New Wrinkle for Health Law

As Medicaid expands, more estates of patients could be targeted by states for cost recovery

By Stephanie Armour

Millions of people have gained health coverage through Medicaid since states began expanding the program under the Affordable Care Act. That also means more Americans may find themselves caught in a little-known law that lets states go after their assets after they die.

For more than 20 years, federal law has allowed states to recover almost all Medicaid costs if recipients are 55 or older when they die. This now applies to many of the 11 million people who joined Medicaid since the health law's expansion of the state-federal insurance program.

The upshot: Some families are discovering they may have to sell a home or other assets of a deceased relative to reimburse the government.

States can't seize assets during the lifetime of a surviving spouse, or when surviving children are under 21 or permanently disabled. Survivors also can apply for hardship exemptions, such as having a very low income.

Some lawmakers and advocates are pushing to further restrict the practice. Colorado, Connecticut, Oregon and Washington recently scaled back what costs they attempt to recover from estates, and California is weighing legislation to help protect survivors' assets. The federal government may issue proposed regulations soon that could limit estate recovery, according to some advocacy groups.

Meanwhile, survivors such as Stephanie Graham of Fair Oaks, Calif., say they worry their state will come after family assets.

Ms. Graham said her 55-year old mother, Mary Graham, signed up for Medicaid last year because the 2010 health law required most Americans to have coverage or pay a fine. Her mother, who had congestive heart failure, felt short of breath in February and went to an emergency room. She died within four days, after suffering a stroke in the hospital, Ms. Graham said.

Soon after, as the family explored the probate process and conferred with an insurance broker, Ms. Graham, 26, said she learned that the state can come after her mother's assets—including the house where she and her 30-year-old sister live with a horse and six dogs—to recover some of her Medicaid costs. If Ms. Graham's mother was on a managed-care plan, the state would likely attempt to recover only the monthly cost of that plan.

"We are waiting to hear from the state," said Ms. Graham, who works at a commercial real-estate company.

Others say they are so wary of estate recovery that they have declined Medicaid or put off treatments.

Pam Cortina, 55, of Sky Valley, Calif., said doctors have suggested she have gallbladder surgery. But she is holding off because she is on Medicaid and worried about the government going after her estate. "I worked very hard for this home," said Ms. Cortina. "This takes away my choice of who I can leave it to."

In the 28 states that expanded Medicaid under the health law, most people below a certain income level can get no-cost or low-cost health coverage without the government taking into account their assets. That means these new enrollees may have savings, houses, trusts and retirement funds that could be subject to estate recovery.

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In 1993, Congress mandated that states recover costs for certain Medicaid services after the recipient dies. For recipients 55 or older, that includes long-term services such as nursing-home care. But the federal law also gives states the option to recover costs for almost all other Medicaid services provided.

As of November 2013, about 40 states had laws or policies to recover the costs of all medical services received by Medicaid recipients, according to a 2014 letter from the Health and Human Services Office of Inspector General. The other states recover only what the federal law requires.

"People are terrified" by the recovery policy, said Patricia McGinnis, executive director of California Advocates for Nursing Home Reform. "It disproportionately affects low income and people of color."

State officials say recovered assets offset Medicaid costs and help ensure that only those who are financially needy are enrolled. "State government is not sitting behind a desk cackling and saying 'I want to take grandma's house,'" said Matt Salo, executive director of the National Association of Medicaid Directors. "Estate recovery helps shore up the program for others who will need it."

Prior to Medicaid expansion, in fiscal 2011, states recovered almost $498 million from the estates of Medicaid recipients who died, according to a report last year by the HHS inspector general, the latest data available.

Some states point out the estate-recovery programs on the enrollment forms beneficiaries sign. Others send out a notice through the mail, or post the information on agency websites.

For many states, the amount recovered is a small portion of the Medicaid budget. Iowa, for example, recovered $21.4 million in fiscal 2014, while the state and federal cost of the program totaled $4.2 billion. The recovered funds are divided between a state and the U.S. based on the portion of the Medicaid budget Washington provides.