

MEDICAID ESTATE RECOVERY

This policy brief is one of five commissioned by the Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation on Medicaid eligibility policies for long-term care benefits. This brief provides an overview of state Medicaid Estate Recovery programs, which enable states to recoup public spending for Medicaid long-term care recipients from the estates of those recipients after their death. The remaining four briefs address: Medicaid Treatment of the Home; Spouses of Medicaid Long-Term Care Recipients; Medicaid Liens; and A Case Study of the Massachusetts Medicaid Estate Recovery Program.

Introduction

Medicaid imposes stringent limits on income and assets of recipients, consistent with its mission to provide a health care safety net for the poor and for those whose personal resources are insufficient to pay the full cost of care. In order to fulfill this mission, Medicaid also recovers expenses paid on behalf of recipients from their estates under certain circumstances. Medicaid is the largest source of funds for institutional long-term care expenses. It pays nearly half of the total amount spent on nursing homes, followed, respectively, by out-of-pocket funds of long-term care consumers, Medicare, private long-term care insurance, and other public and private funding sources.¹

Unless they are among the minority who have long-term care insurance, individuals contemplating paying thousands of dollars out-of-pocket every month for long-term nursing home care face the possibility of exhausting all available assets and using up their lifetime savings before being able to qualify for Medicaid. Not surprisingly, a web search on “Medicaid estate planning” yields thousands of results offering advice on a variety of strategies to qualify for Medicaid while preserving assets and savings for heirs.

¹ See 2002 National Health Expenditure data at: <http://www.cms.hhs.gov/statistics/nhe/historical/t7.asp>, Table 7. Medicaid paid 49.3%; personal funds covered 25.1%; Medicare paid 12.5%; insurance covered 7.5%; and the remainder was paid by various other public and private funds.



Legislative history

Since the beginning of the Medicaid program in 1965, states have been permitted to recover from the estates of deceased Medicaid recipients who were over age 65 when they received benefits and who had no surviving spouse, minor child, or adult disabled child. Twelve states report having had an estate recovery program in effect before 1990 that was based on the original Medicaid law.² While some of the features of these early programs have been documented, their scope and impact on Medicaid recipients, especially as compared to states without such programs, have not.³

The 1965 Medicaid law also gave states permission to impose liens on property in the estates of deceased Medicaid recipients. Post-death liens prevent the estate from being settled and the property distributed to the recipient's heirs before all claims against it, including Medicaid's, are satisfied.

Fueled by well-publicized and well-researched reports claiming that, "Estate recovery programs provide a cost effective way to offset state and Federal costs, while promoting more equitable treatment of Medicaid recipients,"⁴ Congress included a provision in the Omnibus Budget Reconciliation Act of 1993 (OBRA '93)⁵ that required states to implement a Medicaid estate recovery program.⁶

The main features of the OBRA '93 Medicaid estate recovery mandate are described below.⁷

² Sabatino, C.P. and Wood, E. (1996). *Medicaid estate recovery: a survey of state programs and practices*. AARP Public Policy Institute, Washington. D.C.

³ *Medicaid Estate Recoveries: National Program Inspection*. US Department of Health and Human Services, Office of Inspector General, Office of Analysis and Inspections. OAI-09-86-00078, June 1988.

⁴ *Medicaid recoveries from nursing home residents' estates could offset program costs*. US General Accounting Office. GAO/HRD-89-56, March 1989.

⁵ Section 13612 of OBRA '93 (P.L. 103-66) amended Section 1917 of the Social Security Act related to liens, penalties for uncompensated asset transfer and Medicaid estate recovery. See http://www.ssa.gov/OP_Home/ssact/title19/1917.htm.

⁶ OBRA '93 also tightened up the rules regarding asset transfers and the placement of penalties on persons who dispose of their assets in order to qualify for Medicaid. A description of all OBRA '93 asset transfer provisions and discussion of their implementation can be found in Burwell, B. and Crown, W.H. (August 1995). *Medicaid Estate Planning in the Aftermath of OBRA '93*. The MEDSTAT Group, Cambridge, Massachusetts.

⁷ Detailed Federal guidance on estate recovery is in Chapter 3, Section 3810 of the State Medicaid Manual at: http://www.cms.hhs.gov/manuals/45_smm/sm_03_3800_to_3812.asp#_3810.



Highlights of the 1993 Estate Recovery Mandate:

States must pursue recovering costs for medical assistance consisting of:

- Nursing home or other long-term institutional services;
- Home- and community-based services;
- Hospital and prescription drug services provided while the recipient was receiving nursing facility or home- and community-based services; and
- At State option, any other items covered by the Medicaid State Plan.

At a minimum, states must recover from assets that pass through probate (which is governed by state law). At a maximum, states may recover any assets of the deceased recipient.

Much of the original enthusiasm for mandatory estate recovery was based on the results in Oregon, where estate recovery was implemented in the 1940s as part of a comprehensive program to help senior citizens keep enough money to meet their own needs and protect their assets from unscrupulous uses by others.⁸ An extraordinary jump in Medicaid savings was predicted if all states were to follow the Oregon model.⁹ A more recent study estimates that one state (Nebraska) could increase Medicaid savings fivefold if it adopted all of Oregon's estate recovery practices.¹⁰ However, it is clear that the much-vaunted savings have not become a reality. In 2003, estate recoveries amounted to \$330 million, or 0.13% of total Medicaid spending in all states, with individual state collections ranging from 0.0 – 0.64%.¹¹

Whose estates are subject to recovery?

Recoveries may only be made from the estates of deceased recipients who were 55 or older when they received Medicaid benefits or who, regardless of age, were permanently institutionalized. However, states may exempt recipients if their only Medicaid benefit is payment of Medicare cost sharing (i.e., Medicare Part B premiums).

If a state has elected to impose TEFRA liens¹² on recipients' homes, then it must also recover from the estates of those recipients. States may impose liens on property of Medicaid recipients of any age if they

⁸ *Recovery of past Medicaid payments from estates of deceased recipients.* (1986). Unpublished report by DHHS Office of Inspector General. Audit Report Number A-05-86-60249.

⁹ OIG OAI-09-86-00078, June 1988; and GAO/HRD-89-56, March 1989.

¹⁰ *The Heartland Model for Long-term Care Reform: A Case Study in Nebraska* (December 1, 2003). Center for Long-Term Care Financing at: <http://www.centerltc.com/pubs/Nebraska.pdf>. See page 17.

¹¹ This figure is derived from data on state Medicaid spending, which includes "probate collections," reported in the Medstat analysis of the CMS-64. Earlier years are accessible at: <http://www.cms.hhs.gov/medicaid/msis/mstats.asp>.

¹² TEFRA or "pre-death" liens are permitted under section 1917(a) of the Social Security Act. Detailed Federal guidance is in Sections 3810.A.1. and F. of the State Medicaid Manual.



are permanent residents of a nursing home or other medical institution, and if they are expected to pay a share of the cost of institutional care.

What is a Medicaid recoverable estate?

OBRA '93 requires states to recover, at a minimum, all property and assets¹³ that pass from a deceased person to his or her heirs under state probate law, which governs both property conveyed by will and property of persons who die intestate.¹⁴ A state's ability to recover from probate estates depends in some measure on Medicaid's standing vis-à-vis other claimants. The order of payment of debt is established under state law. Mortgages, unpaid tax or public utility bills, child support arrears, burial costs, or other debts may be paid before the Medicaid lien and reduce the amount that is actually recovered. The State's standing is also influenced by locally determined state priorities. For example, some state laws protect the family home in an estate from some or all claims against it, including Medicaid claims.¹⁵

States may use the narrow Federal definition of "estate" and limit Medicaid estate recoveries to only those assets that pass through probate. Alternatively, they may choose to define "estate" in a broader context, which enables them to recover from some or all property that bypasses probate. Such property includes assets that pass directly to a survivor, heir or assignee through joint tenancy, rights of survivorship, life estates, living trusts, annuity remainder payments, or life insurance payouts. As is true of probate estates, most such arrangements operate under other, non-Medicaid laws that define rights and responsibilities in the disposition of bank accounts or other liquid investments, real estate ownership, life insurance policies, etc. For this reason, implementing Medicaid rules against a background of non-Medicaid law carries the potential for lack of legal clarity, competing claims to property of deceased Medicaid beneficiaries, and inconsistent outcomes.¹⁶ Despite such legal and practical obstacles to fully implementing an estate recovery program that uses the broad definition of "estate," it is clear that states could increase Medicaid recoveries, possibly by substantial amounts, by collecting from assets that individuals could otherwise shelter from recovery (i.e., by shifting them out of the future probate estate into a form outside the State's Medicaid recovery orbit).

¹³ The State Medicaid Manual describes exemptions for certain property of American Indians and Alaskan Natives, as well as government reparations payments to individuals. See Section 3810.A.7.

¹⁴ State probate laws are available at: http://www.law.cornell.edu/topics/state_statutes3.html#probate. States that have adopted the Uniform Probate Code are shown at: <http://www.law.cornell.edu/uniform/probate.html>.

¹⁵ Texas probate law (section 322 of the Texas Probate Code) protects the homestead from Medicaid claims. See Texas estate recovery guidelines proposed on January 26, 2004 at: <http://www.hhsc.state.tx.us/medicaid/EstateRecovery/Framework.html>. Florida provides broad protection for the homestead against creditors' claims. See Article X, Section 4 of the Constitution of the State of Florida at: <http://www.flsenate.gov/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes#A10S04>.

¹⁶ For example, see Roger, A. Schwartz, J.D. and Sabatino, C.P. (November 1994). *Medicaid Estate Recovery Under OBRA '93: Picking the Bones of the Poor?* American Bar Association, Commission of Legal Problems of the Elderly.



The home is considered to be part of the recoverable estate unless it is protected for the spouse or certain other close relatives, or is conveyed outside of the State's definition of "estate" (e.g., through a life estate).

Several surveys that examined how individual states implement the estate recovery mandate yielded inconsistent findings when states were queried on whether they used a narrow or broad definition of estate, which shows how difficult it is to get a clear picture of this issue. Further, evidence is lacking on what types of assets are included under the broad definition of estate in those states that have elected to extend their recovery efforts beyond the probate estate. One study¹⁷ determined that 20 of 40 responding states using the Federal minimum definition, while the remaining 24 states used some variation of the broader option. A later study¹⁸ reported that 30 of 48 responding states used the minimum definition. The findings in reports on specific state policies were consistent for only about half of the states. Explanations for variations between surveys are speculative. Different state officials may have responded at different points in time, or there may not be a commonly understood dividing line between the minimum and broader definitions.

How much is subject to recovery?

At a minimum, states must recover amounts spent by Medicaid for long-term care and related drug and hospital benefits, including Medicaid payments for Medicare cost sharing related to these services. However, they have the option of recovering the costs of *all* Medicaid services paid on the recipient's behalf. The majority of states recover spending for more than the minimum of long-term care and related expenses.¹⁹

States can waive estate recovery when it is not cost-effective, as defined by the State and made public through their official State Medicaid plan.²⁰ How states interpret the Federal guidance with respect to this issue varies. Some may waive recoveries of very small estates or make case-by-case determinations. For example, they may waive recovery when the recovery effort itself would be costly because asset ownership is complicated or legally ambiguous, or the asset is hard to reach for some other reason.

¹⁷ Sabatino and Wood (1996), Table 3.

¹⁸ 2002 *Medicaid Estate Recovery Work Group Report to the Pennsylvania Intra-Governmental Council on Long-Term Care*.

¹⁹ Again, reports on specific state practices are inconsistent. For example, compare Table 2 in Sabatino and Wood (1996) to Table 4 of the 2002 report of the Pennsylvania Medicaid Estate Recovery Work Group.

²⁰ See Section 3810.E. of the State Medicaid Manual.



Recoveries may not exceed the total amount spent by Medicaid on the individual's behalf at or after age 55.²¹ Nor may they exceed the amount remaining in the estate after the claims of other creditors against the estate have been satisfied in the order of payment of debt delineated by state law.

Surviving family members or heirs of Medicaid recipients must not be asked to use their own funds to repay Medicaid, except, possibly, in the case of an estate that includes the deceased recipient's home. When home equity becomes part of the estate, it is subject to Medicaid estate recovery. The survivors may either sell the home and use the proceeds to satisfy the Medicaid claim or, if they wish to keep the home in the family, satisfy the claim with their own personal funds.

Prohibitions on Medicaid estate recoveries

Estate recovery is prohibited in certain instances when Federal law deems that the needs of certain relatives for assets in the estate take precedence over Medicaid claims.²²

States are prohibited from making estate recoveries:

- During the lifetime of the surviving spouse (no matter where he or she lives).
- From a surviving child who is under age 21, or is blind or permanently disabled (according to the SSI/Medicaid definition of "disability"), no matter where he or she lives.
- In the case of the former home of the recipient, when a sibling with an equity interest in the home has lived in the home for at least 1 year immediately before the deceased Medicaid recipient was institutionalized and has lawfully resided in the home continuously since the date of the recipient's admission.
- In the case of the former home of the recipient, when an adult child has lived in the home for at least 2 years immediately before the deceased Medicaid recipient was institutionalized, has lived there continuously since that time, and can establish to the satisfaction of the State that he or she provided care that may have delayed the recipient's admission to the nursing home or other medical institution.

Federal guidance implies that states can recover when the surviving spouse dies, or a child's protected status is lost, or when a protected relative moves out of the home.²³ However, a number of states waive their future right to recovery altogether, others defer it, and yet others use a mix of approaches based on the specifics of each case.²⁴

²¹ Specific Federal guidance is provided on recoveries when recipients are enrolled in capitated plans where Medicaid spending is not directly tied to the cost of services provided. See Section 3810.A.6 of the State Medicaid Manual.

²² See Section 1917(b)(2) of the Social Security Act and Section 3810.A.5 of the State Medicaid Manual.

²³ See Section 3810.A.5. of the State Medicaid Manual.

²⁴ Reports about the choices state make with respect to estate recovery when there is a surviving spouse or dependent relative present conflicting data. For example, compare Table 6 in Sabatino and Wood (1996) to the two



Federal policy defers to states regarding how they track or monitor assets that pass to protected relatives in cases where the State retains its right to future recoveries from Medicaid recipients' survivors. There are logistical problems inherent in keeping track of assets for long periods of time, and figuring out which of the survivor's assets originally belonged to the deceased Medicaid beneficiary presents a number of practical problems. In addition, some states waive future recoveries to avoid the ugly task of collecting from those relatives long after their loved one's death or years later when they decide to move to another home. How much potential Medicaid revenue is lost when a state elects this option is not known.

Procedural rules

Procedural rules are intended to ensure that individuals are informed about Medicaid program requirements before they complete the application process. States are advised to tell applicants about the potential for Medicaid estate recovery during the eligibility determination process.

There are wide variations in the ways in which states implement estate recovery, depending upon their Medicaid program and state laws. However, Federal law requires all states to incorporate the following protections for Medicaid recipients into the design of their estate recovery program:

Recipient protections in Medicaid estate recovery:²⁵

- The State should notify Medicaid recipients about the estate recovery program during their initial application for Medicaid eligibility and annual re-determination process.
- The State must notify affected survivors about the initiation of estate recovery and give them an opportunity to claim an exemption based on hardship.
- The State must establish procedures and criteria to waive recovery if it would cause undue hardship.

It is up to each state to develop and disseminate information to help the public understand the rationale and necessity for Medicaid estate recovery, as well as the rights of both the State and the recipient. For this reason, considerable variation exists in the level of resources each state commits to this process. The state Medicaid agency must decide how to keep it understandable, while providing all the essential points, and how to accommodate the variety of individual circumstances. Decisions must also be made regarding what level of detail beneficiaries and their families can absorb or when is the best time to provide information about estate recovery – an event that may occur long after the application process.

1988 companion studies by the North Carolina Department of Health and Human Services, Long-Term Care Policy Office: *Comparing State Medicaid Recovery Efforts* at: <http://www.dhhs.state.nc.us/aging/estate.htm> - 6 and *State Medicaid Estate Recovery Programs* at: http://www.longtermcarelink.net/reference/ref_medicaid_recovery.html. See entries in column 4.

²⁵ These are described in Section 3810 of the State Medicaid Manual. See especially Section 3810.G. Note that this section describes what states "should" do, not what they "must" do.



Even when a state provides comprehensive estate recovery information at the most suitable time, people may be overwhelmed by the complexity of the decisions they must make during the application process, which may take place over a fairly short and emotionally difficult period of time.

State efforts to inform people about the estate recovery program are sometimes the target of scathing criticism.²⁶ States do not welcome bad publicity and litigation that flows from inadequate procedural safeguards, and are working to make the information they provide to clients more accurate, thorough, and timely.²⁷

Hardship waivers

States are required to waive estate recoveries when undue hardship would result,²⁸ but they have considerable discretion in their definition of “hardship” and its impact on their estate recovery activities. Federal guidelines suggest two specific kinds of property for the hardship exception: homesteads of modest value and income-producing property, such as farms or family businesses that are essential to the support of surviving family members. Recently revised Federal guidance defines “modest” homesteads in relation to average value of homes in the same county. It is silent on the matter of limits on the value of income-producing property. A number of states go beyond the Federal guidelines for waiving or deferring recovery. They may negotiate partial recovery, based on other hardship factors defined by the State, such as a very low income of the survivors.²⁹ Information about how states administer hardship waivers has not been published.

Special estate recovery provisions for persons with long-term care insurance

Since 1988, five states have collaborated with the insurance industry in the Partnership for Long-Term Care, a project sponsored by the Robert Wood Johnson Foundation to increase private insurance coverage for long-term care.³⁰ The program aims to design and evaluate new strategies to increase the number of policies offered at affordable prices and to provide prospective buyers with assurances about the quality and reliability of the policies offered. These new features would complement other incentives for buying long-term care insurance – e.g., more and better long-term care choices; avoiding the need for

²⁶ For example, see Roger, Schwartz, and Sabatino (November 1994); or Wilcox, M.D. (April 1998). “*Will nursing home bills haunt your estate?*” in Kiplinger’s Personal Finance Magazine, 115-118.

²⁷ See 2002 Pennsylvania Medicaid Estate Recovery Work Group Report.

²⁸ See Section 3810.C. of the State Medicaid Manual.

²⁹ State practices are reported in Schwartz and Sabatino (November 1994); Sabatino and Wood (September 1996), Table 9; and North Carolina Department of Health and Human Services (1998) *State Medicaid estate recovery programs*.

³⁰ See <http://www.hhp.umd.edu/AGING/PLTC/index.html> for a description of the program, links to Partnership project evaluations, and projections of possible future Medicaid savings. For an overview of the program, see http://www.hhp.umd.edu/AGING/PLTC/partnership_post.pdf.



Medicaid assistance or being a burden on one's children; and tax advantages or credits on Federal and some state income tax.

Changes in Medicaid rules protecting assets of policy holders are an additional strategy used by Partnership programs in a limited number of states to increase the market appeal of long-term care insurance. In these states, policy holders who apply for Medicaid after exhausting their insurance coverage have certain of their assets disregarded during their Medicaid eligibility determination. These assets are also exempt from Medicaid claims against their estates after death.³¹ Thus Medicaid provides both safety net coverage for very long nursing home stays (i.e., after long-term care insurance benefits run out) and the guarantee that substantial assets will remain in the estate for heirs. This combination makes shorter-term insurance policies with lower premiums more marketable to potential buyers. If these buyers ultimately become Medicaid long-term care recipients, then insurance, not Medicaid, will have paid for the bulk of their long-term care expenses. Medicaid spending for these policy holders would, therefore, be limited to the few whose expenses exceed their long-term care insurance limits.

Evidence on whether these plans really produce Medicaid savings in the states that have implemented them is preliminary but positive. One profile of Partnership insurance buyers found that persons with assets in the \$100,000-\$400,000 range – a group frequently targeted by Medicaid estate planners – were more likely to buy long-term care insurance under the Partnership program than persons who were either poorer or richer, so it is quite likely that the program will eventually shift the burden of long-term care costs for at least some people in this group from Medicaid to private insurance.³²

The extent to which the decision to purchase a Partnership insurance policy is influenced by the promise of Medicaid asset protections down the line is a matter of conjecture. Other motives may be as or more compelling – for example, the buyer's desire for more and better long-term care choices than those provided by conventional long-term care insurance policies. In any case, substantial Medicaid savings due to increased long-term care insurance coverage are not imminent. Long-term care insurance is relatively new and still evolving. Moreover, its premiums are relatively high for seniors on a fixed income. They are most affordable for younger, healthier people whose long-term care expenses are typically many years in the future.³³

³¹ States use one of two approaches in determining the amount of assets protected: either the "dollar for dollar" approach in which the value of assets protected depends on the value of the insurance benefits paid out, or the "total assets" approach which protects all assets but only for persons with state-defined comprehensive insurance coverage.

³² McCall, N. and Korb, J. (2001). *Who Will Pay for Long-Term Care: Insights from the Partnership Program*. Chapter 8: "What Have We Learned from the Partnership for Long-Term care." Health Administration Press, Chicago. accessible at: <http://www.hhp.umd.edu/AGING/PLTC/chapter8.pdf>.

³³ In December 2000, over 78,000 long-term care insurance policies were in force in the four states included in the Partnership for Long Term Care. At that point in time, only 810 policy holders – less than 1% – had ever qualified for



Because of uncertainty about the actual effects of exempting assets from Medicaid estate recovery under the Partnership program, OBRA '93 limited this authority to just those states that had Partnership programs in effect shortly before its enactment (May 14, 1993).³⁴ These states are identified in the State Medicaid Manual as California, Connecticut, Indiana, Iowa, and New York.³⁵ Additional states wishing to participate in the Partnership program are required to adopt the broader definition of "estate" for purposes of Medicaid estate recovery and may not exempt assets of long-term care insurance buyers from Medicaid estate recovery,³⁶ restrictions that have had a chilling effect on replication of Partnership programs.

Twelve states have reportedly passed state enabling legislation.³⁷ However, they have not implemented their programs because they regard the Medicaid estate recovery asset exemptions as critical to the success of the program.

Pros and cons of estate recovery

Proponents of more extensive and aggressive Medicaid estate recoveries argue that Medicaid is a chronically strapped program for the poor, and that estate recovery shifts some of the burden of paying for long-term care from the taxpayer to the estates of deceased recipients. States can then spend their share of recovered funds to preserve or expand their Medicaid coverage of services for needy populations,³⁸ although they are not required to do so.

Opponents of Medicaid recoveries argue that the practice is unfair in that it mainly affects people of very modest means, while sparing those who are able to access advice on estate planning techniques that shelter assets. Further, it clashes with broadly held cultural values on the sanctity of intergenerational legacies.³⁹ Others argue that the threat of estate recovery causes people to forego Medicaid funded

benefits. Of these, 38 had exhausted their insurance benefits, and only 21 of these had qualified for Medicaid. For details, see http://www.hhp.umd.edu/AGING/PLTC/partnership_post.pdf.

³⁴ The restriction is codified in section 1917(b)(3) and (4)(B) of the Social Security Act.

³⁵ The list of states is in section 3810.A.4(b) of the State Medicaid Manual.

³⁶ Any additional Partnership states retain the option of disregarding substantial assets of policy holders during the Medicaid eligibility determination process (i.e., during the lifetime of the applicant), but they cannot also protect these assets from recovery from the estate of the policy holder after death. The option to disregard assets from eligibility is based on section 1902(r)(2) of the Social Security Act. Federal guidance on this provision is available at: <http://www.cms.hhs.gov/medicaid/eligibility/elig0501.pdf>.

³⁷ See Meiners, Mark R., Hunter L. McKay, and Kevin J. Mahoney (2002). *Partnership Insurance: An Innovation to Meet Long-Term Care Financing needs in an Era of Federal Minimalism*. *Journal of Aging and Social Policy*, (The Haworth Press, Inc.) Vol. 14, No 3/4, 2002, accessible at <http://www.hhp.umd.edu/AGING/PLTC/Partnership.pdf>.

³⁸ Fossett, J.W. and Burke, C.E. (July 2004) *Medicaid and state budgets in FY 2004: Why Medicaid is so hard to cut* at: http://rockinst.org/publications/federalism/medicaid_managed_care/MedicaidandStateBudgets2004.pdf.

³⁹ For example, see Roger, Schwartz, and Sabatino (November 1994) or Wilcox (April 1998).



services when they need them or discourages adult children from seeking Medicaid for an ill parent, whose health or functional abilities may deteriorate as a result. This avoidable decline in health status may lead to higher medical costs later on.⁴⁰

Conclusion

Retirement is increasingly financed by personal savings, as defined-benefit pension programs are replaced by defined-contribution programs such as IRA and 401(k) savings plans. For this reason, personal financial planning for retirement has become imperative, even for persons of very modest means. Greater life expectancy, combined with the prospect of declining abilities and possible future needs for high-cost long-term care,⁴¹ has made more and more people turn to financial planners for advice on how to make limited funds last for an uncertain duration. Further impetus for obtaining professional advance planning assistance is provided by the complex tax implications of financial decisions and the natural desire to leave a financial legacy to loved ones.

As financial planning for retirement grows in extent and sophistication, more and more such plans will take into account the future possibility of needing to pay for long-term care. Good choices in estate planning require a clear and accurate understanding of the various options for financing long-term care services, including qualifying for Medicaid and accepting – or avoiding – the consequences of Medicaid estate recovery.⁴² However, if a better understanding of Medicaid rules results in more people sheltering more assets and increased dependence on this taxpayer-funded program, then Medicaid - a perennial and major budget concern for state and Federal governments – will inevitably pay an ever increasing share of the nation's long-term care costs.

This policy brief was prepared under contract #HHS-100-03-0022 between the U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Office of Disability, Aging and Long-Term Care Policy (DALTCP) and Thomson/MEDSTAT, Inc. For additional information on this subject, or to view the other briefs in this series, you can visit the ASPE home page at <http://aspe.hhs.gov> or contact the ASPE Project Officer, Hunter McKay, at HHS/ASPE/DALTCP, Room 424E, H.H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, Hunter.McKay@hhs.gov.

⁴⁰ For a discussion of the possible negative impact of Medicaid estate recovery avoidance, see *Medicaid Estate Planning and Estate Recovery in Ohio* (August 1999), Chapter 11. Ohio Department of Human Services, accessible at: http://jfs.ohio.gov/ohp/bltcf/reports/er/ER_D.pdf.

⁴¹ See Curry, L., Gruman, C., and Robinson, J. (2001). *Medicaid Estate Planning: Perceptions of Morality and Necessity*. *The Gerontologist* Vol. 41: 34-42 for a discussion of the factors that influence estate-planning behavior.

⁴² Successful litigation against attorneys giving bad advice on estate planning is not unheard of. See, for example, <http://www.ago.state.co.us/PRESREL/presr12003/prsr198.htm>.



Policy Briefs on Medicaid Eligibility Policies for Long-Term Care Benefits

A total of six Policy Briefs are available from the Office of Disability, Aging and Long-Term Care on this subject:

- **Medicaid Estate Recovery**
[\[http://aspe.hhs.gov/daltcp/reports/estaterec.htm\]](http://aspe.hhs.gov/daltcp/reports/estaterec.htm) Posted May 2005
- **Medicaid Estate Recovery Collections**
[\[http://aspe.hhs.gov/daltcp/reports/estreccol.htm\]](http://aspe.hhs.gov/daltcp/reports/estreccol.htm) Posted February 2006
- **Medicaid Liens**
[\[http://aspe.hhs.gov/daltcp/reports/liens.htm\]](http://aspe.hhs.gov/daltcp/reports/liens.htm) Posted May 2005
- **Medicaid Liens and Estate Recovery in Massachusetts**
[\[http://aspe.hhs.gov/daltcp/reports/MAliens.htm\]](http://aspe.hhs.gov/daltcp/reports/MAliens.htm) Posted May 2005
- **Medicaid Treatment of the Home: Determining Eligibility and Repayment for Long-Term Care**
[\[http://aspe.hhs.gov/daltcp/reports/hometreat.htm\]](http://aspe.hhs.gov/daltcp/reports/hometreat.htm) Posted May 2005
- **Spouses of Medicaid Long-Term Care Recipients**
[\[http://aspe.hhs.gov/daltcp/reports/spouses.htm\]](http://aspe.hhs.gov/daltcp/reports/spouses.htm) Posted May 2005