

## **ESTATE RECOVERY**

The Granholm Administration plans to introduce legislation that will authorize a Medicaid estate recovery program.

### **What is estate recovery?**

Estate recovery is a federal Medicaid program requirement. If a state operates a Medicaid program (and all states do so) it is required to seek recovery for the cost of providing certain long-term care benefits from the Medicaid recipient's estate after the recipient's death. There is a wide variation among the states in the operation of estate recovery programs. Despite the federal requirement, Michigan and one other state have not yet implemented an estate recovery program and the federal Medicaid agency has not issued any fines or taken any enforcement action.

### **What Medicaid costs are covered by estate recovery?**

States are required to seek recovery for the cost of nursing home care and home and community based waiver services, as well as the cost of related hospital care and prescription drugs paid on behalf of Medicaid recipients age 55 and over. States are also required to seek recovery for the cost of institutional care for Medicaid recipients of any age who are permanently institutionalized. States have the option to recover payment for all other Medicaid services provided to persons age 55 and over or those who are permanently institutionalized.

### **Why is estate recovery targeted at older persons and long term care benefits?**

The cost of providing long term care to older Medicaid recipients had been steadily increasing due to the increasing percentage of the population over the age of 55 and the sharp increase in overall health care costs. Nursing home costs comprise approximately two thirds of the state's Medicaid spending. Some people believe that the state should be allowed to recover some of these costs from the estates of Medicaid recipients after their death, rather than allowing them to pass property to their heirs or other intended beneficiaries.

### **Can the state take a person's entire estate under estate recovery?**

It is possible that the state could take a person's entire estate after his/her death, leaving nothing for the heirs or other intended beneficiaries. However, states can provide for certain exemptions and can provide for a waiver of recovery if it will cause "undue hardship". Some states, for example, automatically waive recovery of estates below a certain value.

### **What happens to the money that is recovered?**

The state must return a portion of the funds that are recovered to the federal government based on the rate at which the federal government matches the state's spending for Medicaid. In Michigan the federal share is 55% of any recovery. The state can use the balance for any purpose and is not required to put the recovered funds back into the Medicaid program.

### **How much money can the state expect to recover from an estate recovery program?**

The national average for estate recovery is one tenth of one percent of the total Medicaid spending. The percentages vary from state to state because of differences among the state programs. Some states turn their collection efforts over to collection agencies, who keep a percentage of whatever is recovered, further reducing the net recovery to the state. Other states use state employees to handle the collection effort, and the cost for those employees would further reduce the net recovery. The Department of Community Health has estimated that it will recover about \$17 million dollars the first year of the program, rising to \$30 million in later years, of which the state share would be \$7.65 million and \$13.5 million. These figures are optimistic, based on the national averages.

## **WHAT IS WRONG WITH ESTATE RECOVERY?**

Since the state only seeks reimbursement for Medicaid long term care expenses after the recipient has died it may seem that estate recovery is a relatively harmless way to help reduce the overall cost of the Medicaid program. So why is estate recovery bad public policy?

### **It sends a disturbing message to elderly persons with modest incomes and savings.**

Estate recovery sends a message to elderly persons that even though they worked all their life, paid off their mortgage, and saved their money so they could have a modest retirement nest egg and something to pass on to their children, if they are unfortunate enough to need help from the state to pay for nursing home care, the state will take their home and whatever else is left after their death. It is devastating enough for an elderly person to give up their independence, privacy, and familiar surroundings to move to a nursing home. The realization that their estate will be confiscated and they will not be able to pass on anything to their children, grandchildren, special friends, or favorite charities will only add to their emotional trauma.

### **It is an estate tax on modest estates while the tax on multimillion dollar estates is being eliminated.**

Congress recently enacted tax cuts that include a phase out of the estate tax by 2010. With good estate planning advice wealthy seniors can pass on multi-million dollar estates with little or no tax. In contrast, estate recovery will take up to 100% of a Medicaid recipient's estate.

### **The savings to the state are miniscule compared to total Medicaid spending.**

The average recovery among all the states is one tenth of one percent of total Medicaid spending. There are many other ways to raise the same amount of money that are more fair to elderly Medicaid recipients. One option is to increase the state's effort to reduce fraud, abuse, and mismanagement in the Medicaid program. The federal government recently collected a fine against a single drug company for overbilling Medicaid that exceeded the entire amount recovered by all the states in their estate recovery program.

### **It makes the Medicaid program more complicated.**

Medicaid is an extremely complex program. Many attorneys and most financial planners do not understand it. Legislators and other policy makers should be trying to simplify the program, not making it more complex.

### **It makes the Medicaid program more arbitrary.**

Persons who get good estate planning advice before or at the time they apply for Medicaid will be able to maximize the amount of their assets that they can protect from estate recovery. Persons who get no estate planning advice or (worse) get bad advice, will be left with little or nothing to pass on to their heirs or intended beneficiaries.

### **It will be used as a scare tactic to sell overpriced and unnecessary financial planning products**

Seniors and their families are bombarded with invitations to retirement and estate planning seminars that promise to reduce estate taxes, avoid probate, and protect assets from Medicaid. In many cases these are simply vehicles to sell overpriced and unnecessary annuities, trust kits, and life insurance. The threat of estate recovery will be another scare tactic that can be used to take money from seniors.

### **It will have unintended consequences on the housing stock in older neighborhoods.**

For most Medicaid recipients the only significant asset that will be left after their death is their home. Many of these homes will be quite modest and located in older neighborhoods. If the recipient's family knows that the state will eventually seize the home they will have no incentive to maintain the property. Even if they wanted to maintain the property they would have difficulty obtaining financing. Once the state acquires the property it is likely to be sold at auction to the highest bidder, who may be a "slum landlord."

### **It could result in the loss of the family farm.**

After the recipient's death his/her farm would be subject to estate recovery. Unless the heirs were able to reimburse the state for the recipient's Medicaid costs, the farm would have to be sold to recover the costs.

### **It may deter some older persons from seeking needed long term care.**

The realization that the state will take their home after their death may deter some older persons from seeking necessary care, which could aggravate their health problems.