

AMERICAN MEDICAL ASSOCIATION HOUSE OF DELEGATES

Resolution: 104
(A-24)

Introduced by: Medical Student Section

Subject: Medicaid Estate Recovery Reform

Referred to: Reference Committee A

1 Whereas, 70% of Medicare beneficiaries will require long-term supports and services (LTSS),
2 but since annual LTSS costs exceeds the median Medicare beneficiary's total savings, many
3 must deplete their savings and become destitute to receive Medicaid LTSS coverage;¹⁻⁹ and
4

5 Whereas, the Social Security Act requires states to recover all Medicaid costs from patients'
6 estates after their death, but states typically only recover 0-1%, resulting in insignificant effects
7 on state budgets but disproportionate detriment to patients' inheritors;^{4,10-12} and
8

9 Whereas, because the Social Security Act does not require recovery of nonprobate assets,
10 patients with greater wealth or access to legal and financial estate planning services can evade
11 estate recovery with careful planning and modern methods of wealth transfer;^{10,13-15} and
12

13 Whereas, states disproportionately recover costs from low-income patients, exacerbating racial
14 wealth gaps and preventing intergenerational wealth;¹³ and
15

16 Whereas, Black Medicaid patients die with a median net worth of \$800, compared to white
17 Medicaid patients with \$2100, so estate recovery more rapidly depletes Black wealth;¹² and
18

19 Whereas, 25 states use 1115 waivers to capitate Medicaid LTSS coverage and may therefore
20 recover capitation payments from estates, even if a patient never received LTSS;¹⁶⁻¹⁸ and
21

22 Whereas, alternative methods to reduce LTSS costs exist, such as clinical demonstration
23 projects that improve patient outcomes while saving \$12,000 per patient annually;¹⁹ and
24

25 Whereas, California dramatically limited estate recovery by excluding patients survived by a
26 spouse and homes of modest value, and the Stop Unfair Medicaid Recoveries Act in Congress
27 would end Medicaid estate recovery altogether;²⁰⁻²¹ therefore be it
28

29 RESOLVED, that our American Medical Association oppose federal or state efforts to impose
30 liens on or seek adjustment or recovery from the estate of individuals who received long-term
31 services or supports coverage under Medicaid. (New HOD Policy)

Fiscal Note: Minimal - less than \$1,000

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REFERENCES

1. Johnson RW. What is the lifetime risk of needing and receiving long-term services and supports? The Assistant Secretary for Planning and Evaluation (ASPE). April 3, 2019. Accessed August 12, 2023. <https://aspe.hhs.gov/reports/what-lifetime-risk-needing-receiving-long-term-services-supports-0#table3>.
2. Johnson RW. Who is covered by private long-term care insurance? The Urban Institute. August 2, 2016. Accessed August 12, 2023. <https://www.urban.org/research/publication/who-covered-private-long-term-care-insurance>.
3. Chidambaram P, Burns A. 10 things About Long-Term Services and Supports (LTSS). KFF. September 15, 2022. Accessed August 12, 2023. <https://www.kff.org/medicaid/issue-brief/10-things-about-long-term-services-and-supports-ltss/>.
4. Chidambaram P, Burns A. 10 things About Long-Term Services and Supports (LTSS). KFF. September 15, 2022. Accessed August 12, 2023. <https://www.kff.org/medicaid/issue-brief/10-things-about-long-term-services-and-supports-ltss/>.
5. Willink A, Kasper J, Skehan ME. Are Older Americans Getting the Long-Term Services and Supports They Need? The Commonwealth Fund. January 2019. Accessed September 16, 2023. https://www.commonwealthfund.org/sites/default/files/2019-01/Willink_are_older_americans_getting_LTSS_ib.pdf.
6. Spousal impoverishment. Medicaid.gov. Accessed August 12, 2023. <https://www.medicaid.gov/medicaid/eligibility/spousal-impoverishment/index.html>.
7. Supplemental Security Income (SSI) Disability & Medicaid coverage. Healthcare.gov. Accessed August 12, 2023. <https://www.healthcare.gov/people-with-disabilities/ssi-and-medicaid/#:~:text=In%20many%20states%2C%20SSI%20recipients,get%20SSI%20are%20still%20eligible>.
8. Musumeci M, Chidambaram P, O'Malley Watts M. Medicaid Financial Eligibility for Seniors and People with Disabilities: Findings from a 50-State Survey. KFF. June 14, 2019. Accessed August 18, 2023. <https://www.kff.org/medicaid/issue-brief/medicaid-financial-eligibility-for-seniors-and-people-with-disabilities-findings-from-a-50-state-survey/>.
9. Thach NT, Wiener JM. An Overview of Long-Term Services and Supports and Medicaid: Final Report. The Assistant Secretary for Planning and Evaluation (ASPE). August 7, 2018. Accessed August 18, 2023. <https://aspe.hhs.gov/reports/overview-long-term-services-supports-medicaid-final-report-0>.
10. Liens, Adjustments and Recoveries, and Transfers of Assets. Social Security Act §1917. Accessed August 18, 2023. https://www.ssa.gov/OP_Home/ssact/title19/1917.htm.
11. Karp N, Sabatino CP, Wood EF. Medicaid Estate Recovery: A 2004 Survey of State Programs and Practices . The AARP Public Policy Institute. June 2005. Accessed August 24, 2023. https://assets.aarp.org/rgcenter/il/2005_06_recovery.pdf.
12. Medicaid Estate Recovery: Improving Policy and Promoting Equity. MACPAC. March 2021. Accessed August 24, 2023. <https://www.macpac.gov/wp-content/uploads/2021/03/Chapter-3-Medicaid-Estate-Recovery-Improving-Policy-and-Promoting-Equity.pdf>.
13. Langbein JH. Because Property Became Contract: Understanding the American Nonprobate Revolution. SSRN. March 23, 2020. Accessed August 18, 2023. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3561181#.
14. O'Brien RC. Selective Issues in Effective Medicaid Estate Recovery Statutes. Catholic University Law Review. February 2, 2016. Accessed August 24, 2023. https://scholarship.law.edu/lawreview/vol65/iss1/7/?utm_source=scholarship.law.edu%2Fvol65%2Fiss1%2F7&utm_medium=PDF&utm_campaign=PDFCoverPages.
15. What is Estate Planning & Why it is Critical for Medicaid planning. American Council on Aging. March 6, 2023. Accessed August 24, 2023. <https://www.medicaidplanningassistance.org/estate-planning/>.
16. Medicaid Waiver Tracker: Approved and Pending Section 1115 Waivers by State. KFF. August 11, 2023. Accessed September 16, 2023. <https://www.kff.org/medicaid/issue-brief/medicaid-waiver-tracker-approved-and-pending-section-1115-waivers-by-state/>.
17. Coordination of Benefits & Third Party Liability in Medicaid Handbook. Medicaid.gov. 2020. Accessed August 24, 2023. <https://www.medicaid.gov/medicaid/eligibility/coordination-of-benefits-third-party-liability/index.html>.
18. True, S. Debt After Death: The Painful Blow of Medicaid Estate Recovery. US News & World Report. October 14, 2021. (Accessed September 17, 2023). <https://www.usnews.com/news/health-news/articles/2021-10-14/debt-after-death-the-painful-blow-of-medicaid-estate-recovery>
19. Szanton SL, Wolff JW, Leff B, et al. CAPABLE trial: a randomized controlled trial of nurse, occupational therapist and handyman to reduce disability among older adults: rationale and design. *Contemp Clin Trials*. 2014;38(1):102-112. doi:10.1016/j.cct.2014.03.005.
20. Seipel T. California's Seizure of Medi-Cal Patients' Assets is Limited by New Law. The Mercury News. June 27, 2016. Accessed September 16, 2023. <https://www.mercurynews.com/2016/06/27/californias-seizure-of-medi-cal-patients-assets-is-limited-by-new-law/>.
21. H.R.6698 - Stop Unfair Medicaid Recoveries Act of 2022. Congress.gov. February 10, 2022. Accessed August 24, 2023. <https://www.congress.gov/bill/117th-congress/house-bill/6698/text>.

RELEVANT AMA Policy

Policy Directions for the Financing of Long-Term Care H-280.991

Our American Medical Association believes that programs to finance long-term care should:

1. Assure access to needed services when personal resources are inadequate to finance care.
2. Protect personal autonomy and responsibility in the selection of LTC service providers.
3. Prevent impoverishment of the individual or family in the face of extended or catastrophic service costs.
4. Account for equity in order to assure affordability of long-term care for all Americans.
5. Cover needed services in a timely, coordinated manner in the least restrictive setting appropriate to the health care needs of the individual.

6. Coordinate benefits across different LTC financing program.
7. Provide coverage for the medical components of long-term care through Medicaid for all individuals with income below 100 percent of the poverty level.
8. Provide sliding scale subsidies for the purchase of LTC insurance coverage for individuals with income between 100-200 percent of the poverty level.
9. Encourage private sector LTC coverage through an asset protection program; equivalent to the amount of private LTC coverage purchased.
10. Create tax incentives to allow individuals to prospectively finance the cost of LTC coverage, encourage employers to offer such policies as a part of employee benefit packages and otherwise treat employer-provided coverage in the same fashion as health insurance coverage, and allow tax-free withdrawals from IRAs and Employee Trusts for payment of LTC insurance premiums and expenses.
11. Authorize a tax deduction or credit to encourage family care giving. Consumer information programs should be expanded to emphasize the need for prefunding anticipated costs for LTC and to describe the coverage limitations of Medicare, Medicaid, and traditional medigap policies. State medical associations should be encouraged to seek appropriate legislation or regulation in their jurisdictions to:
 - a. provide an environment within their states that permit innovative LTC financing and delivery arrangements, and
 - b. assure that private LTC financing and delivery systems, once developed, provide the appropriate safeguards for the delivery of high quality care.

Our AMA continues to evaluate and support additional health system reform legislative initiatives that could increase states' flexibility to design and implement long-term care delivery and financing programs. Our AMA will also encourage and support the legislative and funding changes needed to enable more accurate and disaggregated collection and reporting of data on health care spending by type of service, so as to enable more informed decisions as to those social components of long-term care that should not be covered by public or private health care financing mechanisms.

2. Our AMA will work with Centers for Medicare & Medicaid Services and other relevant stakeholders to formulate appropriate medical insurance plans to provide long-term care coverage for patients with Alzheimer's and other forms of dementia. [BOT Rep. O, A-88; BOT Rep. X, I-88; Reaffirmed: CMS Rep. 3, A-94; BOT Rep. S, I-87; Reaffirmed: CMS Rep. 3-A-94; CMS Rep. 11, I-95; Reaffirmation A-04; Modified: CMS Rep. 6, I-05; Reaffirmed: BOT Rep. 32, A-09; Reaffirmation A-11; Reaffirmed: CMS Rep. 05, A-18; Appended: Res. 110, A-23; Modified: Res. 815, I-23]