Medi-Cal has booby trap for some estates

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Many low-income Californians who became eligible for Medi-Cal, the state's version of Medicaid, under the Affordable Care Act were happy to get free health care. But for those 55 and older, it came with a booby trap. When they die, the state will attempt to recover anything it spent on their health care from their estates, including their home.

This so-called estate recovery program has been a feature of Medi-Cal for many years, but the act allowed California to expand Medi-Cal coverage to a much larger group of people, including those with low incomes but unlimited assets. Some who are 55-plus are deeply concerned about asset recovery, because the rules are confusing and it's hard to know how much of their estate is at risk.

It could range from hundreds of dollars a month if the person is in a managed care plan to an unlimited amount if the person is in a fee-for-service plan, in which Medi-Cal pays all the person's health care costs. About 70 percent of Medi-Cal enrollees are in managed care, including all who became newly eligible this year under the act.

"If you received Medicaid services from age 55 and on, you are subject (to estate recovery) even if you are not receiving them at death," says MaryBeth Musumeci, associate director with the Kaiser Family Foundation.

The state Senate has passed SB1124, which would scale back estate recovery in California, with bipartisan support. It is awaiting a vote in the Assembly. The California Department of Finance opposes the bill because it would reduce estate-recovery revenue, which help fund Medi-Cal. If the bill passes, there's a chance Gov. Jerry Brown would veto it.

"It's a concern. He's penny pinching," says Pat McGinnis, executive director of the California Advocates for Nursing Home Reform, which is co-sponsoring the bill.

Sharing the cost

Estate recovery was not part of the Affordable Care Act. Some version of it has been part of Medicaid since it started in 1965. The federal and state governments share the cost of Medicaid, which pays for both regular health care and long-term care for very-low-income people.

In 1993, Congress required states to seek recovery of certain costs, including nursing home and other long-term care for people 55 and older. It gave them the option of recovering all health care costs paid by Medicaid for people 55 and older.

California opted to recover all costs, which has come as a shock to some people who are newly eligible for Medi-Cal.

Before 2014, to qualify for Medicaid/Medi-Cal, a person had to be low-income *and* either a single parent, pregnant, 65 or older, younger than 19, blind or disabled. Some of these people (elderly, blind and disabled) also had to meet an asset test: They generally could have very few assets other than a primary residence.

Although a home is exempt from Medi-Cal eligibility, it is not exempt from estate recovery, says Peter S. Stern, a Palo Alto attorney.

The ACA let states expand their Medicaid programs to a much larger population - essentially anyone whose income is less than 138 percent of the federal poverty level ($16,105 for one person, $21,708 for two and so on).

For the first time, able-bodied adults ages 18 to 64 without children could get free health care through Medicaid, as long as their income was low enough. They did not have to meet an asset test.

The federal government is paying 100 percent of the cost for these newly eligible people for three years. By 2020, its share will fall permanently to 90 percent.

Income levels

California was one of 26 states that opted into Medicaid expansion, which opened Medi-Cal to about 2.2 million additional people.

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If their incomes were higher - between 138 and 400 percent of poverty - these people would qualify for subsidized health care through Covered California, the state's health care exchange. Although they would pay more for health insurance, they would not have to worry about asset recovery. But if their income falls below 138 percent of poverty, they cannot get into Covered California.

No other federal health or welfare program, including Medicare, has asset recovery.

Some people say the program is discriminatory because it only applies to people 55 and older.

And there are ways around it. A state can waive estate recovery if it would pose an undue hardship on the person's heirs or survivors.

There are also ways to protect assets from Medi-Cal recovery. There are certain ways to transfer a home out of an estate, although this can raise tax issues, says Palo Alto attorney Michael Gilfix.

Individual retirement accounts, 401(k)s, pensions and term life insurance are not subject to recovery if they name a beneficiary other than the estate. (See http://bit.ly/1v6U21n).

SB1124 would limit asset recovery in California to what the federal law requires, essentially to recoup the cost of long-term care provided to people 55 and older.

It also would change the way it applies to married people. Under current law in California, if a married person who is subject to asset recovery dies, the state will not seek to recover those assets until the spouse dies.

The bill would change the law to say that when the married person dies, the debt to Medi-Cal dies, too. However, if the person was single, the estate would still be subject to recovery.

The state has estimated that the bill, if passed, would reduce asset recovery revenue by about $30 million a year. The state's share of the revenue loss would be about $15 million.

Supporters say that is a small cost. Other states, such as Oregon and Washington, have already rolled back their asset recovery programs, McGinnis says.

For more on estate recovery in California, see http://bit.ly/VLKVnn.

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