

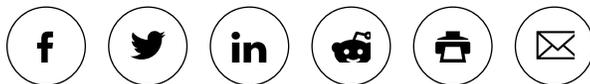
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May 17, 2021

The social contract for long-term care

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America has a social contract for long-term care. It's rarely acknowledged, but here it is.

If you are stricken by a need for long-term care that you cannot afford, we help you even if you are not poor. Assuming you're eligible medically, you'll qualify for Medicaid as long as your income is (1) less than the cost of a semi-private nursing home bed, about [\\$93,072 per year](#), and (2) insufficient to cover your private uncompensated medical and long-term care expenses.

You can retain virtually unlimited assets and still qualify for Medicaid LTC, including up to \$603,000 in home equity (\$906,000 in nine states), plus, with no limit on their value, one automobile, prepaid burial plans, a business including the capital and cash flow, term life insurance, household goods and personal belongings, even an Individual Retirement Account if it's in payout status as most must be by age 72, according to the latest [Required Minimum Distribution](#) rules.

Those are the basic rules that Medicaid eligibility specialists explain when they take your application. Of course, Medicaid planning lawyers can expand financial eligibility much further for

people with higher income and assets using sophisticated trusts, annuities and qualified transfers.

Clearly, Medicaid's financial eligibility rules for long-term care coverage are generous and elastic. But they do require a *quid pro quo*.

Ever since the Omnibus Budget Reconciliation Act of 1993, state Medicaid programs have been required to recover benefits correctly paid from the estates of deceased Medicaid recipients. The idea behind this requirement was to make sure the public understood there is no free lunch for long-term care.

There are two choices. You can save, invest or insure for the risk and cost of long-term care, and if you ever need it, pay privately and command access to any venue and quality of care you can afford. Or you can "go bare," hope you never need long-term care, but if you do, qualify for whatever Medicaid provides, mostly nursing home care, contribute nearly all your income as a kind of co-insurance, benefit from Medicaid's discounted reimbursement rate, but pay it all back after you die.

Policy makers who established this arrangement in 1993 hoped the public would take the risk and cost of long-term care more seriously and plan early to be able to pay privately if and when the need arose. They wanted to send the message to heirs that their inheritances were still at risk for long-term care even if their parents received Medicaid-financed care. The goal was to end the moral hazard inherent in a program that provided easy access to expensive long-term care after the care was needed.

Mandatory estate recovery also reduced the moral stigma of Medicaid dependency, because "it isn't welfare if you pay it back." The hope was that everyone would behave more responsibly, Medicaid LTC expenditures could be significantly reduced, more private financing at market rates would buoy long-term care providers financially, and Medicaid could become a better safety net for its originally intended clientele, the genuinely needy.

Unfortunately, it didn't turn out quite like that. States did not implement estate recovery aggressively; the federal government did not enforce the law; and the media didn't publicize the new estate recovery liability. So the public continued to ignore long-term care until they need it, turning to Medicaid by default when they do.

To add insult to injury, the Medicaid and CHIP Payment and Access Commission (MACPAC) [recently recommended](#) that Congress make estate recovery voluntary and implement rules that would substantially reduce its potential nontax revenue for Medicaid. MACPAC relied heavily on advice from Medicaid planning attorneys who make their livings helping upper middle class people qualify for Medicaid and *avoid estate recovery*, an obvious conflict of interest. See "[MACPAC Captured](#)."

Without estate recovery, an enormous source of private LTC financing (home equity) is lost forever

and Medicaid becomes a tax-payer financed windfall to heirs at the expense of program resources that should go to the poor.

It behooves long-term care providers to stop the MACPAC proposal from passing. We need to strengthen America's long-term care social contract, not cripple it. To understand the reasoning, evidence and recommendations that led to passage of OBRA '93 mandating estate recoveries, read [Medicaid Estate Recoveries: National Program Inspection](#), a 1988 report by the Department of Health and Human Services' Office of Inspector General. (Full disclosure: I conducted that study and wrote that report.)

By enforcing and publicizing Medicaid estate recoveries throughout the country, we can encourage private LTC financing, reduce dependency on Medicaid, improve access and quality of care for people of all income levels, and discourage the imposition of another compulsory payroll-financed government entitlement program.

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