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ISSUE BRIEF

Medicaid Estate Claims: Perpetuating Poverty & Inequality for a Minimal Return

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CONGRESS SHOULD END MANDATORY MEDICAID ESTATE RECOVERY

Federal law requires state Medicaid programs to seek repayment of specified Medicaid benefits, even if the state would prefer not to seek such recovery. The Medicaid program's claim is enforced against the heirs of now deceased persons who relied on Medicaid, forcing the heirs in many cases to sell a family home that otherwise would have been passed down.

The burden of estate claims falls disproportionately on economically oppressed families and communities of color, preventing families from building wealth through home ownership, which has been historically denied to communities of color through discriminatory public policy. The burden also falls inequitably on families due to

medical unpredictability – for example, because their family member developed Alzheimer's Disease, needing months or years of nursing home care or equivalent home and community-based services. This unpredictability is exacerbated by inequities in our health care system that particularly harm lower-income and older adults of color. All these factors contribute to estate claim collections being unfair and societally counterproductive.

Congress should amend Federal law to eliminate Medicaid estate claims. Alternatively, the law should be amended so that states have the choice of whether to use Medicaid estate claims, as recommended in a recent report to Congress by the Medicaid and CHIP Payment and Access Commission (MACPAC).[1]

MACPAC'S RECENT RECOMMENDATIONS TO CONGRESS

Earlier this month, MACPAC addressed Medicaid estate claims in a report to Congress. The report's relevant chapter, entitled "Medicaid Estate Recovery: Improving Policy and Promoting Equity," contains three recommendations for revision of federal Medicaid law:

1. Amend federal law so that Medicaid estate claim programs are optional with states.
2. Amend federal law to allow states with managed care Medicaid programs to pursue recovery of the cost of care, rather than the amount of capitation payment, when the cost of care is less.
3. Amend federal law to require the federal government to develop standards for hardship waivers of Medicaid estate claims. These standards would bar estate claims against a) a sole income-producing asset of a Medicaid recipient's heirs, b) homes of modest value, and c) any estate less than a specified threshold value.[2]

CURRENT FEDERAL LAW FORCES STATES TO PURSUE MEDICAID ESTATE RECOVERY

Federal law requires that state Medicaid programs attempt to recover costs from the estates of now-deceased recipients. Specifically, Medicaid programs must seek recovery for the costs of nursing home services, home and community-based services, and certain related services, if the recipient was 55 years or older when services were provided. In addition, a state has the option to seek recovery for other services. In all cases, recovery is limited to the size of the deceased recipient's estate.[3]

> **"No other public benefit program requires that correctly paid benefits be recouped from deceased recipients' family members.**

Notably, no other public benefit program requires that correctly paid benefits be recouped from deceased recipients' family members. Also, as explained below, the minimal revenue generated by estate recovery is outweighed by the burdens it places on low-income families.

Medicaid estate recovery should be eliminated, so that low-income families are better able to retain wealth and pass it on to future generations. Or, at a minimum, federal law should be amended to make estate claims voluntary. If a state believes that estate claims are counterproductive, the state should not be forced to assess them.

EXAMPLE

Consider a widow who owns a $90,000 family home, along with $2,000 in savings. She has two adult children, each of whom has limited income. She suffers a stroke and then lives in a nursing home for two years, with all but the first month covered by Medicaid. After her death, the Medicaid program imposes an estate claim based on $150,000 of nursing home services which she received. To pay the claim, the adult children must sell the family home and give all proceeds to the state.

STATES HAVE OBJECTED TO MEDICAID ESTATE RECOVERY BECAUSE IT PLACES AN UNDUE BURDEN ON POOR FAMILIES

The current federal mandate prevents states from protecting low-income families that rely upon Medicaid. Estate claims originally were optional for states.[4] In 1993, however, Congress amended federal Medicaid law to make estate claims mandatory.[5]

Notably, some states objected to this change. West Virginia sued the federal government, arguing that estate recovery was poor policy.[6] As argued by West Virginia, the burden of estate recovery falls upon the poorest older adults, who can in no way afford long-term care insurance or legal counsel. West Virginia described the estate claim mandate as a "betrayal of the New Deal."[7] Ultimately, however, West Virginia's objections were unavailing, as a federal appellate court found that the mandate did not violate the Constitution.[8]

In response, West Virginia tried to soften the blow of estate recovery, by exempting approximately $50,000 in home value so that poor families would not lose their homes. Once again, however, West Virginia was blocked from enacting its preferred policy: even this targeted protection for impoverished families was found to violate the federal mandate.[9]

West Virginia is not the only state likely to reduce or eliminate Medicaid estate claims, if given the opportunity. Michigan, for example, only instituted estate recovery in 2007, after being threatened by the federal government with loss of Medicaid funding.[10]

MEDICAID ESTATE RECOVERY KEEPS FAMILIES IN POVERTY

Medicaid eligibility rules generally prohibit a recipient from possessing more than $2,000 in non-exempt, available assets. As a result, a Medicaid recipient at death generally can own only one thing of any significant value: their home, which is considered an exempt asset for determining Medicaid eligibility. That home ownership is usually the product of decades of monthly mortgage payments, often at great sacrifice.

Home equity for older, Medicaid-eligible adults is modest. This is shown by data regarding net wealth (which, due to Medicaid eligibility rules, is comprised heavily of home value). Recent sampling data from MACPAC showed Medicaid recipients age 65 or older with an average net wealth of only $44,393, with the lowest quartile having a negative net wealth of (on average) $14,236. Three-quarters of these recipients had net wealth of less than $48,500. Recipients' home equity is likewise limited. The same data set showed an average home equity of only $27,364 for Medicaid recipients age 65 and older, with the lowest quartile having negative home equity of almost $7,000.[11]

Especially with homes of modest value, as noted by the Urban Institute (and many others), "[h]ome ownership is an important wealth-building source and a foundation for economic stability."[12] If a low-income Medicaid recipient can pass their home on to a child, later generations are more likely to have a stable place in which to live. Medicaid estate recovery, however, often requires that the family home be sold to satisfy a state's claim. Alternatively, surviving family members may be forced to take out a loan against the home, and once again be saddled with a substantial mortgage.[13]

These financial burdens can affect not just a family, but the neighborhood in which they live. In economically oppressed neighborhoods, the burden of estate claims can contribute to disrepair, abandonment, or homelessness, with multiplying negative consequences. By contrast, eliminating estate claims can help support low-income neighborhoods, leading to more neighborhood stability as adult children remain in their parent's home after the parent has died.[14]

Estate recovery also works at cross-purposes with federal, state, and local efforts to create more affordable housing. Federal programs alone spend billions annually to address the dearth of affordable housing for low and moderate-income persons.[15] It makes little sense to add to the housing affordability crisis by taking stable and affordable housing away from low-income families due to a family member's health care needs.

MEDICAID ESTATE RECOVERY EXACERBATES RACIAL WEALTH GAPS

Medicaid estate recovery burdens fall especially hard on families of color living in multigenerational homes. Due to historic and ongoing racist housing and economic policies, people of color often do not have access to familial wealth in the form of family members willing to co-sign a loan or assist with a down payment, and may also have limited access to credit and mortgages.[16]

Estate recovery exacerbates these inequities, imposing burdens on those who are least able to shoulder them. As the Urban Institute points out, "intergenerational homeownership transfer is likely to reinforce and expand the homeownership and wealth gaps across race and ethnicity.[17] By disrupting the ability to keep a family home, estate recovery cuts off opportunities and adds burdens that may be felt across generations.

THE AMOUNT OF ESTATE CLAIMS VARIES DRAMATICALLY, DEPENDING ON UNPREDICTABLE EVENTS

The unfairness of estate claims is compounded by unpredictability in how they accrue. First consider two individuals who rely on Medicaid in a state with a fee-for-service Medicaid program. Due to an unpredictable medical need, one individual needs three years of nursing home care, but the other never requires nursing home care or equivalent home and community-based services. As a result, one low-income family faces a $200,000 estate claim, while the other family faces no estate claim whatsoever. Here again, furthermore, a lifetime of inequitable access to health care for people of color leads to greater burdens on those communities.[18]

In states with managed care Medicaid programs, an estate claim varies with the amount of time that the person was covered, even if that amount far exceeds the value of the services actually provided. The CMS State Medicaid Manual requires that states with recipients enrolled in managed care collect the "total capitated rate" from estates.[19] In other words, the person's family is held responsible for the monthly capitation payments made by the state to a

Medicaid managed care plan, even if they rarely if ever used Medicaid-funded services. Depending on the capitation rates, the person's heirs may face estate claims in the hundreds of thousands of dollars, even though the person actually received little tangible benefit from the Medicaid coverage. In Massachusetts, for example, Mr. P. used almost no medical services over a five-year period, but the Medicaid program nonetheless assessed an estate claim exceeding $179,000, based on a capitation rate of roughly $3,300 per month over five years. By contrast, if he had happened to live in a state with a fee-for-service Medicaid program, the state's claim would have been negligible.

Overall, this type of unpredictability characterizes estate claim policy and practices. Such arbitrary outcomes confuse recipients, discourage enrollment by people who could greatly benefit from Medicaid, and lead to unjust outcomes.

THE FINANCIAL BENEFIT TO STATES IS MINIMAL

The primary rationale for estate recovery is financial – that recovered funds will support state Medicaid programs. This rationale is belied by the recent MACPAC data. In each of the five fiscal years 2015 through 2019, states recovered only 0.53 percent to 0.62 percent of the Medicaid fee-for-service spending on long-term services and supports.[20] Because 24 states provide long-term services and supports through managed care, the actual recovery percentage is even lower than that.[21] These data are consistent with other examinations of estate recovery finances. In a previous study by AARP, for example, estate recoveries amounted on average to 0.69 percent of states' Medicaid expenses for long-term care, with the median recovery percentage being 0.57 percent.[22]

CONCLUSION

Current estate recovery law conflicts with national efforts to promote affordable housing and repair equity and income disparities. Estate recovery offers a minimal benefit for state Medicaid budgets, while significantly harming low-income families and communities. Consequently, federal law should be amended to eliminate estate claims. At a minimum, Congress should adopt MACPAC's recommendations to make estate claim programs optional, limit unfair recovery based on capitation payments, and establish fair, enforceable standards for hardship waivers.

This issue brief was jointly authored by California Advocates for Nursing Home Reform (CANHR), Justice in Aging, National Academy of Elder Law Attorneys (NAELA), National Health Law Program (NHeLP), and Western Center on Law & Poverty to raise awareness about the counterproductive nature of Medicaid estate recovery. Medicaid coverage should support low and middle-income families, but estate recovery perpetuates poverty and inequality in exchange for a minimal financial benefit to states.

ENDNOTES

1 MACPAC, Report to Congress on Medicaid and CHIP, ch. 3 (Medicaid Estate Recovery: Improving Policy and Promoting Equity), at 72 (March 2021).

2 MACPAC, Report to Congress on Medicaid and CHIP, ch. 3 (Medicaid Estate Recovery: Improving Policy and Promoting Equity), at 72 (March 2021).

3 42 U.S.C. § 1396p(b).

4 Pub. L. 89-97, Title I, Part 2, § 121 (July 30, 1965) (enacting Medicaid Act, including Section 1902(a)(18) of the Social Security Act, which was codified as 42 U.S.C. § 1396a(a)(18)).

5 42 U.S.C. § 1396p(b)(1)(B); Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, Title XIII, Ch. 2, Subch. B, Part II, § 13612(a)–(c) (Aug. 10, 1993).

6 *West Virginia v. United States HHS*, 132 F. Supp. 2d 437, 441 (S.D. W. Va. 2001).

7 *West Virginia v. United States HHS*, 289 F.3d 281, 285 (4th Cir. 2002) ("betrayal of New Deal" argument from oral argument; "clinical depression" argument from appellate brief).

8 *West Virginia v. United States HHS*, 289 F.3d at 297 (4th Cir. 2002).

9 *West Virginia v. Thompson*, 475 F.3d 204, 214 (4th Cir. 2007).

10 Student Note, Widening the Gap Between Rich and Poor: Issues and Recommendations for the Implementation of Michigan's Medicaid Estate Recovery Law, 90 U. Det. Mercy L. Rev. 141, 141 (Fall 2012). Prior to the federal mandate, only twenty-two states had chosen to employ estate recovery. Naomi Karp et al., ABA Commission on Law and Aging, Medicaid Estate Recovery: A 2004 Survey of State Programs and Practices, at 9 (June 2005).

11 MACPAC, Report to Congress on Medicaid and CHIP, ch. 3 (Medicaid Estate Recovery: Improving Policy and Promoting Equity), at 81 (March 2021).

12 Alanna McCargo, Jung Hyun Choi, and Edward Golding, Building Black Ownership Bridges, at 1 (May 2019).

13 *See, e.g.*, Rachel Corbett, Medicaid's Dark Secret, The Atlantic (Oct. 2019) (adult daughter who pays $100,000 to pay off mortgages and make repairs in mother's home, but then is assessed estate claim of almost $200,000 after mother's death).

14 *See, e.g.*, Housing Alliance of Pennsylvania, Reclaiming Abandoned Pennsylvania, at 16-17 (March 2003).

15 National Association of Counties, Affordable Housing Federal Programs and Legislation.

16 *See e.g.*, Michele Lerner, One Home, A Lifetime of Impact, The Washington Post (Oct. 2020).

17 Jung Hyun Choi, Laurie Goodman, and Jun Zhu, Intergenerational Homeownership, at 7 (Oct. 2018).

18 Kaiser Family Foundation, Profile of Medicare Beneficiaries by Race and Ethnicity: A Chartpack, March 2016; CMS, Prevalence State level: All Beneficiaries by Race/Ethnicity and Age, 2007 – 2018.

19 CMS, State Medicaid Manual, Ch. 3, Eligibility, Section 3810(A)(6).

20 MACPAC, Report to Congress on Medicaid and CHIP, ch. 3 (Medicaid Estate Recovery: Improving Policy and Promoting Equity), at 89 (March 2021).

21 MACPAC, Report to Congress on Medicaid and CHIP, ch. 3 (Medicaid Estate Recovery: Improving Policy and Promoting Equity), at 89 (March 2021).

22 Naomi Karp et al., ABA Commission on Law and Aging, Medicaid Estate Recovery: A 2004 Survey of State Programs and Practices, at 51 (Table 3) (June 2005).