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Making Medicaid Estate Recovery Policies More Equitable:
State Toolkit

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Introduction

Federal law requires that states recover from the estates of deceased elderly Medicaid enrollees, those who have disabilities, and adults in the new adult group age 55 and older the costs of long-term services and supports (LTSS) and related services provided to them.[1] While estate recovery is intended to recoup funds to support the Medicaid program and ensure that enrollees and their families who are able to pay for LTSS do so, the burden falls disproportionately on families of color and exacerbates existing inequities in the distribution of wealth tied to the historical and contemporary realities of structural discrimination and racism.

The federal government has set minimum requirements for Medicaid estate recovery, but states otherwise have considerable flexibility in implementing their programs. This toolkit is intended to assist state officials in evaluating their current estate recovery policies and understanding where they may have flexibility to make the policies less burdensome for affected low-income families.

Why Is Medicaid Estate Recovery Policy Important?

Medicaid estate recovery has important health equity implications. Medicaid pays for many long-term care expenses in the United States (U.S.) because long-term care is expensive, Medicare does not generally cover LTSS, and relatively few individuals have private insurance coverage for long-term care due to its unaffordability.[2] Moreover, older adults with few financial resources are more likely to have severe LTSS needs, which concentrates the burden of Medicaid estate recovery on this population.[3] Recently, Medicaid estate recovery policies have been criticized for impacting primarily enrollees of modest means and people of color, thereby exacerbating the significant wealth gap in the United States.[4]

In a 2019 survey of consumer finances, White families reported the highest level of both median ($188,200) and mean ($983,400) family wealth, while Black median ($24,100) and mean ($142,500) family wealth and non-White Hispanic[5] median ($36,100) and mean ($165,000) family wealth were less than 15 to 20 percent that of White families.[6] These substantial wealth gaps persist as people move into older age brackets. Notable gaps between White, non-White Hispanic, and Black families are also present in rates of homeownership (between 20 to 30 percentage points) and home values; the typical White family's home value is $230,000, while Black and non-White Hispanic families' home values are lower, at $150,00 and $200,000, respectively.[7] These wealth disparities are the result of systemic racism[8] and the institutional barriers that people of color face.

Medicaid estate recovery can perpetuate and exacerbate wealth disparities by recovering from families with estates/homes of modest value, removing from enrollees and their heirs the most important source of intergenerational family wealth–the home. People of color make up almost 60 percent of Medicaid enrollees under the age of 65 and are disproportionately represented among dual eligible enrollees (37%), the group that is most affected by estate recovery.[9] Due to inequities in wealth and Medicaid enrollment, the adverse effects of Medicaid estate recovery disproportionally impact people of color.

Notably, estate recovery recoups a minuscule portion of total Medicaid fee-for-service spending on LTSS (between 0.53 and 0.62% of total spending from fiscal years 2015 to 2019).[10] Experts have noted that individuals with greater awareness of the Medicaid requirements and more resources can protect their assets from recovery.[11] For example, these individuals can use sophisticated estate planning tools, such as putting property into irrevocable trusts, to shield assets from Medicaid estate recovery, which exacerbates the existing wealth disparities and effects on intergenerational transfers of wealth noted above. Enrollees with fewer assets are less likely to be aware of estate recovery requirements or to have financial means to hire an attorney to assist with estate planning.[12] Thus, it is important for states to examine their Medicaid estate recovery policies to promote equity and mitigate these negative outcomes.

Minimum Federal Requirements and Flexibilities for States

Minimum federal Medicaid estate requirements to which states must adhere are as follows:

- **Services Subject to Recovery:** States *must* recover from an individual's estate for the costs of nursing facility services, home and community-based services (HCBS), and related hospital and prescription drug services (i.e., hospital and prescription drug services for people residing in a skilled nursing facility or receiving LTSS) for enrollees age 55 and older.
    - This requirement covers managed care capitation payments if the capitation payments cover the costs of services subject to recovery.
    - This requirement also applies to individuals who are eligible for Medicaid under the Modified Adjusted Gross Income (MAGI) eligibility rules and receive coverage for LTSS, including members of the Medicaid expansion "new adult" group.[13]
    - States must also recover for services provided in a nursing facility, intermediate care facility for individuals with intellectual disabilities (ICF-IID), or other medical institution for enrollees determined to be permanently residing in an institution, regardless of age.
- **Assets Subject to Recovery:** States *must* define the estate to include at least the enrollee's probate estate. While the exact definition varies by state, the probate estate consists of assets held under an enrollee's name that pass through the individual's last will and testament.[14] Jointly titled assets like homes or bank accounts generally are not part of the probate estate.
- **Undue Hardship Standard:** States *must* establish procedures under which estate recovery will be waived as a result of an undue hardship and describe their policy in the state plan.

States have substantial flexibility in the following areas to shape their Medicaid estate recovery policies to address inequities in how this policy impacts families of color and to reduce barriers to intergenerational wealth accumulation:

- **Scope of Services:** While states may opt to collect costs associated with any other state plan services, limiting estate recovery to the federally required minimum services would minimize the negative impact of this policy.
- **Hardship Waivers:** States have discretion to define what constitutes an undue hardship for purposes of limiting estate recovery. Some common situations that may cause undue hardship include:
    - The estate claim would remove the sole income-producing asset of survivors, and the asset produces only limited income.
    - The home is of modest value (roughly half the average home value in the county).
    - Other compelling circumstances that would cause the survivor to become eligible for public or medical assistance or deprive the survivor of necessities like food and shelter.
- **Scope of Assets:** To limit the policy's effects on intergenerational wealth, states should only recover from the probate estate instead of including other assets outside of the probate estate, such as joint accounts, life insurance policies, and annuities.
- **Administrative and Operational Tools:** States can adjust various administrative and operational policies to educate enrollees and reduce the burden of estate recovery on families of color and those of modest means, including:
    - Providing *public information* on estate recovery (e.g., brochures, websites, training for eligibility and other Medicaid staff, phone numbers) that is accessible and available in languages other than English.

- Providing *meaningful notice* of the estate recovery requirements, including at the time of application and at other points (e.g., redetermination of eligibility or admission to a certified facility).
- Setting *cost-effectiveness thresholds* to pursue estate recovery, which are minimum values of the estate and/or services to be recovered that the state determines are administratively worthwhile to pursue.
- Collecting *data on estate recoveries* (e.g., exemptions and deferrals, hardship waivers, contested recoveries, settlements, sources of property, total administrative costs) and analyzing them to see if the policies have a disproportionate impact on families of color or people residing in under-resourced geographic areas.

Strategies for States to Make Medicaid Estate Recovery More Consumer-Friendly

The following table presents a variety of strategies for states to consider to make their Medicaid estate recovery programs more consumer-friendly and advance health equity. This toolkit also includes an attached impact assessment questionnaire for states to examine their current Medicaid estate recovery policies and determine which strategies to potentially pursue.

Strategy	Rationale	State Examples
Limit the scope of services subject to estate recovery to the federal minimum	Limits the overall burden of estate recovery for enrollees by only recovering for the federally required minimum services	Alaska, Louisiana, Mississippi, New Mexico
Exclude from estate recovery homes of modest value	Avoids removing an important source of intergenerational wealth from enrollees and their heirs of modest means	California (defines a home of modest value as "a home whose fair market value is 50 percent or less of the median price of homes in the county where the homestead is located, as of the date of the decedent's death") Florida
Make undue hardship standards more consumer-friendly by broadening their eligibility	Allows for broader exemptions to address health equity concerns	California
Set higher cost-effectiveness thresholds to pursue estate recovery	Shields families with minimal assets and lowers administrative costs related to pursuing estate recovery	Georgia and South Carolina have minimum asset thresholds of $25,000 to pursue estate recovery
Limit assets definition to the probate estate (i.e., do not recover from joint accounts, life insurance policies, annuities)	Reduces the overall burden of estate recovery	North Carolina
Only pursue estate recovery for services provided in a nursing facility, ICF-IID, or other medical institution for individuals determined to be permanently residing in an institution	Decreases the burden of estate recovery for enrollees permanently residing in an institution	California, New Mexico

Medicaid Estate Recovery State Impact Assessment Questionnaire

1. Does the state adjust or recover for services beyond the federally required minimum (e.g., state plan services beyond nursing facility services, HCBS, and related hospital and prescription drug services)?

   ☐ Yes

   a. If so, which additional services?

   b. Where is the authority for this requirement found (e.g., state law, state regulations, administrative policies and procedures)?

   ☐ No

2. Does the state recover from homes of modest value (e.g., roughly half the average home value in the county)?

   ☐ Yes

   ☐ No

   a. What should be the state's definition for a home of modest value?

   b. Where is the authority for this requirement found (e.g., state law, state regulations, administrative policies and procedures)?

3. Does the state recover from assets beyond what is included in the enrollee's probate estate (e.g., joint accounts, life insurance policies, annuities)?

   ☐ Yes

   a. If so, which additional assets?

   b. Where is the authority for this requirement found (e.g., state law, state regulations, administrative policies and procedures)?

   ☐ No

4. What is the state's cost-effectiveness threshold for pursuing estate recovery?

a. Cost-effectiveness threshold:

b. Where is this the authority for this requirement found (e.g., state law, state regulations, administrative policies and procedures)?

5. What are the state's undue hardship waiver criteria? (Common examples include: the estate claim would remove the sole income-producing asset of survivors, and the asset produces only limited income; the home is of modest value; or other compelling circumstances that would cause the survivor to become eligible for public or medical assistance or deprive the survivor of necessities like food and shelter.)

a. Undue hardship criteria:

b. Where is the authority for this requirement found (e.g., state law, state regulations, administrative policies and procedures)?

6. What data does the state collect on estate recovery (e.g., total collections, number of undue hardship waiver applications and number of successful applications, race/ethnicity of the enrollee, administrative spending, etc.)?

a. Data on estate recovery:

7. What administrative tools does the state use for Medicaid estate recovery? These tools include:

- Use of exemptions, waivers, deferrals, and negotiated settlements.
- Use of Tax Equity and Fiscal Responsibility Act liens (i.e., pre-death liens on the homes of living institutionalized enrollees) and the process for doing so (e.g., how a state determines permanent institutionalization and how a state provides meaningful notice).
- What public information the state has on estate recovery (e.g., brochures, websites, training for eligibility and other Medicaid staff, phone numbers) and the accessibility and availability of the information in languages other than English.
- How the state provides meaningful notice of the estate recovery requirements, including at the time of application and at other points (e.g., redetermination of eligibility or admission to a certified facility).
- How the state provides claim notices (e.g., method of delivery, determination of proper contact).
- How the state implements its hardship waivers (e.g., having a standard application form, establishing a formal appeals process).
- Whether a state will collect funds directly from banks and nursing homes.

a. Description of administrative tools:

ENDNOTES

1. Social Security Act § 1917 Liens, Adjustments and Recoveries, and Transfers of Assets.
2. Office of the Assistant Secretary for Planning and Evaluation (ASPE), Assessing the Out-of-Pocket Affordability of Long-Term Services and Supports Research Brief, May 14, 2019.
3. *Ibid.*
4. Medicaid and CHIP Payment and Access Commission (MACPAC), Report to Congress on Medicaid and CHIP – Chapter 3: Medicaid Estate Recovery: Improving Policy and Promoting Equity, March 2021.
5. While Latino(a) is generally considered a more inclusive term, we use non-white Hispanic here because the source used this term.
6. Board of Governors of the Federal Reserve System, Disparities in Wealth and by Race and Ethnicity in the 2019 Survey of Consumer Finances, September 28, 2020.
7. *Ibid.*
8. State Health & Value Strategies, Health Equity Language Guide for State Officials, August 9, 2021.
9. Kaiser Family Foundation (KFF), Distribution of the Nonelderly with Medicaid by Race/Ethnicity, 2019; KFF, Dual Eligible Beneficiaries by Race/Ethnicity, Fiscal Year 2013; and Administration for Community Living, 2019 Profile of Older Americans, May 2020.
10. MACPAC, Report to Congress on Medicaid and CHIP – Chapter 3: Medicaid Estate Recovery: Improving Policy and Promoting Equity, March 2021.
11. *Ibid.*
12. *Ibid.*
13. Centers for Medicare & Medicaid Services, Application of Liens, Adjustments, and Recoveries, Transfer-of-Asset Rules and Post-Eligibility Income Rules to MAGI Individuals, February 21, 2014.
14. Legal Information Institute, Definition of “Probate Estate”.

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