



Using Medicaid to protect inheritances

BY STEVE MOSES AND BRIAN BLASE, OPINION CONTRIBUTORS — 06/10/21 05:00 PM EDT
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The number of Americans over 65 increases by about 4,000 each day, causing the finances of many government programs to become more precarious. While Social Security and Medicare receive the most attention, a growing concern is the reliance on Medicaid to pay the nation's long-term care needs.

Medicaid pays nearly half the nation's long-term care bills, and [improper payments](#) in the program exceed \$100 billion a year. Conventional wisdom is wrong that seniors need to spend down to gain Medicaid eligibility for long-term care. Seniors can make a sizable income (medical and long-term care costs are deducted before determining eligibility) and hold large assets and still qualify for Medicaid. These assets include home equity of \$603,000 in most states (\$906,000 in nine states) and generally unlimited amounts in retirement accounts.

With minimal prior planning, child heirs can preserve their inheritance by arranging their parents' finances and assets so that Medicaid picks up the tab in the event long-term care services are necessary. A cottage legal industry has emerged to assist heirs in creating such wealth management schemes.

The ease with which people can gain Medicaid eligibility for long-term care creates a major moral hazard problem. Since the government is paying, people don't need to properly plan. A prominent economic [study](#) found that Medicaid largely crowds out the market for private long-term care insurance. While gaining access to Medicaid long-term care is too easy, one aspect of law in this area that makes sense is now under threat.

The Omnibus Budget Reconciliation Act of 1993 required states to recover long-term care costs borne by the Medicaid program from the estates of deceased recipients. The primary asset in most estates is the home, and U.S. seniors [hold \\$7 trillion of home equity](#). This law sends the message that Medicaid would pay long-term care bills, but the tab, or at least a portion of it, would be paid out of the deceased person's estate. It was essentially a government-backed loan for people who failed to prepare to pay privately for long-term care. It isn't welfare if it's paid back.

For many reasons, it would be better to limit eligibility to Medicaid long-term care on the front end, but the existence of Medicaid estate recovery

efforts avoids some amount of moral hazard. Unfortunately, a powerful Medicaid advisory board is recommending that Congress eliminate the requirement for states to pursue estate recoveries.

This board, the Medicaid and CHIP Payment and Access Commission (MACPAC), says the fear of estate recovery discourages people from applying for Medicaid, and recovery efforts tend to keep poor people poor. But MACPAC's rationale makes no sense. States cannot recover funds expended on behalf of people who lack assets. Estate recoveries only affect people who have resources left over and generally died without a spouse.

MACPAC also claims that estate recoveries do not produce a lot of revenue. That's true, but fixable. After the 1993 federal requirement for estate recoveries, states did not implement robust recovery programs, the federal government did not enforce the law and the media didn't publicize the new estate recovery liability. As a result, the public continued to ignore long-term care until they need it, turning to Medicaid by default if they do.

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Here's our advice. First, don't make the problem worse by eliminating estate recovery requirements. Doing so will further reduce incentives to prepare properly for long-term care expenses. It also would permit more heirs to shift costs that their parents' estate should bear onto taxpayers. Government should provide Medicaid for the truly indigent but allowing middle and upper-income Americans to preserve a greater inheritance weakens the safety net for those who most need it and is unfair to taxpayers and those who prepare properly.

Second, the government should enforce and publicize Medicaid estate recoveries. This would reduce dependency on Medicaid, preserve Medicaid for the truly needy and encourage responsible private behavior. As federal deficits and debt explode, it has never made more sense to limit welfare programs to those who are poor.

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