lampkin, Milligan, Scanlon, Szilagyi, Weno	15	Yes
No:	Burwell	1	No
Abstain:	Retchin	1	Abstain

APPENDIX 3A: Medicaid Estate Recovery Policies

TABLE 3A-1. Demographics, Income, and Wealth of Deceased Medicaid Beneficiaries Age 65 and Older in the Health and Retirement Study, 2012–2016

Characteristic	Total sample	Net value of total wealth			
		Quartile 1 (less than $0)	Quartile 2 ($0 to $2,027)	Quartile 3 ($2,028 to $48,499)	Quartile 4 (greater than $48,500)
Demographics					
Age					
Years: mean (median)	81.8 (81.5)	80.1 (79.0)	82.6 (82.4)	82.1 (82.5)	82.0 (81.8)
Gender					
Female	65.4%	58.2%	73.8%	71.1%	55.5%
Male	34.6	41.8	26.2	28.9	44.5
Race					
White, non-Hispanic	52.3	45.5	50.4	56.8	56.4
Black, non-Hispanic	29.1	33.5	29.6	28.8	24.4
Hispanic	16.3	19.4	17.4	12.5	15.9
Other, non-Hispanic	2.4	1.6	2.6	1.9	3.3
Marital status					
Married	27.9	24.9	19.8	29.2	51.5
Non-married	72.1	75.1	80.2	70.8	48.5
Education					
Years: mean (median)	10.1 (11.0)	10.1 (10.7)	10.0 (10.5)	9.8 (11.5)	10.5 (11.0)
Chronic conditions					
Number: mean (median)	4.0 (3.9)	4.4 (4.0)	4.0 (4.0)	3.9 (4.0)	3.5 (3.7)

TABLE 3A-1. (continued)

Characteristic	Total sample	Net value of total wealth			
		Quartile 1 (less than $0)	Quartile 2 ($0 to $2,027)	Quartile 3 ($2,028 to $48,499)	Quartile 4 (greater than $48,500)
Disability status					
Had cognitive impairment	12.9	15.3	14.2	13.1	8.9
Had a disability	28.2	27.8	35.6	30.8	18.4
Work status					
Retired	86.4%	88.5%	84.1%	84.3%	88.8%
Income					
Below 100 percent of federal poverty level	32.4	43.6	32.7	28.6	24.7
Total household income: mean (median)	$19,918 ($14,980)	$13,967 ($11,786)	$15,589 ($13,389)	$18,512 ($14,245)	$30,764 ($19,120)
Wealth					
Home equity: mean (median)	$27,364 ($19,686)	-$6,954 ($0)	$8 ($0)	$12,880 ($2,000)	$98,694 ($75,905)
Additional property equity: mean (median)	$764 ($0)	$0 ($0)	$0 ($0)	$0 ($0)	$2,963 ($0)
Total value of financial assets: mean (median)	$17,364 ($3,845)	$0 ($0)	$275 ($0)	$4,105 ($2,000)	$64,396 ($12,450)
Net value of total wealth: mean (median)	$44,393 ($30,624)	-$14,236 (-$2,900)	$304 ($8)	$17,709 ($12,500)	$173,436 ($112,258)

Notes: The total sample was composed of 578 Medicaid beneficiaries who participated in the Health and Retirement Study and passed away during the 2012, 2014, and 2016 survey periods. Assets are in 2016 dollars.

Source: LeadingAge LTSS Center @UMass Boston, 2021, analysis for MACPAC of the Health and Retirement Study, 2012–2016.

TABLE 3A-2. Income and Wealth of Deceased Medicaid Beneficiaries Age 65 and Older in the Health and Retirement Study, by Demographic Characteristic, 2012–2016

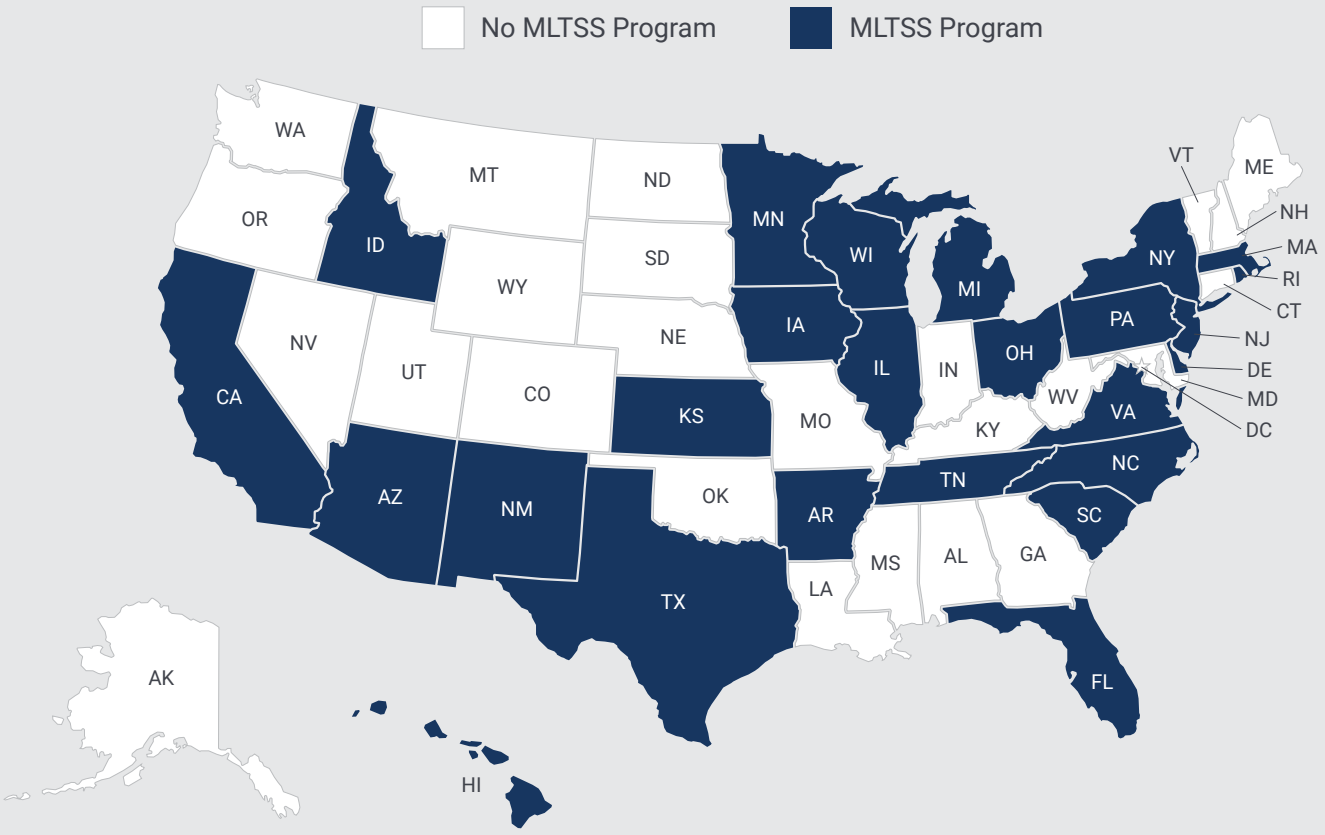
Characteristic	Below 100% federal poverty level	Total household income		Home equity		Additional property equity		Total value of financial assets		Net value of total wealth	
		Mean	Median	Mean	Median	Mean	Median	Mean	Median	Mean	Median
Gender											
Female	34.8%	$16,366	$12,513	$23,465	$0	$796	$0	$11,603	$59	$36,330	$900
Male	25.2	22,491	17,375	34,894	0	758	0	26,318	750	66,277	3,500
Marital status											
Married	19.8	26,600	22,168	50,816	15,000	1,131	0	38,699	3,000	91,217	30,800
Non-married	37.1	13,995	12,000	18,386	0	647	0	8,199	0	29,502	500
Age											
65–74	26.6	25,607	13,878	28,828	0	0	0	29,650	282	59,266	1,800
75–84	35.3	17,714	12,876	31,174	0	357	0	11,970	165	46,740	4,500
≥ 85	29.8	16,883	14,036	23,290	0	1,594	0	13,652	233	39,617	1,250
Race											
White, non-Hispanic	24.5	22,599	14,628	25,784	0	968	0	24,777	800	54,072	2,100
Black, non-Hispanic	38.8	14,947	12,000	25,316	0	648	0	9,864	0	35,502	800
Hispanic	28.6	14,655	13,200	33,989	0	537	0	3,119	0	37,753	1,000
Disability status											
Had a disability	36.3	20,661	12,000	17,952	0	6	0	14,487	0	37,309	475
Did not have a disability	28.4	19,876	14,262	30,619	0	1,044	0	17,441	462	49,863	2,000

Notes: The total sample was composed of 578 Medicaid beneficiaries who participated in the Health and Retirement Study and passed away during the 2012, 2014, and 2016 survey periods. Assets are in 2016 dollars.

Source: LeadingAge LTSS Center @UMass Boston, 2021, analysis for MACPAC of the Health and Retirement Study, 2012–2016.

APPENDIX 3B: States with Managed Long-Term Services and Supports Programs

FIGURE 3B-1. State Adoption of Managed Long-Term Services and Supports Programs, January 2021



Note: MLTSS is managed long-term services and supports. MLTSS program(s) in each state may not cover all regions or populations that use LTSS.

Source: MACPAC, 2021, analysis of ADvancing States 2021.

APPENDIX 3C: Medicaid Estate Recovery Policies

TABLE 3C-1. Medicaid Estate Recovery Policies in State Plans (Liens, Populations, and Services), 2020

State	Liens				Treatment of individuals and services		
	State places lien on real property for Medicaid assistance paid or to be paid	State places lien on real property for benefits incorrectly paid	State imposes TEFRA liens	State imposes post-death lien	State recovers non-mandatory benefits for permanently institutionalized	State determines permanent institutional status for individuals under age 55	State recovers for non-mandatory services for individuals over 55
Total number of states with the specified policy	15	13	26	19	27	16	36
Alabama	✓	–	✓	–	✓	*	✓
Alaska	✓	–	✓	✓	–	–	–
Arizona	✓	✓	✓	✓	–	–	✓
Arkansas	–	–	–	–	✓	✓	–
California	–	–	✓	✓	–	–	✓
Colorado	–	–	✓	–	✓	*	–
Connecticut	✓	✓	✓	✓	✓	*	✓
Delaware	–	–	✓	–	–	–	✓
District of Columbia	–	–	–	✓	–	*	✓
Florida	–	–	–	–	–	–	✓
Georgia	✓	–	–	✓	✓	–	✓
Hawaii	✓	✓	✓	✓	✓	–	✓
Idaho	✓	✓	✓	✓	✓	*	✓
Illinois	–	–	✓	–	✓	–	✓
Indiana	–	–	✓	–	–	–	✓
Iowa	–	–	–	–	–	✓	✓
Kansas	–	–	✓	–	✓	–	✓

TABLE 3C-1. (continued)

State	Liens				Treatment of individuals and services		
	State places lien on real property for Medicaid assistance paid or to be paid	State places lien on real property for benefits incorrectly paid	State imposes TEFRA liens	State imposes post-death lien	State recovers non-mandatory benefits for permanently institutionalized	State determines permanent institutional status for individuals under age 55	State recovers for non-mandatory services for individuals over 55
Kentucky	–	–	–	–	–	✓	✓
Louisiana	–	–	–	–	–	–	–
Maine	–	–	–	–	–	✓	✓
Maryland	✓	✓	✓	–	✓	*	✓
Massachusetts	✓	✓	✓	✓	✓	✓	✓
Michigan	–	–	–	✓	✓	*	✓
Minnesota	–	✓	✓	✓	✓	*	–
Mississippi	–	–	–	–	–	–	–
Missouri	–	✓	✓	–	✓	–	✓
Montana	✓	–	✓	–	✓	✓	✓
Nebraska	–	–	–	–	✓	✓	✓
Nevada	–	–	–	✓	✓	✓	✓
New Hampshire	✓	–	✓	–	✓	✓	✓
New Jersey	–	✓	–	✓	–	–	✓
New Mexico	–	–	–	–	–	*	–
New York	✓	✓	✓	✓	✓	✓	✓
North Carolina	–	–	–	–	✓	✓	✓
North Dakota	–	–	–	–	✓	✓	✓
Ohio	✓	–	✓	✓	✓	✓	✓
Oklahoma	–	–	✓	–	✓	*	–
Oregon	–	–	–	–	✓	–	✓
Pennsylvania	–	–	–	–	–	–	–

TABLE 3C-1. (continued)

State	Liens				Treatment of individuals and services		
	State places lien on real property for Medicaid assistance paid or to be paid	State places lien on real property for benefits incorrectly paid	State imposes TEFRA liens	State imposes post-death lien	State recovers non-mandatory benefits for permanently institutionalized	State determines permanent institutional status for individuals under age 55	State recovers for non-mandatory services for individuals over 55
Rhode Island	–	–	–	✓	–	–	✓
South Carolina	–	–	–	–	–	*	–
South Dakota	✓	✓	✓	–	–	✓	–
Tennessee	–	–	–	–	–	–	✓
Texas	–	–	–	–	–	–	✓
Utah	–	–	✓	✓	✓	–	✓
Vermont	–	–	–	–	–	*	–
Virginia	–	–	–	–	*	✓	–
Washington	–	✓	✓	✓	–	*	–
West Virginia	✓	–	✓	✓	–	✓	–
Wisconsin	–	✓	✓	–	✓	–	✓
Wyoming	–	–	–	–	✓	*	✓

Notes: TEFRA is the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248). Non-mandatory services are services for which states are not required to seek recovery by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66).

– Dash indicates state does not have the indicated policy.

✓ Check mark indicates the state does have this policy.

* Asterisk indicates this information was missing from the copy of the state plan we reviewed.

Source: MACPAC, 2021, review of state plans and survey on Medicaid estate recovery.

TABLE 3C-2. Medicaid Estate Recovery Policies in State Plans (Insurance and Hardship Criteria), 2020

State	Treatment of insurance					Hardship criteria	
	Disregards assets or resources for individuals with LTC insurance policy as described in Attachment 2.6-A, Supplement 8b	Adjusts or recovers from estate on all medical assistance	Does not adjust for NF or other LTC	Recovers from assets on account of medical assistance	State does not seek recovery or adjustment if individual has LTC insurance partnership	Income producing asset	Home of modest value
Total number of states with the specified policy	8	21	3	9	35	36	8
Alabama	*	*	*	*	✓	✓	–
Alaska	–	–	–	✓	–	✓	✓
Arizona	–	✓	–	–	✓	✓	–
Arkansas	–	–	–	–	✓	✓	–
California	✓	–	–	✓	*	✓	✓
Colorado	–	–	–	–	✓	✓	–
Connecticut	✓	✓	–	–	*	–	–
Delaware	–	✓	–	–	*	✓	–
District of Columbia	–	✓	–	–	–	✓	–
Florida	*	*	*	*	✓	✓	✓
Georgia	–	✓	✓	✓	✓	✓	–
Hawaii	–	✓	–	–	*	✓	–
Idaho	–	✓	–	✓	✓	✓	–
Illinois	✓	✓	–	–	*	–	–
Indiana	✓	–	–	✓	*	✓	–
Iowa	✓	✓	–	✓	✓	–	–
Kansas	–	–	–	–	✓	✓	–
Kentucky	*	*	*	*	✓	–	–
Louisiana	*	*	*	*	✓	✓	–

TABLE 3C-2. (continued)

State	Treatment of insurance					Hardship criteria	
	Disregards assets or resources for individuals with LTC insurance policy as described in Attachment 2.6-A, Supplement 8b	Adjusts or recovers from estate on all medical assistance	Does not adjust for NF or other LTC	Recovers from assets on account of medical assistance	State does not seek recovery or adjustment if individual has LTC insurance partnership	Income producing asset	Home of modest value
Maine	–	–	–	✓	✓	*	*
Maryland	–	–	–	–	✓	*	*
Massachusetts	–	–	–	–	*	–	–
Michigan	–	✓	–	–	✓	✓	✓
Minnesota	–	–	–	–	✓	✓	–
Mississippi	–	✓	–	–	*	✓	✓
Missouri	*	*	*	*	✓	–	–
Montana	*	*	*	*	✓	✓	–
Nebraska	*	*	*	*	✓	–	–
Nevada	*	*	*	*	✓	✓	–
New Hampshire	–	✓	–	–	✓	✓	–
New Jersey	–	✓	–	–	✓	✓	–
New Mexico	–	–	–	–	–	✓	✓
New York	✓	–	✓	–	✓	✓	✓
North Carolina	–	✓	–	–	✓	✓	–
North Dakota	*	*	*	*	✓	–	–
Ohio	*	*	*	*	✓	✓	–
Oklahoma	–	–	–	–	✓	–	–
Oregon	✓	✓	✓	✓	✓	–	–
Pennsylvania	–	✓	–	–	✓	✓	–

TABLE 3C-2. (continued)

State	Treatment of insurance					Hardship criteria	
	Disregards assets or resources for individuals with LTC insurance policy as described in Attachment 2.6-A, Supplement 8b	Adjusts or recovers from estate on all medical assistance	Does not adjust for NF or other LTC	Recovers from assets on account of medical assistance	State does not seek recovery or adjustment if individual has LTC insurance partnership	Income producing asset	Home of modest value
Rhode Island	*	*	*	*	✓	✓	–
South Carolina	–	✓	–	–	*	–	✓
South Dakota	*	*	*	*	*	–	–
Tennessee	✓	✓	–	–	✓	✓	–
Texas	–	–	–	✓	✓	✓	–
Utah	*	*	*	*	✓	✓	–
Vermont	–	✓	–	–	*	✓	–
Virginia	*	*	*	*	*	*	*
Washington	–	✓	–	–	✓	✓	–
West Virginia	–	–	–	–	*	✓	–
Wisconsin	–	✓	–	–	✓	✓	–
Wyoming	–	–	–	–	✓	✓	–

Notes: LTC is long-term care. Supplement 8b to Attachment 2.6-A of the state plan describes resource standards that are more liberal than those used for cash assistance programs. NF is nursing facility.

– Dash indicates state does not have the indicated policy.

✓ Check mark indicates the state does have this policy.

* Asterisk indicates this information was missing from the copy of the state plan we reviewed.

Source: MACPAC, 2021, review of state plans and survey on Medicaid estate recovery.

TABLE 3C-3. Medicaid Estate Recovery Cost-Effectiveness Thresholds, 2020

State	Cost-effectiveness threshold
Alabama	A situation where the state determines that the amount to be recovered exceeds the cost of recovery. Determined on a case-by-case basis.
Alaska	The Department of Health and Social Services will pursue a claim only if it determines that the potential recovery amount would result in twice the administrative and legal cost of pursuing the claim, with a minimum pursuable net amount of $10,000. In assessing the value of an estate, the department will consider all other claims against the estate having precedence under state statute.
Arizona	No initial cost threshold is applied and all potential cases are worked for recovery. However, should an estate enter into litigation, a $5,700 litigation cost threshold has been established which is applied at the point of litigation to determine whether it is cost effective to pursue recovery.
Arkansas	Cost effectiveness will exist when the estimated amount to be recovered from an estate will be greater than the estimated costs of recovery.
California	Because of the volume of cases and limited availability of resources, the Department of Health Care Services has determined that it is not cost effective to pursue continued collection or litigation after a claim/lien is filed if the potential net collection amount is under $5,000. However, when the administrative costs to process a case and continue recovery are very low, usually with cases handled by public administrators/guardians and formal probates, the department may file and pursue continued collection or litigation for any amount. Additionally, in certain circumstances when the debtor has excessive allowable expenses or obligations or when the heir(s) lives out of state and is not responsive to collection efforts, etc., the department may determine that it is not cost-effective to litigate or otherwise pursue recoveries, even though the net assets are over the normal $5,000 threshold.
Colorado	A $500 threshold for liens and estate claims was established in the original operating procedures due to costs in maintaining low-dollar cases on active systems and the costs associated with recovery activities due to lack of automation in Colorado's probate and tax assessment systems.
Connecticut	The Financial Services Center (FSC) does not pursue recovery of a claim against a decedent estate if it determines that the estate lacks sufficient resources to make recovery efforts cost effective. If FSC determines that there are sufficient assets in the estate to allow a recovery on behalf of the state of $100.00 or more, the FSC shall pursue recovery.
Delaware	If there are no resources for burial and the total assets in the estate are less than $5,000, then it is not considered cost effective to pursue because the state's probate law requires that funeral expenses be paid first. If there are resources for burial in the amount of $5,000 then it is considered cost effective to pursue if there are assets in the estate.
District of Columbia	Recovery shall be considered cost effective when the Medical Assistance Administration's claim is over $100. A total medical assistance payment of $100 or less is waived as not cost effective since the court fee (from $15 to $50), standard probate fee ($65), the regular probate fee ($28) and staff time to process the claim exceed the net proceeds to be recovered.
Florida	Liquid assets: $100 Non-liquid assets: automobile ($1,000 minimum value); non-homestead real property ($50,000 equity) [Additional considerations may apply during litigation as described in the state plan.]

TABLE 3C-3. (continued)

State	Cost-effectiveness threshold
Georgia	Estates valued under $25,000 are not subject to recovery. To prevent substantial and unreasonable hardship, the Commissioner for the Department of Community Health shall waive any claim against the first $25,000 of any estate subject to an estate recovery claim for the deceased Medicaid member with a date of death on or after July 1, 2018.
Hawaii	If a contractor is performing the recovery work, it is cost effective if the amount of the recovery is sufficient to yield a contingency fee payment to the contractor which exceeds its cost to recover the asset. If the state is performing the recovery, it is cost effective if the amount of the recovery exceeds the administrative costs, legal fees, travel expenses and other cost factors that may be involved.
Idaho	Recovery shall be considered cost effective when the Department of Health and Welfare's claim is five hundred dollars ($500) or more, or when the total assets subject to recovery are $500 or more, excluding trust accounts or other bank accounts.
Illinois	The State does not make a cost-effectiveness determination.
Indiana	Recovery is not cost effective when the Office of Medicaid Policy and Planning (OMPP) determines that attorneys' fees and other expenses of collection equal or exceed the amount that OMPP expects to collect. If the agency determines that it is most cost effective to compromise the State's claim, the compromise must be approved by the attorney general and the governor.
Iowa	The estate recovery unit attempts estate recovery on all estates for possible recovery; no thresholds for cost effectiveness have been set.
Kansas	The estimated costs involved in filing, pursuing and collecting the estate claim are less than the total expected amount of recovery. These costs include, but are not limited to, administrative costs, court costs, costs of litigation, travel costs, expert witness fees and deposition expenses.
Kentucky	The administrative cost of recovering from the estate is more than the total date-of-death value of the estate subject to recovery. a. The administrative cost shall be comprised of the estimated financial equivalent of agency staff time and resources required to recover the full claim in any individual case. b. This administrative cost shall be compared to actual date of death value, less any exemptions or limitations to recovery known at the time the estimate is made, including any payments made to contractors who may perform the recovery function. If the cost is equal or greater to the value subject to recovery, it shall be determined not cost effective to pursue recovery. c. Based upon a review of historical data regarding the average value of cases, including extrapolated estimates of the expanded value of the estate under current rules, and the staff time and resources involved in securing recovery, the agency has determined that it is not cost effective to recover when the total date-of-death value of the estate is $10,000 or less.
Louisiana	Recovery is deemed to be cost effective when the amount reasonably expected to be recovered exceeds the cost of recovery by an amount equal to or greater than $1,000.
Maine	*
Maryland	*
Massachusetts	In determining cost-effectiveness, the state considers the costs and availability of resources, the amount of its claim, the assets in the estate, and the likelihood of actual recovery.

TABLE 3C-3. (continued)

State	Cost-effectiveness threshold
Michigan	Potential recovery amount of the estate exceeds the cost of filing the claim or if the claim amount is above a $1,000 threshold.
Minnesota	Cost effective for estate claim purposes means that the total amount of the claim that the state is legally entitled to file, or the total amount the state is legally entitled to collect after filing an estate claim is equal to or greater than the estimated costs for filing, pursuing, and collecting the estate claim. In determining that recovery from an estate is not cost effective, the costs to pursue the recovery are considered, including attorney time, travel, court fees, fees for a personal representative, staff and technical support costs.
Mississippi	While the Division of Medicaid will attempt to recover all amounts that are not waived for undue hardship, recovery is not deemed cost effective if the amount to be recovered is less than $2,000 and protracted litigation is required to recover, or the value of the estate is less than 25 percent of the recovery amount making Medicaid's potential recovery less than 25 percent of the recovery amount and protracted litigation will be required to recover. These thresholds are based on the legal time and expense involved in pursuing recoveries through the courts.
Missouri	The state voluntarily defines cost effectiveness as: the cost of the collection will exceed the amount of the claim. However, if a dispute exists, the estate's attorney or other interested parties may raise any disputes, including cost-effectiveness, with the state's attorney over the state's claim filed in probate. If the dispute cannot be resolved, the probate judge will render a ruling in a scheduled probate hearing.
Montana	If a contractor is performing recovery work, it is a cost-effective case if the amount of recovery is sufficient to yield a contingency fee payment to the contractor which exceeds its cost to recover the asset. If the department is performing the recovery, it is a cost-effective case if the amount of recovery exceeds the costs such as administrative, legal fees, travel and the consideration of the factors listed in [other area of the state plan] above.
Nebraska	Recovery is not cost effective when the cost of collection would likely exceed the amount of the Department of Health and Human Services' claim.
Nevada	Cost-effective recovery is accomplished when the amount recovered exceeds the administrative (direct or indirect) expense associated with obtaining the recovery such as, but not limited to, legal fees and expenses.
New Hampshire	No claims are made against estates if the value of the estate is less than $200. Some case-by-case review occurs balancing complexity of issues with likelihood of recovery and the amounts of the potential recovery.
New Jersey	The amount to be recovered is in excess of $500; and the gross estate is in excess of $3,000. In the case of an individual who became deceased on or after April 1, 1995, cost effectiveness shall be found to exist when the expense of the process of collection of the Division of Medical Assistance and Health Services' claim does not exceed the amount likely to be collected. The term "expense" shall include but not necessarily be limited to: division staff salary and benefits; salary and benefits of any ancillary staff, to include the Department of Law and Public Safety, county welfare agencies, etc.; indirect costs, including overhead; the costs of anticipated legal, quasi-legal, or administrative proceedings; and any other incurred or anticipated costs that the division, in its sole discretion, determines are likely to be incurred.
New Mexico	To be cost effective, the administrative cost of recovering from the estate shall be less than the total date-of death value of the estate subject to recovery.

TABLE 3C-3. (continued)

State	Cost-effectiveness threshold
New York	The social services districts are authorized to make judgments as to the cost effectiveness of recoveries based upon their knowledge of the amount of recovery from each type of recovery, and the costs of pursuing each type of recovery.
North Carolina	The gross assets in the estate prior to any disbursements, distributions, or any other payments are below $5,000, or the amount of Medicaid payments subject to recovery is less than $3,000. In either case, the state will waive estate recovery. A waiver based on cost-effectiveness may be a conditional waiver and may specify that the waiver will cease if additional assets are subsequently discovered that may be property of the estate. The state has three years from the date of discovery to pursue any assets subsequently discovered.
North Dakota	North Dakota does not initiate recovery in instance in which the estimated costs of recovery together with the estimated total of other claims with preference over the Medicaid claim exceeds or nearly exceeds the assets in the decedent's estate. Informal estate recovery is limited to estates that have a total asset value of no more than $50,000, include no real property, and involve no person who could assert a hardship claim. In such estates, North Dakota statues permit the Medicaid agency to act as the decedent's "successor," and to collect the decedent's personal property by providing an affidavit to anyone in possession of that property. The primary sources of informal collections are bank accounts in very small estates. More rarely, motor vehicles or other valuable personal property may be collected and liquidated.
Ohio	The state does not perform a cost-effectiveness test or place any predetermined dollar thresholds or real property value thresholds below which recovery is not attempted.
Oklahoma	*
Oregon	Each estate administrator has the authority to determine if an estate will be pursued for collection based on the likelihood of recovering the value of the claim as it compares to the cost of collection.
Pennsylvania	The Department of Human Services does not seek to collect from estates with a gross value of $2,400 or less, unless there is no heir. For estates with a gross value of $2,400 or more, cost effectiveness is determined based on the factual circumstances of each case.
Rhode Island	If probate assets exceed $3,000 at the time of last recertification or if they include real estate, then recovery efforts are initiated upon notification of death.
South Carolina	If the value of the estate is determined (by receipt of affidavit) to be less than $25,000, the department will not file a claim. The assets of the estate must be $25,000 or more and the claims paid by Medicaid must be $500 or more. If the net assets of the estate are less than $4,000 after the payment of all priority expenses, then the department will withdraw its claim. The state may settle its claim for a lesser amount if the state determines that it would be more cost effective and in the best interest of the state to do so than to continue to pursue collection of the full amount of the claim. Criteria to be considered in determining cost effectiveness may include the probability of collecting a larger amount, staff time, cost incurred, legal expense and length of time required to collect.

TABLE 3C-3. (continued)

State	Cost-effectiveness threshold
South Dakota	Cost effectiveness exists if the quotient is greater than one when the amount recovered is divided by the cost of recovery. The average cost of initiating recovery in an uncomplicated recovery case is used as the cost of recovery in determining whether recovery will be cost effective. Because the cost of recovery is subject to periodic fluctuations in personnel and postage costs, no specific dollar threshold is used. However, a recovery of less than $100 is waived as not cost effective. Other guidelines the state uses to determine cost effectiveness are: (a) Because the costs of estate administration can deplete an estate valued at $3,000 or less, the state evaluates each such case individually to determine cost effectiveness; and (b) After consultation with counsel, the state evaluates individually any claims rejected or disallowed in circuit court to determine if initiating further legal action is cost effective.
Tennessee	Collection of any estate recovery claim is presumed to be cost effective. Estate recovery claims are pursued through the probate court and are classified as third priority claims. After payment of the first priority claims (administrative costs) and second priority claims (funeral expenses), TennCare receives the balance of the value of the estate recovery claim. Any remaining value of the estate after payment of the estate recovery claim is then disbursed in accordance with Tennessee probate law.
Texas	Recovery will not be cost effective when the value of the estate is $10,000 or less, or the cost involved in the sale of the property would be equal to or greater than the value of the property. On average, a funeral in Texas costs approximately $10,000. This is just one of six classes of claims under Texas Probate Code that precede estate recovery. Others include estate preservation, safekeeping and management; tax liens and second mortgages; and state taxes, penalties and interests thereon. Given the precedence of these claims and their potential costs the state would incur administrative costs for estates valued at $10,000 or less, but have little chance of regaining those costs.
Utah	The state employs the following procedures to waive estate recovery when recovery is not cost effective: Expenses and claims having priority to the state's claim are subtracted from the assets in the estate to determine if enough recoverable assets remain in the estate to make recovery cost effective. Where expenses having priority leaves less than $500 in recoverable assets, the investigator waives estate recovery.
Vermont	Recovery is considered cost effective in cases where the estate includes liquid resources, such as cash, bank accounts, stocks, bonds, certificates of deposit, IRAs, or real property. There is no minimum threshold, excepted that described in #5. 5. Recovery is waived when it would cause undue hardship (see above). Recovery is waived as being not cost effective in cases where the estate consists only of personal property, such as home furnishings, apparel, personal effects and household goods, which do not exceed $2,000 in value, based on information filed with the probate court.
Virginia	*
Washington	A total medical assistance payment of $100 or less is waived as not cost effective. Guidelines used to establish the cost effectiveness of other cases follow: Because the costs of estate administration may deplete an estate valued at $3,000 or less, each such case is evaluated individually to determine cost effectiveness. After consultation with the attorney general's office, claims rejected (disallowed) in probate court are evaluated individually to determine if initiating legal action is cost effective.
West Virginia	The value of the estate must exceed $5,000 at the time the estate is admitted to probate.

TABLE 3C-3. (continued)

State	Cost-effectiveness threshold
Wisconsin	Claims and liens are adjusted and settled to obtain the fullest amount practicable. Generally, the state will file a claim in a court-supervised estate when the amount of the claim exceeds $100. In the case of assets transferred without court supervision, the state generally will file a claim against the estate when both the claim amount and the amount of assets in the estate exceed $50. The state will act to recover from nursing home personal accounts when both the claim amount and the asset amount exceed $10. Experience has shown that recovery is cost effective at these thresholds in most instances. Estates under $50,000 may be settled by affidavit without court supervision. To achieve cost effectiveness in recoveries from these small sum estates, the state prorates the amounts recovered for the various programs by standard fixed formulas. These formulas are based on the amount of benefits paid by each program in relation to the amount of reported assets of the estate.
Wyoming	The determination by the Department of Health that the expected expenses of a recovery, including, but not limited to, administrative costs, attorneys' fees, court costs, costs of litigation, travel costs, expert witness fees and deposition expenses, are less than the expected amount of the recovery.

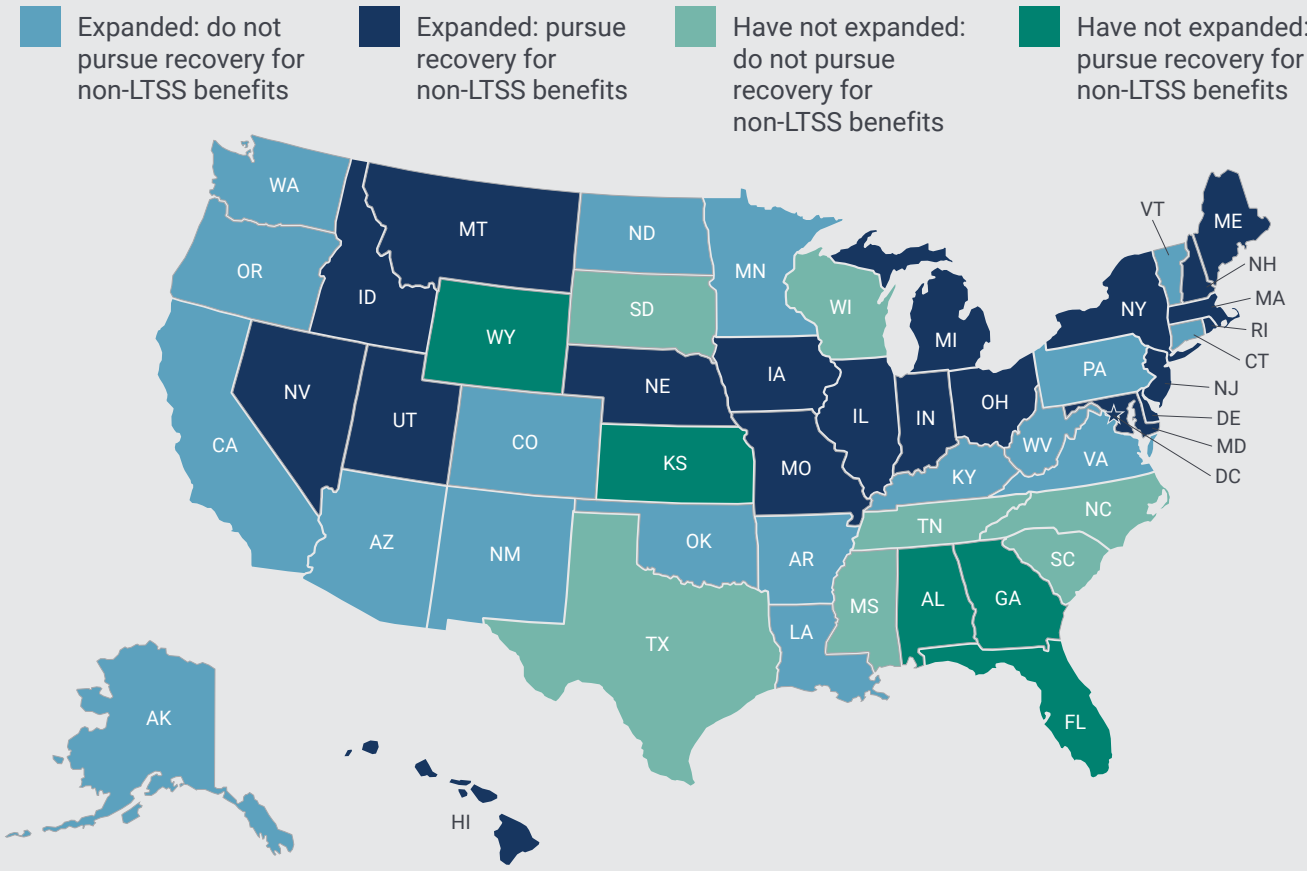
Notes: Text is verbatim from state plan, with minor style changes.

* Asterisk indicates this information was missing from the copy of the state plan we reviewed.

Source: MACPAC, 2021, review of state plans and survey on Medicaid estate recovery.

APPENDIX 3D: Medicaid Expansion and Pursuit of Benefits Other Than Long-Term Services and Supports

FIGURE 3D-1. States That Have Expanded Medicaid and Pursue Estate Recovery for Benefits Other Than LTSS, January 2021



Notes: LTSS is long-term services and supports. Oregon pursues estate recovery for non-LTSS benefits, but only when LTSS services were also received by a beneficiary.

Source: MACPAC, 2021, review of state plans and KFF 2021.

APPENDIX 3E: Medicaid LTSS Spending and Estate Recoveries

TABLE 3E-1. Medicaid LTSS Spending and Estate Recoveries, FYs 2015–2019 (thousands)

State	Fee-for-service LTSS spending[1]					Estate recoveries[2]				
	FY 2019	FY 2018	FY 2017	FY 2016	FY 2015	FY 2019	FY 2018	FY 2017	FY 2016	FY 2015
Total	**$133,124,413**	**$128,133,083**	**$121,984,531**	**$122,118,219**	**$117,920,942**	**-$733,440**	**-$723,872**	**-$754,477**	**-$646,485**	**-$622,291**
Alabama	1,553,753	1,524,362	1,501,517	1,532,514	1,488,324	-7,259	-6,749	-5,686	-5,277	-4,847
Alaska	540,653	530,407	551,435	543,016	520,922	-2,679	-2,245	-3,222	-2,092	-2,890
Arizona	98,491	92,638	85,515	79,855	76,310	-216	-354	-583	-393	-449
Arkansas	1,386,403	1,580,977	1,608,313	1,559,342	1,483,363	-3,796	-2,779	-3,094	-2,632	-2,240
California	17,090,003	16,262,246	12,551,344	12,636,678	11,772,133	-28,987	-41,127	-68,411	-69,613	-71,786
Colorado	2,954,764	1,816,715	2,113,925	2,170,339	1,955,507	-6,409	-8,377	-6,432	-5,599	-7,250
Connecticut	3,441,731	3,509,721	3,504,131	3,361,331	3,352,173	-15,405	-12,078	-8,424	-7,728	-6,460
Delaware	212,739	195,259	224,900	134,060	153,152	–	–	–	–	-25
District of Columbia	971,183	913,379	844,084	809,314	756,611	-1,461	-1,357	-2,283	-2,072	-3,485
Florida	2,771,684	2,511,425	2,229,600	2,094,850	2,086,950	-22,411	-21,327	-16,468	-16,003	-14,537
Georgia	3,017,614	2,784,632	2,609,336	2,427,534	2,406,195	-4,481	-4,939	-5,331	-6,134	-5,903
Hawaii	155,273	140,432	121,588	119,953	116,411	-31	-55	-21	-55	-12
Idaho	732,200	703,188	678,496	633,636	638,895	-11,934	-11,699	-10,202	-10,573	-9,561
Illinois	3,143,948	3,463,518	3,261,887	3,783,703	3,984,962	-25,949	-22,354	-19,731	-19,829	-18,948
Indiana	4,467,450	4,184,202	4,084,689	3,814,853	3,465,602	-13,198	-17,493	-19,077	-17,005	-16,398
Iowa	182,737	170,378	132,304	1,156,396	1,723,990	-26,485	-27,426	-27,664	-24,746	-24,174
Kansas	96,751	111,656	92,507	77,222	83,357	-13,240	-18,199	-12,776	-9,722	-13,114
Kentucky	2,170,633	2,062,536	2,017,133	1,992,137	1,944,007	-7,351	-7,142	-6,254	-8,122	-12,397
Louisiana	2,336,146	2,245,074	2,251,277	2,232,249	2,295,167	-430	-534	-313	-230	-381
Maine	1,104,840	1,033,569	965,128	946,828	898,012	-10,248	-9,847	-11,203	-10,481	-9,195
Maryland	3,077,898	2,844,741	2,734,954	2,473,534	2,535,753	-13,701	-13,734	-14,450	-10,128	-14,972

TABLE 3E-1. (continued)

State	Fee-for-service LTSS spending[1]					Estate recoveries[2]				
	FY 2019	FY 2018	FY 2017	FY 2016	FY 2015	FY 2019	FY 2018	FY 2017	FY 2016	FY 2015
Massachusetts	$4,887,628	$5,091,826	$5,179,353	$4,990,078	$4,632,894	-$83,071	-$73,712	-$63,813	-$59,877	-$55,974
Michigan	3,095,551	2,818,909	2,793,684	2,704,313	2,593,470	-6,478	-5,118	–	-2,114	-4,201
Minnesota	4,814,903	4,451,913	4,116,437	3,885,389	3,664,058	-39,905	-36,561	-35,127	-32,031	-33,078
Mississippi	1,595,550	1,519,152	1,547,610	1,440,114	1,444,609	-399	-684	-947	-691	-559
Missouri	3,719,386	3,417,469	3,246,383	3,003,514	2,827,842	-13,695	-17,382	-15,221	-13,796	-11,394
Montana	439,237	444,120	426,389	414,647	412,055	-4,037	-4,135	-3,614	-2,963	-3,580
Nebraska	923,198	905,206	793,975	846,050	797,544	-4,742	-5,532	-6,681	-3,753	-3,842
Nevada	647,921	592,430	557,674	518,418	493,563	-3,154	-2,545	-1,954	-3,950	-2,351
New Hampshire	798,481	762,260	698,951	694,708	698,878	-7,713	-7,420	-6,248	-5,612	-5,280
New Jersey	3,271,700	3,048,810	3,046,835	3,285,832	3,668,210	-13,840	-18,261	-13,898	-18,596	-12,173
New Mexico	455,435	436,829	420,806	400,594	365,968	-157	-1,005	-67	-349	-301
New York	16,017,895	14,882,081	15,532,615	15,563,161	14,491,863	-59,760	-62,882	-70,036	-67,625	-52,365
North Carolina	2,350,603	2,268,482	1,678,704	2,731,948	2,179,455	-19,842	-17,405	-14,245	-16,118	-12,827
North Dakota	618,490	612,455	616,959	585,356	556,636	-4,490	-4,663	-2,491	-3,020	-3,596
Ohio	6,269,632	5,965,154	5,871,803	6,071,870	5,880,810	-43,795	-40,575	-31,224	-29,357	-35,634
Oklahoma	1,326,817	1,228,156	1,234,564	1,252,017	1,315,575	-5,264	-5,076	-81,875	-4,830	-3,652
Oregon	2,693,291	2,508,042	2,368,980	2,282,140	2,033,381	-31,434	-30,704	-28,225	-25,684	-20,566
Pennsylvania	9,072,796	10,657,467	10,410,341	9,544912	8,711,613	-54,093	-52,133	-54,047	-43,891	-38,106
Rhode Island	561,628	161,915	142,649	171,912	182,557	-5,381	-2,753	-3,785	-3,270	-3,103
South Carolina	1,637,981	1,521,046	1,443,285	1,423,723	1,311,830	-3,844	-5,560	-1,565	-4,093	-4,689
South Dakota	365,348	354,022	340,839	324,648	318,376	-2,714	-3,732	-3,355	-3,229	-3,058
Tennessee	967,300	939,051	933,797	917,676	946,993	-29,437	-24,381	-21,553	-21,017	-20,101
Texas	4,357,004	4,395,505	4,061,900	4,681,227	5,139,604	-4,996	-6,244	-6,178	-4,377	-5,960
Utah	799,716	716,795	693,652	572,992	532,371	-5,488	-4,306	-5,132	-3,944	-4,853

TABLE 3E-1. (continued)

State	Fee-for-service LTSS spending[1]					Estate recoveries[2]				
	FY 2019	FY 2018	FY 2017	FY 2016	FY 2015	FY 2019	FY 2018	FY 2017	FY 2016	FY 2015
Vermont	$209,630	$195,938	$177,007	$125,457	$127,481	–	–	–	–	-$453
Virginia	2,287,579	2,309,002	2,816,447	2,734,993	2,624,540	-$6,130	-$3,999	-$3,593	-$4,312	-1,173
Washington	3,780,124	3,571,035	3,305,743	3,167,292	2,743,637	-16,989	-20,374	-16,196	-15,887	-14,302
West Virginia	1,362,255	1,310,046	1,299,588	1,317,008	1,372,284	-210	-477	-537	-498	-717
Wisconsin	1,988,736	2,069,605	1,774,739	1,610,696	1,853,112	-41,400	-33,059	-17,793	-21,563	-22,931
Wyoming	301,705	297,306	288,756	276,193	261,942	-5,307	-3,379	-3,454	-1,607	-2,450

Notes: FY is fiscal year. LTSS is long-term services and supports. Includes federal and state funds. Amounts shown here represent reported spending as of the date the data were collected. Figures presented in this exhibit may change if states revise their expenditure data after this date

– Dash indicates zero.

[1] LTSS includes fee-for-service institutional and home- and community-based LTSS. Does not include LTSS spending provided under managed care. LTSS includes nursing facility, intermediate care facility for individuals with intellectual disabilities, mental health facility, home health, waiver and state plan services, personal care, and certified community behavioral health clinics.

[2] Estate recoveries reflect amounts reported as probate collections. Because these are collections, they are reported as negative spending amounts.

Source: MACPAC, 2021, analysis of CMS-64 FMR net expenditure and collections reports as of June 15, 2020.

APPENDIX 3F: MACPAC Estate Recovery Survey Results

We chose a sample of 15 states that represented a range of aggregate collections and estate recovery policies, and included states with and without MLTSS. Ten states responded. Several responding states noted that they do not collect certain data (e.g., hardship waiver applications) or were unable to provide customized reports.

Hardship Waivers

Nine states were able to provide information on hardship waiver applications and the number granted. Two states reported receiving no hardship waiver applications.

TABLE 3F-1. Estate Recovery Hardship Waivers Granted

State	Year	Hardship waiver applications	Hardship waivers granted	Percentage of hardship applications granted
Alaska	SFY 2018	0	0	–
	SFY 2019	0	0	–
	SFY 2020	0	0	–
Arizona	SFY 2018	34	29	85.3%
	SFY 2019	24	21	87.5
	SFY 2020	21	17	81.0
Georgia	FFY 2017	15	7	46.7
	FFY 2018	28	10	35.7
	FFY 2019	23	17	73.9
Iowa	SFY 2018	46	43	93.5
	SFY 2019	60	57	95.0
	SFY 2020	35	32	91.4
Maryland	CY 2017	6	4	66.7
	CY 2018	4	1	25.0
	CY 2019	5	2	40.0
Missouri	SFY 2018	0	0	–
	SFY 2019	0	0	–
	SFY 2020	0	0	–
New York	CY 2017	6	3	50.0
	CY 2018	10	3	30.0
	CY 2019	14	4	28.6
Oregon	Not specified	27	–	–

TABLE 3F-1. (continued)

State	Year	Hardship waiver applications	Hardship waivers granted	Percentage of hardship applications granted
Wisconsin	SFY 2018	89	28	31.5
	SFY 2019	76	41	53.9
	SFY 2020	81	41	50.6

Notes: SFY is state fiscal year. FFY is federal fiscal year. CY is calendar year.

– Dash indicates that the state did not answer this question, said it was unknown, or question is not applicable.

Source: MACPAC, 2021, survey on Medicaid estate recovery.

Program Administration Costs

Five states provided information on administrative costs, which were typically less than 12 percent of total recoveries for each fiscal year. States that use third-party contractors for estate recovery administration may pay them on a contingency fee basis. We did not ask states to specify whether administrative costs included these arrangements.

TABLE 3F-2. Estate Recovery Program Administration Costs

State	Year	Program administration costs	Total recoveries	Administration costs as percentage of total recoveries
Alaska	SFY 2018	$39,905.93	$858,674.69	4.6%
	SFY 2019	52,311.11	235,257.47	22.2
	SFY 2020	35,525.89	408,139.16	8.7
Georgia	FFY 2017	450,228.04	3,966,766.95	11.3
	FFY 2018	476,765.87	4,200,580.34	11.4
	FFY 2019	450,596.57	3,970,013.82	11.4
Iowa	SFY 2018	2,311,113.44	7,189,569.89	32.1
	SFY 2019	3,003,357.08	27,303,246.14	11.0
	SFY 2020	2,785,380.15	25,321,637.73	11.0
Missouri	SFY 2018	571,304.14	13,321,042.00	4.3
	SFY 2019	571,304.14	14,607,628.00	3.9
	SFY 2020	571,304.14	15,580,521.00	3.7
Oregon	Not specified	2,500,000.00	32,700,000.00	7.6

Notes: SFY is state fiscal year. FFY is federal fiscal year.

Source: MACPAC, 2021, survey on Medicaid estate recovery.