



## MICHIGAN REPORT

# SAVINGS ON MEDICAID ESTATE RECOVERY IMPLEMENTATION DIFFER

As part of her fiscal year 2007-2008 budget for the Department of Community Health, Governor Jennifer Granholm is once again proposing the state implement a Medicaid estate recovery program, but how much such a program would save to Michigan's coffers and whether those savings would end up being a wash when the state has to administer such a program is debatable.

Ms. Granholm's proposal states that an estate recovery program could net \$4.2 million in savings to Medicaid, which alone takes up 66 percent of DCH's \$11.5 billion annual budget.

Michigan is the only state that has not adopted a recovery program, which it can do under a provision in federal law that gives states a waiver if the program is not considered cost effective.

At a minimum, states with a recovery system have to collect what was spent on Medicaid for long-term care and related drug and hospital benefits, which include Medicaid payments for Medicare cost sharing related to those services, according to the U.S. Department of Health and Human Services. But states have the option of collecting for costs related to all Medicaid expenditures for an individual.

Under the governor's plan, all real and personal property subject to the state's probate law would be eligible for recovery.

"A state's ability to recover from probate estates depends in some measure on Medicaid's standing vis-a-vis other claimants. The order of payment of debt is established under state law. Mortgages, unpaid tax or public utility bills, child support arrears, burial costs, or other debts may be paid before the Medicaid lien and reduce the amount that is actually recovered. The State's standing is also influenced by locally determined state priorities. For example, some state laws protect the family home in an estate from some or all claims against it, including Medicaid claims," an April 2005 report

from the federal department stated.

And states are prohibited under federal law from recovering costs "during the lifetime of the surviving spouse (no matter where he or she lives); from a surviving child who is under age 21, or is blind or permanently disabled (according to the SSI/Medicaid definition of "disability"), no matter where he or she lives; in the case of the former home of the recipient, when a sibling with an equity interest in the home has lived in the home for at least one year immediately before the deceased Medicaid recipient was institutionalized and has lawfully resided in the home continuously since the date of the recipient's admission and in the case of the former home of the recipient, when an adult child has lived in the home for at least two years immediately before the deceased Medicaid recipient was institutionalized, has lived there continuously since that time, and can establish to the satisfaction of the State that he or she provided care that may have delayed the recipient's admission to the nursing home or other medical institution."

The Mackinac Center for Public Policy has estimated that Michigan could actually see a savings of up to \$85 million per year if it implemented an estate recovery system, which was based on collections nationally from 2004 that totaled \$362 million out of the \$45.8 billion spent on nursing home Medicaid recipients.

"Oregon had the second highest rate of collection at 5.8 percent, or \$13 million of its \$238 million Medicaid nursing home care bill. Given the \$1.7 billion Michigan spent on Medicaid nursing home care, a 5 percent recovery rate would save taxpayers \$85 million," wrote TaraLynn Velting, an estate attorney with Garan Luow Miller in Grand Rapids and an adjunct scholar with the Mackinac Center.

In looking at the Oregon model, the federal

department wrote, "Much of the original enthusiasm for mandatory estate recovery was based on the results in Oregon, where estate recovery was implemented in the 1940s as part of a comprehensive program to help senior citizens keep enough money to meet their own needs and protect their assets from unscrupulous uses by others. An extraordinary jump in Medicaid savings was predicted if all states were to follow the Oregon model. A more recent study estimates that one state (Nebraska) could increase Medicaid savings fivefold if it adopted all of Oregon's estate recovery practices.

"However, it is clear that the much-vaunted savings have not become a reality. In 2003, estate recoveries amounted to \$330 million, or 0.13% of total Medicaid spending in all states, with individual state collections ranging from 0.0 - 0.64 percent."

The concern that implementation of such a program could mean a wash for the state, or end up costing the state more simply because of the administrative duties that would accompany it, has Rep. Bruce Caswell (R-Hillsdale), the lead Republican of the House Appropriations Subcommittee on Community Health, questioning what good such a program would do for the state at this point.

Mr. Caswell said it's easy to say the state is enacting such a program, but much harder for it to follow through by acquiring and selling the recipient's assets to have Medicaid repaid.

He said the state should first provide those who are 50 to 65 years of age with options in long-term care, which was

facilitated by the approval of the Long-Term Care Partnership last session and a letter by Ms. Granholm to all senior citizens in the state, but that further options such as tax credits for people investing in their long-term care should also be enacted.

Once those are up and running and people have choices, then in five to six years the state could impose a recovery program, Mr. Caswell said.

Asked whether he thought the savings estimated by Ms. Granholm were too low or the Mackinac Center's were too high, Mr. Caswell said that based on what he's read that 15-20 states with an estate recovery don't make anything once administrative costs are considered, so he believed Ms. Granholm's estimation was closest to what Michigan might be able to expect.

Greg Bird, spokesperson for the State Budget Office, said, "We think the recovery figure from the Mackinac Center is very overstated. Obviously it depends on how aggressive a state is and their definition of who falls under a particular program. We researched other Midwest states (Illinois, Minnesota, Ohio, Indiana and Wisconsin) and their plans. We felt that following our research - and the past willingness by the Legislature to pass such a plan - that we would begin modestly."

Mr. Bird said that in terms of administration, the DCH budget plans for one full-time employee to begin the program, with more possibly needed as the program comes online. DCH would be in charge of administering the program, but the Department of Attorney General would do the collections, he said.