Justice in Aging: Fighting Senior Poverty through Law

When States Recoup Medicaid Costs by Seizing Family Homes, Poor Families Suffer While State Budgets Are Barely Affected

MAY 2024 Eric Carlson, Director, Long-Term Services and Supports Advocacy

Asking the wrong question inevitably produces the wrong answer. Consider the recent federal report: “Kansas’s Medicaid Estate Recovery Program Was Cost Effective, but Kansas Did Not Always Follow its Procedures, Which Could Have Resulted in Reduced Recoveries.” The HHS Office of Inspector General (OIG) made two principal findings. The Kansas Medicaid estate recovery program spent $5 million to collect $37 million, and thus was deemed “cost-effective.” Recovery could have been higher, however, had the state and its contractor been more diligent and conscientious.

But underneath the efficiency analysis lurks the rancid reality of Medicaid recovery. Due to program requirements, the burden of recovery inevitably falls on poor families. The “recovered” funds cover only a small portion of Medicaid expenditures, but the state’s taking of those funds can push families into poverty or homelessness, or prevent them from escaping the same.

MEDICAID & ESTATE RECOVERY BASICS

Medicaid funds health and long-term care for persons who otherwise cannot afford it. In most cases, an older adult becomes eligible only after spending their life savings down to under $2,000. A home generally is exempt and not counted in determining eligibility.

Alone among public health care programs, a Medicaid program moves to recover health care expenses after the recipient dies. Specifically, federal Medicaid law requires recovery against the recipient’s assets if the recipient was at least 55 years old when receiving services. The state must take money from the remaining assets to pay itself back for nursing facility care and home and community-based services, and can recover the expense of certain other specified services as well. The recipient’s home is no longer exempt and is generally the principal source of recovery.

RECOVERY HARMS POOR FAMILIES AND PERPETUATES POVERTY

As part of its investigation in Kansas, the OIG examined 30 cases in which the Medicaid program paid itself back from a deceased recipient’s remaining assets. The OIG found no deficiencies in these 30 cases.

The “no deficiency” finding, however, is based solely on cost-effectiveness – did the state recoup more than it spent seeking recovery? But this is the wrong question. A more careful examination, with an expanded focus, reveals harmful public policy. Recovery against a recipient’s remaining assets has a relatively small impact from a state’s financial perspective, but often can be devastating to a recipient’s surviving family.

OIG’s Table 7 (see table below) tells an important story that is largely ignored in the OIG’s focus on supposed cost-effectiveness. For the 30 Medicaid recipients, the state incurred expenses of $6,055,884 but recovered only $162,298. Thus, even without factoring in the cost of recovery, the state recovered only 2.7% of incurred health care expenses.

Table 7 further reveals how the burden of recovery falls on poor families. For one, Kansas recovered expenses almost exclusively from small amounts of assets. None of the Medicaid recipients left assets valued at more than $100,000 and, for 25 of the 30 recipients, the remaining assets were worth less than $11,000. The median remaining asset value was only $1,532.

As result, Medicaid recovery took every last dollar of the Medicaid recipient's assets in 23 of the 30 samples. Furthermore, this may actually underestimate the impact of recovery, since it is likely that the "remainder" in many of the other 7 samples was consumed by other claims.

Consider sample #24, for example, where the state recovered $3,178 of a potential claim of $342,364, leaving a remainder of $30,522 in assets. In this situation — and in similar fact patterns in samples ## 8, 26 and 30 — the state's potential remaining claim exceeded the listed remainder of the Medicaid recipient's assets. It is likely in these cases that the "remaining" assets in fact did not remain — the remaining money was not recovered by the state only because it instead was collected by some other creditor or consumed by fees (as discussed below for sample #8).

Thus, factoring in such ongoing liability, the recipient's assets were eliminated in 27 of the 30 samples. Table 7 indicates either a remainder of zero (23 samples) or a remainder less than the continued debt to the state (4 samples).

The OIG report also indicates a ruthlessness in recovery against small amounts that may be meaningful to families but of relatively little importance to the state. In the words of the OIG report:

> The State agency's asset research established that most of these 30 deceased Medicaid recipients had no real property and little or no other assets at their times of death. In addition, the majority of the recoveries made on behalf of these recipients included small dollar amounts that were remitted to the State agency by third parties such as banks, funeral homes, and nursing homes, and that consisted of leftover funds from deceased Medicaid recipients' accounts.

These every-last-dollar collection efforts are illustrated by the fact that the state's collection exceeded the recipient's identified assets in 19 of the 30 samples. One nursing facility resident had no identified assets, but the state collected $38.50 that the facility had been holding on the resident's behalf. Similarly, the state recovered $570 from a recipient with only $285 in assets, $963 from a recipient with only $330 and $55, $139, $191 and $394 from recipients with no identified assets.

And the impact of recovery could be similarly onerous in the few cases in which the assets were not reduced to zero. In sample #8, for example, the deceased Medicaid recipient owned real property (presumably a house) of modest value, with a similarly modest mortgage. This house could have been a source of stability and affordable housing for the resident's family and their community. But instead the Medicaid program forced the sale of the home for $90,000 in order to collect $7,929. The remainder of the sale price was consumed by the mortgage payback ($56,186) and $25,885 in various fees.

CONCLUSION

Medicaid estate recovery should be judged not by supposed cost-effectiveness for the state, but by how it harms low-income families and communities. With this more inclusive focus, it is clear that the minimal financial benefits to the state are far outweighed by the harm imposed upon disadvantaged families and communities.

Read more about this issue here.

TABLE 7: THIRTY SAMPLED DECEASED MEDICAID RECIPIENTS WITH ASSET RECOVERIES

Summary of Assets and Recoveries

	ASSET TYPE			RECOVERY TYPE			
Sample Number	Real Property	Other Assets	Total Assets	Probate or Lien	All Other Recoveries	Total Recoveries	Medicaid Paid Claims
1	$99,410	$0	$99,410	$27,357	$0	$27,357	$27,357
2	0	3,235	3,235	0	3,288	3,288	107,089
3	0	285	**285**	0	570	570	64,446
4	0	0	0	0	55	55	81,862
5	0	1,124	1,124	0	3,986	3,986	31,468
6	0	330	330	0	963	963	7,347
7	0	1,115	1,115	0	2,925	2,925	343,347
8	63,740	0	63,740	7,929	0	7,929	338,412
9	0	0	0	0	139	139	563,627
10	0	0	0	0	2,924	2,924	214,606
11	0	1,777	1,777	0	7,340	7,340	23,103
12	0	0	0	0	1,964	1,964	128,659
13	0	5,954	5,954	0	6,977	6,977	65,844
14	0	10,567	10,567	0	10,567	10,567	56,826
15	0	0	0	0	39	39	760,774
16	30,000	0	30,000	22,917	865	23,782	23,782
17	0	68	68	0	68	68	185,997
18	0	0	0	0	5,244	5,244	198,690
19	0	0	0	0	27,550	27,550	333,818
20	0	0	0	0	394	394	49,111
21	0	1,774	1,774	0	1,774	1,774	129,205
22	0	5,415	5,415	0	8,808	8,808	79,963
23	0	1,820	1,820	0	1,915	1,915	45,103
24	33,700	0	33,700	3,178	0	3,178	342,364
25	82,700	380	83,080	4,304	0	4,304	4,304
26	0	2,880	2,880	0	23	23	149,952
27	0	1,289	1,289	0	4,132	4,132	419,844
28	0	0	0	0	191	191	174,432
29	0	1,937	1,937	0	1,937	1,937	683,780
30	0	2,404	2,404	0	1,977	1,977	420,770
Total	**$309,550**	**$42,352**	**$351,902**	**$65,684**	**$96,613**	**$162,298**	**$6,055,884**
Count	**5**	**17**	**21**	**5**	**26**	**30**	

Last updated on May 21, 2024.

[Services for Seniors]

[Medicaid]

Print

Table of Contents

NEWS

News & publications

The news about recent activities for needed peoples.

More News

30 Oct 2024

Job Opportunities at Kansas Legal Services

ATTORNEY - EMPORIAKLS – Emporia seeks a staff attorney to provide general legal…

Continue Reading

22 Oct 2024

A Kansas legal nonprofit makes a big economic impact with pro bono expungement help

From KCUR FM 91.5 Up to Date, October 21, 2024By Steve Kraske, Zach…

Continue Reading

Our Partners

LSC's support for this website is limited to those activities that are consistent with LSC restrictions.