



# JOINT ECONOMIC COMMITTEE

DEMOCRATIC STAFF

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## Medicaid Estate Recovery: The Other Estate Tax

### Executive Summary

When they die, most Americans leave estates that are too small to owe any federal estate tax. However, some of those estates may be subject to a Medicaid provision that “taxes” them in order to recover long-term care expenditures made on behalf of program recipients.

This paper analyzes the fairness and cost-effectiveness of Medicaid estate recovery. It also notes that the impulse to remove federal taxation of estates has not yet extended to Medicaid estate recovery. This shows the inconsistency in how we treat the estates of lower- and higher-income elderly people.

The following are the key findings of the paper:

- Federal Medicaid provisions require states to recover the cost of long-term care from the estates of Medicaid recipients aged 55 and over and from those of permanently institutionalized beneficiaries of any age.
- The cost of long-term care can be a heavy financial burden. The average cost of a nursing home is about \$55,000 per year, and more than half of all elderly nursing home residents rely on Medicaid as their primary source of payment.
- In order to qualify for Medicaid, people must have very low incomes and a limited value of assets. In most states, those with more resources must “spend down” their assets by paying nursing home costs themselves until their remaining assets are below the Medicaid asset eligibility limit, which is about \$2,000 per person in a typical state.
- The estates left by Medicaid beneficiaries are typically small, limiting the amount of money likely to be recovered. In fiscal year 1999, nationwide Medicaid estate recovery efforts recouped only about \$200 million—roughly one-tenth of one percent of total Medicaid spending, which was more than \$190 billion.
- When the costs of recovery are taken into account, the net yield of Medicaid estate recovery is even smaller. States must either hire and train a staff or pay a collection agency. The additional complications introduced into the Medicaid application process create additional costs both for the states and for the applicants themselves. Finally, families may have to pay for legal



assistance to deal with the recovery process in probate.

- The federal government has instituted mandatory Medicaid estate recovery regulations, which affect families of modest means and generate little revenue. At the same time, the major tax cut passed last year reduced taxes on the estates of the most wealthy Americans, while reducing revenues by \$138 billion between 2001 and 2010.
- At the same time very wealthy families will be realizing substantial estate tax savings from the changes enacted in last year's tax act, people of modest means who require long-term care will continue to see their estates diminished by Medicaid estate tax recovery.

**Medicare** is a federal health insurance program that covers all Americans aged 65 and over as well as younger adults with permanent disabilities, regardless of income or medical history.

**Medicaid** is a federal-state, means-tested program to provide medical assistance to certain low-income, disabled or medically needy individuals. Each state receives a matching grant from the federal government and administers its own Medicaid program within federal guidelines.

## The Long-Term Care Crisis

Paying for long-term care is a heavy financial burden for many older Americans, particularly the low-income elderly. About 1.5 million people aged 65 and over were in a nursing home on an average day in 1999, according to the National Nursing Home Survey. The average cost of such care is about \$55,000 per year. Because the average length of time since admission among elderly nursing home residents is two and a half years, total costs for long-term care can easily reach well over \$100,000.<sup>1</sup>

Many people do not have sufficient resources or insurance coverage to pay the full amount of these costs. In 1997, only about a quarter of elderly nursing home residents relied primarily on personal funds or private insurance to pay their bills.<sup>2</sup> Long-term care insurance is a growing market, but it is still small. By one estimate, it covers less than one percent of total U.S. spending on long-term care.<sup>3</sup>

Medicare, the federal health insurance program for the elderly, pays for 100 days of nursing home care per stay and only if preceded by three days in the hospital.<sup>4</sup> Only 15 percent of elderly nursing home residents relied primarily on Medicare to pay their costs in 1997.<sup>5</sup>

Medicaid, the federal/state medical assistance program for low-income people, has become, by default, the primary means of financing nursing home care. More than half of elderly nursing home residents (56 percent) rely on Medicaid as the primary source of payment for their care.<sup>6</sup> Over the course of the year in 1998, 1.6 million Medicaid beneficiaries received long-term care in a nursing home and an additional half million beneficiaries



got long-term care in a home- or community-based setting.<sup>7</sup>

When the Medicaid program was created in 1965, it was designed to provide medical assistance to the most financially needy populations in our society. It was not intended to become the primary source of long-term care coverage that it is today. To help limit abuse and trim costs, the federal government has placed strict income and asset rules on the low- and middle-income seniors who apply for the program.

The federal government has also made it mandatory for states to recoup the costs of long-term care from the estates of Medicaid beneficiaries. At the same time, the estate tax for wealthy individuals has been liberalized and will soon be repealed, resulting in a loss of billions of dollars in revenue for both states and the federal government.

## Qualifying for Medicaid Long-Term Care Benefits

Seniors seeking Medicaid coverage for long-term care must contend with a complex set of income and asset eligibility requirements that vary from state to state. In addition to meeting the requirements at the time of application, individuals must also look back 36 months to ensure that they did not make any transfer of assets for less than fair market value in order to qualify for Medicaid.<sup>8</sup> They must also look forward to consider the potential impact of estate recovery on their families after their death.

While the requirements vary by state, people can generally get Medicaid coverage if they meet the income qualification for Supplemental Security

Income (SSI), which is currently \$545 per month and \$2,000 in assets for an elderly individual. Some states extend Medicaid coverage to individuals with up to 300 percent of the SSI income limit. Or, individuals can “spend down” their income and assets on long-term care to a state-established level.<sup>9</sup>

Certain non-countable assets are not factored into the eligibility equation. These typically include a house used as the primary residence for the individual, spouse, or dependent child; a pre-paid burial plan; a life insurance policy (up to a certain cash surrender value); and a car used by the beneficiary.

To ensure that Medicaid qualification does not entirely deplete a family’s resources, Congress enacted provisions in 1988 to protect against the “spousal impoverishment” of Medicaid beneficiaries.<sup>10</sup>

## Medicaid Estate Recovery

### *What is Medicaid estate recovery?*<sup>11</sup>

Since 1993, federal law has required states to recover the cost of long-term care in a nursing home or in a home or community-based setting (and any related hospital or prescription drug costs) from the estates of Medicaid recipients aged 55 and over. States must also seek recovery for the cost of institutional care of permanently institutionalized beneficiaries of any age. States also have the option of recovering payments for all other Medicaid services provided to these individuals.

This change was made as part of the Omnibus Budget Reconciliation Act (OBRA) of 1993. Prior to that time, the recovery of assets was optional.



In an effort to curb abuse and limit spending, Congress enacted several measures to close loopholes that allowed elderly people to transfer or shelter assets in order to qualify for Medicaid.

The Medicaid estate recovery process varies considerably by state, but in all states it adheres to broad guidelines set out in federal law. Recovery cannot begin until after the death of the Medicaid beneficiary and his or her spouse. Nor can it start if the beneficiary has a child who is under the age of 21 or permanently disabled. In states that allow liens, a lien cannot be placed on the home of a beneficiary if it is inhabited by a sibling for at least one year prior to the beneficiary entering a nursing home; or by a son or daughter who has lived there and provided care that allowed the individual to stay at home and out of a nursing facility for at least two years. (See Appendix II for a more detailed description of the Medicaid estate recovery process.)

Federal law includes a broad hardship waiver clause that allows states to waive recovery if it will create “undue hardship.” Some states automatically waive recovery of estates below a certain value as part of their hardship provisions.

A portion of recovered funds is returned to the federal government at the state’s federal Medicaid match rate. The state can keep the balance to use for any purpose.

### *How much is recovered?*

In 1999, recovered funds were about one-tenth of one percent of Medicaid spending. Approximately \$200 million was recovered nationwide from the estates of Medicaid beneficiaries, according to data from the Health Care Financing Administration

(HCFA).<sup>12</sup> (See Appendix I.) In that same year, combined federal and state spending for Medicaid was \$190 billion.<sup>13</sup>

The amount of money recovered has increased steadily over the last few years. Nationwide, the total amount collected rose 16 percent from 1996 to 1999, and some states drastically increased their estate recoveries. Massachusetts increased collections 66 percent from \$13.8 million to \$23 million, and Florida had a 105 percent increase from \$4 million to \$8.1 million. However, even in those states the amount recovered was only a small proportion of Medicaid spending.

In contrast, some states have very limited or no estate recovery procedures. In 1999, nine states reported that they had collected less than \$1 million. It is important to note that these states, which include Vermont, Nevada and Oklahoma, have fewer Medicaid beneficiaries than other states. Three states – Georgia, Michigan and Texas – have not established an estate recovery program.<sup>14</sup>

### *Who is affected?*

Given the income and asset limits for Medicaid qualification, most of the individuals affected by estate recovery probably have very small estates. There is very little hard data available on the number and average value of the estates that have had Medicaid claims. States are only required to report the aggregate amount recovered to the federal government.

However, court documents from West Virginia show that the average amount recovered in that state since 1995 has been \$14,000 per estate, offsetting an average liability of \$50,000.<sup>15</sup> A 1999 review of Ohio’s Medicaid estate recovery program shows that the average claim per recipient (amount



**State Medicaid Estate Recovery Programs**

It is difficult to estimate either the number or the average size of estates subject to Medicaid estate recovery because of the limited amount of data and the wide variation in how states implement the program. There are several factors that can influence the amount recovered by a state. One is the number of Medicaid long-term care beneficiaries in the state. A second is how broadly “estate” is defined by the state. Similarly, states also have latitude about which Medicaid services to claim: some make claims only for long-term care; others may claim all Medicaid services. Finally, state laws and regulations may limit the estate recovery process. For example, some states do not seek recovery of estates below a certain value while others may pursue all eligible claims.

Below are examples of how Medicaid estate recovery operates in two states. While these are just two examples, the data suggest that the value of the Medicaid beneficiaries’ estates in these states is fairly small.

**Ohio:**

<b>Ohio Medicaid Estate Recovery Program</b>				
<i>State fiscal year</i>	<i>Deceased recipients</i>	<i>Average claim per recipient (dollars)</i>	<i>Total recovered (millions of dollars)</i>	<i>Average recovery per recipient (dollars)</i>
1999*	25,114	57,020	7.8	292
1998	20,151	53,995	5.3	263
1997	19,750	38,772	3.6	180
1996	19,304	20,541	0.9	48

**Source: Medicaid Estate Planning and Estate Recovery in Ohio August 1999, Ohio Dept of Human Services**  
 \* Partial SFY 1999 includes July 1998 – June 1999, and is incomplete re: total recoverable claims.

In fiscal year 1998, Ohio ranked eighth in the nation in Medicaid enrollment with 1.4 million beneficiaries. A report by the state’s Department of Human Services notes several factors that limit the total amount recovered in Ohio: a narrow definition of estate, recoveries are not pursued after the death of a surviving spouse or child, no use of liens, state law does not allow recovery from estates of permanently institutionalized individuals of any age, and the state requires the sale of a house after the owner has been institutionalized for six months. By their estimate, the state recovers \$10.11 for every \$1.00 spent on the collection process.



**Kansas:**

<b>Kansas Medicaid Estate Recovery Program</b>			
<i>Fiscal Year</i>	<i>Number of cases</i>	<i>Total recovered (millions of dollars)</i>	<i>Average recovery per case (dollars)</i>
2001	2,162	3.8	1,742
2000	2,183	4.5	2,072
1999	1,769	3.3	1,846
1998	1,356	2.6	1,910
1997	1,079	2.3	2,161
1996	824	1.8	2,165
1995	995	1.2	1,229
1994	566	0.7	1,155

**Sources: Kansas Department of Social and Rehabilitation Services website.**  
Average recovery calculated by Joint Economic Committee Democratic staff.

In FY 1998, Kansas ranked 35<sup>th</sup> in the nation in Medicaid enrollment with 246,598 beneficiaries.

of Medicaid dollars spent per beneficiary) was \$57,000 and the state collected an average of \$292 per estate.<sup>16</sup> This suggests that the estates available to the states are quite small. (See text box page 5.)

Looking at the elderly population in general, a large portion have limited financial resources. Seventeen percent of elderly adults had incomes below 125 percent of the poverty line in 2000.<sup>17</sup> About half of the elderly – 17.2 million – owned their own home in 1999.<sup>18</sup> The median value of these homes was \$96,442 – about 11 percent lower than the median for all homeowners. Almost 20 percent of elderly homeowners reported that their homes were worth less than \$50,000.<sup>19</sup>

**Medicaid Estate Recovery and the Estate Tax: Policy Inconsistencies**

While the federal government has been tightening the regulations for recovery from the estates of lower- and middle-income Medicaid beneficiaries, it has liberalized the tax treatment of higher-income estates. The contrast shows an inconsistency in how we treat the estates of lower- and higher-income elderly people.

- **Few high-income estates are subject to estate taxes now.** The federal estate tax has garnered a significant amount of attention as a “death tax.” However, only



about 2 percent of deaths each year result in a taxable estate. Most estates are not taxable because federal law exempts transfers to a surviving spouse and charitable gifts, and it applies a sizeable exemption to other transfers. Only 49,870 estates incurred a tax liability in 1999. About 75 percent of the total taxes paid were incurred by estates valued at \$2.5 million or more.<sup>20</sup>

In contrast, the estates of lower- and middle-income Medicaid beneficiaries receiving long-term care in a nursing home or in the community are subject to being depleted through recovery. As noted earlier, existing data suggest that the value of these estates is quite small.

- **The federal estate tax will be completely repealed in 2010.** The Economic Growth and Tax Relief Reconciliation Act of 2001 will further reduce the number of estates that will incur any tax liability. The Act raises the federal estate tax exemption from \$675,000 to \$1 million starting in 2002 and further increases the exemption in steps to \$3.5 million by 2009. In 2010, the estate tax is completely repealed. The Joint Committee on Taxation estimates that this change will lead to a \$25 billion revenue loss in 2001 through 2006, and a total revenue loss of \$138 billion in 2001 through 2011. As noted earlier, estate recoveries under Medicaid total about \$200 million per year.

- **Medicare beneficiaries are not subject to estate recovery for the cost of services.** Although the primary purpose of estate recovery is to reimburse the Medicaid program for the cost of services, that standard is not applied universally across all programs. Medicare provides lower-cost health insurance coverage to all Americans aged 65 and over – regardless of income. This means that even the wealthiest elderly people are eligible for federally subsidized medical insurance. However, no Medicare beneficiary must pay back the cost of care received, including the cost of the limited amount of nursing home care provided by the program.

### The Costs of Medicaid Estate Recovery

Medicaid estate recovery was enacted to help curb rising costs and limit the amount of abuse or fraud. In practice, however, estate recovery can create new costs for government and society by increasing the complexity of the Medicaid program. While data limitations preclude a precise analysis, the cost of pursuing recovery, the additional compliance costs for Medicaid beneficiaries and their families, and the small size of beneficiaries' estates raise questions about the benefits relative to the costs of the program. The following are some key issues:

**Increases in complexity.** Sorting through multiple eligibility criteria, determining which services are covered, making payments and meeting reporting requirements mean that navigating the Medicaid program is already a difficult process for states and



individuals. The estate recovery process adds further complexity to this process in several ways.

- **Expansion of the bureaucracy.** In addition to providing medical services, every state Medicaid office must also develop and carry out procedures for Medicaid estate recovery. In most cases, this involves hiring new staff or contracting with a collections agency.
- **Further complication of the eligibility process.** For an elderly individual in need of intensive long-term care, the process of applying for Medicaid can be daunting. In addition to looking back over the last three years to see if they meet the asset test, potential beneficiaries must also consider the impact of estate recovery on their families in the future. Even with legal assistance, it can be difficult to determine the impact, because states vary widely in how they define “estate” for Medicaid recovery purposes, and in how they determine which Medicaid benefits are included in the claim. Also, it is almost impossible to know in advance the cost of Medicaid services, so it is unclear how big a claim will be made against the estate.

In addition to determining the individual’s eligibility, states must also notify Medicaid applicants about the estate recovery process. This can involve additional staff training and creating documents to explain the legal issues surrounding this process.

- **Extension of the Medicaid process.** In addition to dealing with their current caseload, states must also continue to deal with the families and estates of Medicaid

beneficiaries who have died. This could potentially last for several years since the recovery process cannot begin until after the death of the beneficiary’s spouse. This process requires identifying potential cases and then determining if the state has a claim.

A 1999 report by the Washington State Department of Social and Health Services notes that “the estate recovery process is highly labor intensive.” The state’s Office of Financial Recovery manually researched probate filings and other state records to identify potential claims. In 1998, a full-time staff of eight in the Estate Recovery Unit researched more than 22,000 estates but found that they could make claims against only 579 of them. Once identified, they had to collect data on the type and cost of services delivered to the beneficiary from several different information systems in order to calculate the amount of the claim.<sup>21</sup>

Also, the families of beneficiaries must continue to deal with the Medicaid office and may need to pay for legal assistance to navigate the probate process.

**Small returns to the collection effort.** As noted earlier, current estate recovery programs yield less than one percent of total Medicaid spending. While estate recovery can potentially bring millions back to a state, these returns must be weighed against the costs of staff salaries, time, and overhead, as well as against the share of recovered funds that must be returned to the federal government at the state’s Medicaid match rate.

Maximizing the amount of funds recovered is limited by two factors. First, Medicaid





beneficiaries are likely to leave small estates after having depleted their assets to qualify for the program. In addition, existing state laws can limit how much is recovered from the estates of Medicaid beneficiaries. For example, some states do not allow liens to be placed on individuals' property before they die. This means that the state has to wait until after the death of the beneficiary and pursue the matter with a claim in probate court. Time and procedural matters can reduce the probability of a substantial recovery.

**Impact on care.** The possibility of losing the family home may discourage some people in need of long-term care from seeking Medicaid coverage. While there is no conclusive data showing that this is a problem, anecdotal evidence from an American Association of Retired Persons (AARP) survey of state officials and legal practitioners found some concern that some elderly people may delay or not seek needed care because of the fear of losing their homes or of not being able to pass them on to their heirs.<sup>22</sup>

## Conclusion

The high cost of long-term care forces many low- and middle-income elderly Americans to seek Medicaid coverage. Having depleted their resources on nursing home costs, the evidence suggests that very little is left in their estates when they die. In recent years, however, the federal government has made it mandatory for states to recover the cost of long-term care from the estates of Medicaid beneficiaries. At the same time, the tax treatment of higher-income estates has been significantly relaxed.

Given the small estates of Medicaid beneficiaries, estate recovery brings limited benefits while

creating additional costs for both individuals and states. In FY 1999, estate recovery efforts nationwide only recouped about one-tenth of one percent of total Medicaid spending. In order to comply with the estate recovery mandate, states must hire and train staff or pay a collections agency. It further complicates the Medicaid application process for individuals and may force their families to pay for legal assistance to deal with the recovery process during probate. Eliminating the estate recovery requirement will reduce the complexity and some of the costs of the Medicaid process for beneficiaries, their families and the states.

The federal government and the states are facing tough budget choices right now. However, those problems cannot be solved by depleting the estates of low-income Medicaid beneficiaries to achieve very small savings. It is neither fair nor effective to try to reclaim small amounts of assets from low- and middle-income families while simultaneously lowering or even eliminating taxes for the very richest.

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## Appendix I

<b>Medicaid Estate Recovery FY 1999</b>			
<i>State</i>	<i>Total Estate Recovery (millions of dollars)</i>	<i>Total Medicaid Spending (millions of dollars)</i>	<i>Recovery as Share of Spending (percent)</i>
Alabama	2.7	2,519	0.11
Alaska <sup>a</sup>		451	
Arizona	0.9	2,144	0.04
Arkansas	0.9	1,546	0.06
California	37.4	21,656	0.17
Colorado	2.5	1,914	0.13
Connecticut	10.1	3,084	0.33
Delaware	na	491	
District of Columbia <sup>b</sup>	0.6	957	0.06
Florida	8.1	7,135	0.11
Georgia <sup>a</sup>		3,905	
Hawaii	0.2	626	0.03
Idaho	2.9	566	0.52
Illinois	15.4	7,144	0.22
Indiana	3.4	3,151	0.11
Iowa	na	1,475	
Kansas	3.2	1,298	0.25
Kentucky	na	2,780	
Louisiana	na	3,383	
Maine	5.8	1,213	0.48
Maryland	6.6	3,109	0.21
Massachusetts	22.9	6,021	0.38
Michigan <sup>a</sup>		6,799	
Minnesota	12.2	3,303	0.37
Mississippi	na	1,870	
Missouri	3.1	3,760	0.08
Montana <sup>c</sup>	1.1	418	0.26
Nebraska	na	1,044	
Nevada	0.7	578	0.13
New Hampshire	5.9	814	0.73



<b>Medicaid Estate Recovery FY 1999 (continued)</b>			
<i>State</i>	<i>Total Estate Recovery (millions of dollars)</i>	<i>Total Medicaid Spending (millions of dollars)</i>	<i>Recovery as Share of Spending (percent)</i>
New Jersey	4.4	6,036	0.07
New Mexico	na	1,168	
New York	17.4	29,544	0.06
North Carolina	1.3	5,095	0.03
North Dakota	1.0	357	0.28
Ohio <sup>d</sup>	0.1	7,159	0.00
Oklahoma	1.0	1,594	0.06
Oregon	10.3	2,127	0.48
Pennsylvania	na	10,033	
Rhode Island	na	1,088	
South Carolina	na	2,571	
South Dakota	0.8	389	0.21
Tennessee	1.0	4,305	0.02
Texas <sup>a</sup>		11,066	
Utah	1.7	795	0.21
Vermont	0.5	506	0.10
Virginia	0.6	2,603	0.02
Washington	5.9	3,857	0.15
West Virginia	2.1	1,416	0.15
Wisconsin <sup>e</sup>	8.1	2,934	0.28
Wyoming	0.9	213	0.42
<b>National total</b>	<b>203.9</b>	<b>190,010</b>	<b>0.11</b>

**Sources:** Congressional Research Service (CRS) analysis of Medicaid expenditure and third party liability savings trend data from the Centers for Medicare and Medicaid services. Percentage calculations by Joint Economic Committee Democratic staff.

Notes:

na = not available. Several states merged their MER amounts into other columns on their Form 64 reports to HCFA.

<sup>A</sup>Alaska, Georgia, Michigan and Texas did not have MER programs in FY 1999.

<sup>B</sup>The District of Columbia did not report the amount recovered in the first quarter of FY 1999.

<sup>C</sup>Montana did not report the amount recovered in the fourth quarter of FY 1999.

<sup>D</sup>Ohio did not report the amount recovered in the first, third and fourth quarters of FY 1999.

<sup>E</sup>Wisconsin did not report the amount recovered in the first, second and fourth quarters of FY 1999.



## Appendix II

### The Process of Medicaid Estate Recovery

As noted earlier, there is wide variation in how estate recovery is carried out at the state level and there is not a lot of hard data. Much of the information in this section was taken from state Medicaid office websites, a 1996 survey and a booklet on estate recovery by the AARP Public Policy Institute, and a 1998 survey of estate recovery procedures across the country by the state of North Carolina's Long-Term Care Policy Office of Medicaid.

**The recovery process cannot begin until after the death of the Medicaid beneficiary and his/her spouse or if there is a child under the age of 21 or a child who is permanently disabled.** Once these conditions are met, the local Medicaid administrative agency calculates the cost of the potential claim on the estate. The claim can only include Medicaid payments made since the state had an estate recovery plan in place. (California, Connecticut, Indiana, Iowa and New York are not required to recover funds from estates of Medicaid beneficiaries with long-term care insurance because they had state plans approved before May 14, 1993.) States have the authority to make a claim for all Medicaid charges— not just those associated with long-term care. A 1998 survey found that 15 states made claims for all Medicaid services provided to a beneficiary.

Some states allow liens to be placed on the property of a Medicaid beneficiary before his or her death if the state determines that the individual will not return home. Federal law prohibits liens under two conditions. A lien cannot be placed on the home of a beneficiary if it is inhabited by one of their

siblings; or by a son or daughter who has lived there and provided care that allowed the beneficiary to stay at home and out of a nursing facility for at least two years.

**States can waive recovery if it will cause undue hardship.** Federal Medicaid law requires states to have a process for determining if recovery will create a financial hardship. Some states determine hardship on a case-by-case basis. In Oregon, the Estate Administration Unit works with the family and community to evaluate the negative impact of a recovery claim. Some states automatically waive recovery of estates or Medicaid claims below a certain level. North Carolina does not make claims on estates worth less than \$5,000 or for claims less than \$3,000. Pennsylvania waives recovery of estates valued at \$2,400 or less, or if the home is income producing (a family farm) and the family's income would be less than 250 percent of poverty without it.

**States can broadly define "estate."** OBRA 1993 gives states the discretion to use a broad definition of "estate." In 1998, 14 states reported that, for the purposes of Medicaid Estate Recovery, they defined estate more broadly than their state's probate law definition. In some states, jointly held property and trusts are included in the estate recovery process.

**States use different methods to administer the estate recovery process.** States can handle the recovery process through an existing state agency. Oregon established an Estate Administration Unit within the Department of Human Services. Pennsylvania handles estate recovery through its Department of Public Welfare. Some states use a collections agency. In 1998, eight states reported that they contracted out the estate recovery process.



The average fee was 14.5 percent of collections. Ohio relies on its state attorney general's office to investigate and process estate claims. The office keeps a nine percent finder's fee on any reclaimed funds. At least three states – Georgia, Michigan and Texas – have not established any process for Medicaid estate recovery.<sup>23</sup>

**Depending upon state law, the state may either file a claim or place a lien on an estate.** When the state submits a claim, it becomes a creditor in the estate's probate process. State claims are typically paid after debts for probate costs, funeral expenses, and taxes. By statute, a state may designate itself as a primary creditor. A lien is a claim against a specific piece of property. As of 1998, 16 states reported that they used or planned to use liens as part of the estate recovery process.

**Recovered funds are split between the state and federal government.** Funds are returned to the federal government at the state's federal Medicaid match rate. In FY '99 and FY '00, the average federal matching rate was about 57 percent. The state keeps the remaining funds, which can be used for any purpose although many states keep them within the Medicaid program.

## Endnotes

<sup>1</sup> Data on number of nursing home residents from: National Center for Health Statistics, Data Highlights of the 1999 National Nursing Home Survey (on-line:<http://www.cdc.gov/nchs/about/major/nnhsd/nnhsd.htm>). Length of stay data: *Characteristics of Elderly Nursing Home Current Residents and Discharges: Data from the 1997 National Nursing Home Survey*, by Celia S. Gabrel, April 25, 2000. Cost data: *Beyond 50.02: A Report to the Nation on Trends in Health Security*, by AARP, (May 2002).

<sup>2</sup> Gabrel, Table 9.

<sup>3</sup> *A Survey of Employers Offering Group Long-Term Care Insurance to Their Employees: Final Report Prepared for the Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services*, by The Lewin Group, (June 20, 2000).

<sup>4</sup> Medicare only provides coverage for patients in need of "skilled nursing care" – nursing or rehabilitation staff who must manage, observe and evaluate the patient's care. Medicare does not cover "custodial care" – assistance performing daily activities like walking, eating and bathing. Medicare covers 100 days of skilled nursing care following a three-day hospital stay. Only the first 20 days are fully covered. After that, beneficiaries must pay a daily coinsurance fee (\$101.50 per day in 2002). The individual cannot get another 100 days of covered skilled nursing care until they have been out of the hospital or nursing facility for at least 60 consecutive days.

<sup>5</sup> Gabrel, Table 9.

<sup>6</sup> Gabrel, Table 9.

<sup>7</sup> This number includes non-elderly Medicaid beneficiaries. Data from *A Profile of Medicaid, Chartbook 2000* by Health Care Financing Administration (HCFA).

<sup>8</sup> To ensure that individuals are not hiding resources in order to qualify for Medicaid, states can review the transfer of any assets in the 36 months prior to the application for benefits. Transfer of assets at less than fair market value renders the individuals ineligible for Medicaid benefits for a penalty period. The length of the penalty is determined as a function of the value of the assets and the cost of nursing home services. Transfer of assets to a spouse, to certain disabled individuals or for purposes other than to qualify for Medicaid are allowed.

<sup>9</sup> *Medicaid's Role in Long-Term Care*, Kaiser Commission on Medicaid and the Uninsured. (March 2001). In some states that observe the 300 percent of SSI rule, this is accomplished through a "Miller Trust."

<sup>10</sup> "Spousal impoverishment" provisions state that the spouse who is not receiving Medicaid – known as the "community spouse" – is entitled to a share of the couple's combined countable assets. This share is set at half the countable assets,



with a minimum value of \$17,856 and a maximum of \$89,280 in 2002. The community spouse is also entitled to a monthly income allowance, between \$1,452 and \$2,232 in 2002. This is the amount of the Medicaid beneficiary's income that is made available to the community spouse. This allowance is reduced by any income received directly by the community spouse. This information came from [www.hcfa.gov/medicaid](http://www.hcfa.gov/medicaid).

<sup>11</sup> "Medicaid Estate Recovery," Congressional Research Service (CRS) Memorandum, by Julie Lynn Stone, (April 9, 2001).

<sup>12</sup> Health Care Financing Administration data: Third Party Liability Collections Prior Years and "Medicaid Estate Recovery," CRS Memorandum, by Julie Lynn Stone, (April 9, 2001).

<sup>13</sup> *Medicaid Expenditures, FY1999 and FY2000*. CRS Report for Congress by Evelyne P. Baumrucker, (November 19, 2001).

<sup>14</sup> "West Virginia Fights Law that Makes Heirs Sell Homes to Pay Off Medicaid Bill," by Laura Parker. *USA Today*, Wednesday, May 1, 2002.

<sup>15</sup> Case Summary, United States Court of Appeals for the Fourth Circuit, *State of West Virginia v. US Department of Health and Human Services*, No 01-1443. The state of West Virginia challenged the constitutionality of the Medicaid estate recovery provision on the grounds that it was coercive to the states to force them to recover money. On May 7, 2002, a federal appeals court upheld the decision that estate recovery did not violate the 10<sup>th</sup> Amendment. *The Charleston (WV) Gazette* reported that in his decision, Judge Robert Goodwin noted that estate recovery may be hard on families but it is not unconstitutional.

<sup>16</sup> *Medicaid Estate Planning and Estate Recovery in Ohio*. Ohio Department of Human Services, (August 1999). Ohio state law requires the sale of a house if the owner has been institutionalized for at least six months. As a result, few Medicaid beneficiaries leave behind a house that can be claimed by the state and thus reducing the average size of estates.

<sup>17</sup> *A Profile of Older Americans: 2001* by the Administration on Aging, US Department of Health and Human Services.

<sup>18</sup> The Census reports that the homeownership of the elderly in 1999 was 80.1% - this represents the rate of ownership among homes headed by an elderly person. It does not include elderly people who are not the head of household (i.e., living with their adult child).

<sup>19</sup> *Current Housing Reports: American Housing Survey for the United States 1999*.

<sup>20</sup> See *Myths About the Estate Tax: Rhetoric versus Reality* by the Joint Economic Committee, Democratic staff for more information on the estate tax.

<sup>21</sup> *The Estate Recovery Notification Implementation Plan*. Washington State Department of Social and Health Services, Management Services Administration, Research and Data Analysis. December 1999. There are several reasons why the state may not bring a claim – such as a surviving spouse or dependent child, the cases meets the hardship waiver conditions, or no recoverable estate was left.

<sup>22</sup> *Medicaid Estate Recovery: A Survey of State Programs and Practices*. Charles P. Sabatino and Erica Wood. AARP Public Policy Institute, (September 1996).

<sup>23</sup> Parker, "West Virginia Fights Law that Makes Heirs Sell Homes to Pay Off Medicaid Bill."