
Medicaid Cost Recovery

Lien Authority

Senate Finance
Health and Human Resources

Medicaid Estate Recovery

- From the beginning of the Medicaid Program there has been a concern that individuals would use loopholes to shelter assets in order to qualify for long term care (LTC) services
- As Medicaid long term care (LTC) expenditures have increased, federal laws have evolved to require states to recoup these expenditures through estate recovery programs
- This presentation will discuss the Medicaid estate recovery process in general and then focus on the issues surrounding estate recovery through the use of liens

Federal Law

- The Original Medicaid legislation prohibited the placement of liens during the life of the beneficiary unless the benefits were incorrectly paid.
- In 1982, federal law permitted states to impose liens on homes for benefits paid on behalf of an individual in a medical institution if the individual is not reasonably expected to return home. (Exceptions were granted if certain immediate family members reside in the house: a spouse, a child under 21, a sibling with an equity interest in the home, a child residing in the home at least two years and providing care that permitted the Medicaid recipient to avoid institutionalization.)
- In 1993, federal law required states to recover expenditures from estates of individuals that receive LTC services and allowed states to recover payments for any Medicaid services provided to individuals age 55 or older.

Current DMAS Estate Recovery Process

- Currently, DMAS has authority to make claims on estates of recipients for any Medicaid payments made on their behalf.
- When a recipient who has an estate with recoverable assets dies, DMAS sends any claims for services provided after their 55th birthday to the executor of the estate or circuit court to try to recoup those expenses.
- State legislation stipulates the order in which an estate must pay debts. Medicaid claims are typically sixth in line (behind the estate lawyers, family allowances, funeral expenses, debts and taxes given federal preference, and Medicaid expenses paid to hospitals and nursing homes).
- A recipient's survivors may request a hardship waiver if property in the estate is the sole income producing asset, if the home is of modest value, or if other compelling circumstances exist.
- DMAS does not currently use liens for estate recovery.

Estate Recovery—National Data*

- In fiscal year 2003, States recovered over \$347 million (\$86,000 in Louisiana and almost \$54 million in California).
- Overall, the proportion of Medicaid expenses recovered from estates is small compared to the amount spent on LTC services and ranges from .01% to 2.2%. Only 8 states recovered over 1% of LTC costs. The national median recovery was .5% of total LTC costs. (In Virginia it was .08%.)
- The average recovery per estate was \$8,116 and the median recovery per estate was \$5,081. (In Virginia it was \$4,207.)
- Information on the cost of operating estate recovery programs is very limited. Only a few states were able to provide consistent administrative cost estimates. Administrative costs as a percentage of collections ranged from a low of 1.5% in North Carolina to a high of 11.8% in Tennessee.

* Data from the latest available national survey undertaken by the AARP Public Policy Institute: "Medicaid Estate Recovery: A 2004 Survey of State Programs and Practices"

Estate Recovery—Claims vs. Liens*

- A lien binds property to a debt and provides notice that someone besides the property owner has an interest in that property.
- The lien is a notice, not a claim. Even with a lien, the state may have to take further judicial action to create a claim that may then be granted or denied by a court. This process may occur as part of probate proceedings or under separate proceedings.
- However, liens are often “enforced” without intervention from a court when the property is sold, since the owner must satisfy the lien in order to convey clear title.
- Thus, estate recovery may occur through a lien without a claim, through a claim without a lien, or through a lien that is then enforced by using a claim.

* Information the study undertaken by the AARP Public Policy Institute: “Medicaid Estate Recovery: A 2004 Survey of State Programs and Practices”

Liens—Pre-Death vs. Post-Death

- Post-death liens are placed against the estate of deceased Medicaid recipients. Since the post-death lien would not be imposed until after DMAS was made aware of the death of a Medicaid recipient, it does not appear that post-death liens would offer much of an advantage over the estate recovery process currently utilized by DMAS.
- Pre-death liens are imposed on the homes of living enrollees determined to be permanently institutionalized . There are several advantages as well as disadvantages of utilizing pre-death liens in the estate recovery process.
- The 2004 AARP survey found that 19 states were using pre-death liens, and 13 states were using post-death liens.

Advantages of Pre-Death Liens

- It would be relatively easy to notify new recipients that DMAS intended to impose a lien on their home since this could be done at the time of application.
- Lien authority would improve DMAS' ability to recover expenses since it would prevent the sale of a home before Medicaid had a chance to recover expenses.
- It would allow Virginia to make recoveries of assets not passing through probate.
- It would establish a consistent method for estate recovery and ensure equal treatment of all LTC recipients.

Disadvantages of Pre-Death Liens

- It would increase the complexity and the cost of the estate recovery process.
- It could potentially result in negative public perceptions and complaints to DMAS and elected officials.
- Currently, DMAS lacks resources to pursue recovery through liens. DMAS may need to acquire legal assistance or directly involve the Office of the Attorney General in lien administration.

Operational Issues to Consider

- DMAS would need to consider some of the following issues:
 - Notify Medicaid applicants and current enrollees that liens will be imposed on their homes if LTC services are used.
 - Develop criteria to define/determine when permanent institutionalization occurs.
 - Develop procedures to notify recipients that they are considered permanently institutionalized and that they have an opportunity for a hearing to contest this determination.
 - Develop a process for DMAS, or the Office of the Attorney General, to attach the lien to the property and to periodically update the lien as medical expenditures increase for a recipient.

DMAS Authority to Impose Liens

- It appears that the Code of Virginia would need to be amended in order to provide DMAS authority to impose liens.
- DMAS would also have to promulgate regulations and modify its Medicaid State Plan.
- Federal approval of this State Plan change might be difficult to obtain, at least in the short term .
 - The Patient Protection and Affordability Care Act (PPACA) precludes states from restricting eligibility in their Medicaid programs.
 - Although DMAS has not consulted CMS on this matter, it is likely that CMS may view the imposition of liens as a more restrictive eligibility policy, at least until January, 2014.