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Final Notice

Some Heirs Find A Costly Surprise: Bill From Medicaid

As Spending Surges, Officials
Claim Assets of Estates
To Recoup Nursing Costs

Fighting to Keep Mom's Home

By SARAH LUECK
 Staff Reporter of THE WALL STREET JOURNAL
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As Medicaid spending surges, many states are embracing an aggressive way to recoup some of their costs: going after the estates of Medicaid recipients when they die.

State officials promoting the idea say Medicaid is a program for poor people, so if beneficiaries leave behind significant property it should be used to lessen taxpayers' burden. Critics call the practice "the other death tax" and say it's a posthumous slap at people who worked hard to hand down something to their children. Sometimes heirs are forced to sell the home of the deceased to pay the bill for years of nursing-home care. While alive, people on Medicaid are generally allowed to keep their homes.

For many families, the Medicaid bills come as a surprise. Medicaid applicants are supposed to be told that their estates may be subject to claims after they die, but there's no system for warning heirs of the potential debt.

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Myree Sparks, a 72-year-old retiree who lives in Richmond, Va., got an \$89,000 bill from the state of Tennessee for her late mother's nursing-home care. To pay off the debt, Mrs. Sparks auctioned the 80-year-old farmhouse and surrounding land that she inherited from her mother, along with all the contents of the house.

"I wanted to keep it in the family," she says. "I was born there in that house." The auction brought in \$96,000, which after costs was about enough to pay the state's bill. Mrs. Sparks spent \$900 to buy two family heirlooms at the auction, a Hoosier kitchen cabinet and a cupboard for storing pies. Other than that, the state "got everything," she says.

The debate over estate recovery is part of the growing battle over the high cost of Medicaid, the

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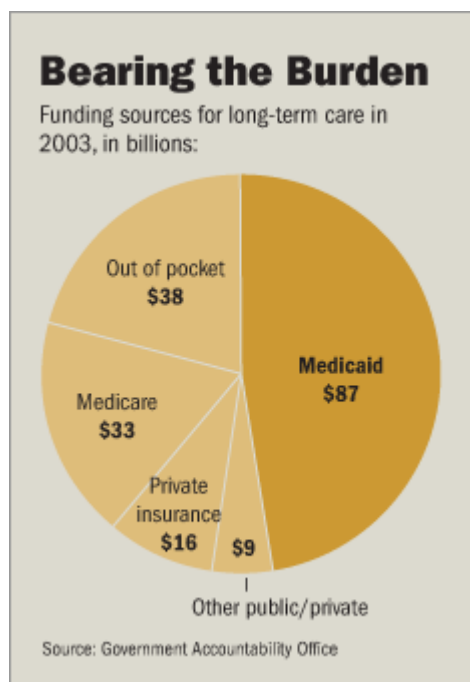
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health-care program for the poor that is jointly funded by the federal government and state governments. Altogether Medicaid cost an estimated \$290 billion in 2004, a 7.9% rise from the previous year. Of that, \$89 billion went to pay for long-term care including \$46 billion for nursing-home care, according to Medstat, a health consulting firm. Medicaid covers nearly half of the nation's nursing-home bills. The Bush administration and Congress are looking for ways to reduce federal spending on Medicaid. Congress is aiming to trim it by \$10 billion over five years.

Placing claims on estates isn't a new Medicaid practice -- the federal government has ordered states to do it since 1993 -- but it has taken a bigger role amid the cost crunch. Until a few years ago, many states declined to follow the federal order or did so half-heartedly. Some figured it was a waste of time because few Medicaid recipients leave behind estates of significant value. Others didn't feel like pressuring bereaved heirs, typically people of modest means, into selling the property of their loved ones.

Now states are losing their reticence. Some are beefing up staff and going after even small estates that they hadn't bothered to touch in the past. Others that had refused to seek estate recovery at all, such as Texas, have set up programs to do so.



California's Medicaid program wants to update its computer system so that it's easier to track deaths of elderly recipients and go after the estates of people who cost Medicaid as little as \$500. Ohio's legislature passed a bill that would let the state seek assets that aren't listed in a will -- including, in some cases, a house jointly owned by the deceased and an adult child. The bill also would let Ohio go after the estates of permanently institutionalized Medicaid recipients who are younger than 55. Many states only target those older than 55.

West Virginia has made a notable about-face. Twice the state took the federal government to court challenging the directive to do estate recovery. In court documents filed in 2000, the state called the practice "abhorrent" and a Web site for the state attorney general urges people to complain to Congress about it.

"If you had the work ethic that came out of the Depression and managed to actually finance your own home and pay it off, that's the symbol of your life's achievement," says Silas Taylor, West Virginia's senior deputy attorney general. "That can be the legacy that helps get the next generation out of the cycle of poverty."

But with the state facing a \$156 million shortfall in its Medicaid budget, it said in May it intends to recover nursing-home costs from estates worth as little as \$5,000. Besides a house, estates might include other assets that don't count against a person's eligibility for Medicaid, such as a car, a small bank account or certain life-insurance policies. Also, assets that people failed to report when seeking eligibility for Medicaid may turn up after they die, such as a stash of cash under the mattress.

Previously West Virginia targeted only estates worth more than \$50,000. "We're looking at all the ways we can to contain the costs," says Nancy Atkins, who runs West Virginia's Medicaid program.

A study being released today, commissioned by the AARP Public Policy Institute, finds that many states are defining "estate" more broadly and capturing assets that were protected in the past. The study, written by researchers at the American Bar Association, says total collections by the 46 states that provided data have more than tripled since 1995 to \$350 million a year. (See the AARP [synopsis](#)⁶ or [full report](#)⁷.)

Many people who end up on Medicaid aren't poor when they enter nursing homes, but quickly run through assets to cover annual bills averaging \$70,000. Lengthy nursing-home stays aren't covered by Medicare, the federal health-care program for the elderly that is open to people of all income levels. To qualify for Medicaid, people must have low incomes and are entitled to keep only limited financial assets. They're allowed to keep their homes if they say they intend to return to them. Roughly one in seven elderly Americans receives Medicaid coverage, including many who aren't in nursing homes.

The bigger issue behind the estate-recovery debate is how generous Medicaid should be. Some Bush administration officials portray the program as a target of abuse by middle-class elderly people who adopt a veil of poverty to get cheap nursing care. "There is a whole industry that actually helps people shift costs to the taxpayer," said Secretary of Health and Human Services Mike Leavitt in a February speech.

Elder-law attorneys have devised many ways for people with some assets to get into Medicaid. Giving money to a child is one way, although rules block people from writing a big check to their kids and immediately entering Medicaid. A married couple with money in the bank may buy an annuity benefiting just one spouse, turning the lump sum into a steady income stream and enabling the other spouse to receive Medicaid. Often the easiest way is to turn assets that block eligibility, such as cash and stock, into assets that don't block it -- say, by putting a new roof on one's house or buying a car.

It isn't clear how many people actually use these maneuvers. A recent review of the research by Georgetown University's Long-Term Care Finance Project found no evidence of widespread gaming of the system.

Some of the techniques used to get people into Medicaid also help protect against their assets being claimed by Medicaid after death. In addition, elder-law attorneys can suggest ways to preserve a house for heirs such as putting it into an irrevocable trust or a life estate. Upon death the property can pass directly to an heir. Most states don't target the home for estate recovery when it's held this way, although recently more are taking a look at the idea.

Many proposals to keep Medicaid solvent, especially those by Republicans, focus on ways to keep people out of the system and have Americans take more responsibility for their own care. The Bush administration wants to make it harder for people to transfer assets and still qualify for Medicaid. Some lawmakers want to encourage people to buy private long-term-care insurance. In a set of Medicaid proposals sent to Congress last week, a bipartisan group of the nation's governors said people who own homes should be prodded to mortgage them to pay for their long-term care costs rather than going into Medicaid.

Estate recovery often sparks nasty political fights. Texas repealed its program in 1989 after public criticism, including television ads that contributed to the defeat of a state legislator who had voted for the program. The state started it again earlier this year. The Massachusetts state legislature passed a bill in 2003 allowing the state to make claims on assets that aren't included in a will, such as houses and bank accounts jointly owned by the deceased person and an heir. Following a public outcry it repealed the measure last year.

The AARP study shows that rules and practices vary widely from state to state. More than half of states waive estate recovery when it would deprive survivors of "necessities of life" but they define such necessities differently. States also differ on when a home is a target for estate recovery. Most say that if the spouse of the deceased is living, the home is off limits, at least until the spouse dies. But 13 told the AARP that the spouse has to live in the home or else it's fair game. Most states use the money recovered only for Medicaid but about a dozen put all or part in their general funds.

Critics argue that the cost-recovery programs discriminate against elderly people with long, debilitating illnesses that lead to nursing-home stays. Heart surgery might cost as much as a year in a nursing home, but it's mostly covered by Medicare and doesn't leave the patient impoverished, says Donna Bashaw, a lawyer in Laguna Hills, Calif., who handles estate-recovery cases. "Heaven forbid you should have Alzheimer's or Parkinson's," she says. "Even if you keep the house, you lose it when you die."

Others say it's only fair that people should reimburse taxpayers for their care, to the extent they are able. Roy Fredericks, manager of Oregon's estate-recovery program, says Medicaid is "like a loan program" for elderly people in nursing homes, with repayment due at death for those with any assets. "It's a fiction to think the Medicaid program serves just low-income people and those with no resources," he says.

Oregon's 19-person estate-recovery unit is one of the nation's most systematic. It's also one of the oldest, having existed in some form since the 1940s. When Medicaid patients die, their electronic case files move within days to the unit, which moves quickly to stake its claim before assets change hands. In some cases, it takes funds directly from the bank account of the deceased.

In fiscal year 2003, according to the AARP survey, Oregon collected \$20 million from Medicaid recipients' estates. That was 2.22% of its total spending on long-term care, the second-highest percentage among the 46 states that provided a full year's data to the AARP.

In terms of the amount collected, Louisiana ranked at the bottom with \$85,907. California, the nation's most populous state, recovered the most, nearly \$54 million.

In 2002, a few months after Jim Smithson's mother died, the retired phone repairman received a letter from California's Medicaid program at the house he had inherited from her in Encino.

"The letter said sorry for your loss, you owe \$99,000 and change," says Mr. Smithson, now 60. The white, two-bedroom house was where Mr. Smithson lived until he married at 34, and he moved back there in 2000. It's "the only place in town with its own orange grove," he says, laughing, referring to the nine trees he planted in the yard in 1951 with his father.

Mr. Smithson's mother, Babette, had been in a nursing home on Medicaid for nearly five years when she died at age 98 in August 2002. Mr. Smithson says he pleaded with his mother to consult a lawyer about how to protect her house and bank accounts. "She basically refused," he says.

To pay the state's bill, Mr. Smithson got a mortgage. The \$1,000 monthly payment "really hurts," says Mr. Smithson. Earlier this year, he decided to retire, in part to spend more time with Sylvia, his wife of 26 years, who suffers from severe multiple sclerosis and debilitating seizures. She has lived in nursing homes for most of the past decade and receives Medicaid herself. The income Mr. Smithson earns belongs to him and doesn't count against his wife's eligibility for Medicaid.

Mr. Smithson hopes to bequeath the house to his son, but is worried the state will end up taking it

to pay for his wife's Medicaid bills. That could happen after they both have died or if he dies first. He recently hired a lawyer to help keep the house in the family for another generation.

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