

# JNAELA JOURNAL

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**Medicaid Estate Recovery:  
A Failed Program Based on an Invalid 19th Century  
Philosophy Is Harming Our Ability to Meet  
the Challenges of the 21st Century**

*By Jim Schuster, CELA*



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Elder and special needs law topics range over many areas and include: preservation of assets, Medicaid, Medicare, Social Security, disability, health insurance, tax planning, conservatorships, guardianships, living trusts and wills, estate planning, probate and administration of estates, trusts, long-term care placement, housing and nursing home issues, elder abuse, fraud recovery, age discrimination, retirement, health law, and mental health law.

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## **Medicaid Estate Recovery: A Failed Program Based on an Invalid 19th Century Philosophy Is Harming Our Ability to Meet the Challenges of the 21st Century**

*By Jim Schuster, CELA*

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### **About the Author**

*James “Jim” Schuster* retired from the active practice of law following a career spanning 40 years. He joined NAELA in 1995 and became Michigan’s fourth Certified Elder Law Attorney (CELA) in 2004. His practice focused on Medicaid, and he was the attorney for the Amicus Curiae Elder Law and Disability Rights Section of the State Bar of Michigan and the Michigan Chapter of NAELA in *Hegadorn v. Department of Human Services Director*, 913 N.W.2d 334 (Mich. 2018). Before practicing elder law, Mr. Schuster’s practice focused on appellate and civil rights cases in Michigan state and federal district courts and the Sixth Circuit Court of Appeals.

## I. Introduction

Medicaid estate recovery (MER), whereby recipients' estates pay back the cost of Medicaid benefits they received, has been part of the Medicaid program since its inception in 1965. At that time, the United States was high on the post–World War II economic boom. Welfare programs operated on a *hand up, not a handout* basis, on the theory that recipients could pay back the benefits when they got back on their feet. Payback took the form of payment or recovery from the estates of deceased recipients on the theory that it would be better to put the money back into the program than provide an unjust enrichment to the heirs. Numerous studies have shown that MER never met its goals of helping to fund the Medicaid program and improve the life choices of recipients. Now, in the 21st century, the United States faces profound economic challenges, and the harm MER does to the poor and working communities has increasingly come into question.

What is MER? For recipients over age 55, Medicaid acts as a loan. Upon a recipient's death, their estate must pay back the cost of all institutional care, including hospital and nursing home care; home and community-based services (HCBS); and care rendered in intermediate care facilities for people with intellectual disabilities.<sup>1</sup> At its option, the state may recover the cost of all

Medicaid services, as well as the cost of prescriptions.<sup>2</sup>

Section II of this article presents a brief history of the MER program. Section III addresses the program's rationale, which is based on 19th century moral arguments for payback of welfare benefits. Section IV reviews findings of the 2021 Medicaid and CHIP Payment and Access Commission (MACPAC) report, which challenges the arguments in support of MER. Advocates for older adults and people with disabilities immediately supported the

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- 2 While most attention to MER focuses on nursing home benefits, the cost of Medicaid benefits to those living in their own homes still can be staggering. An article in *KFF Health News* told the story of Henry Ruhl, a veteran who needed assistance for his wife, Fran, a retired childcare worker who was diagnosed with Lewy body dementia. To keep his wife out of a nursing home, Mr. Ruhl contacted the local area agency on aging for in-home assistance. With the help of his daughter, Jen, the family applied for the Elderly Waiver program, which helps keep people at home and out of a nursing home. They did not understand that they were applying for their state's Medicaid Home and Community-Based Services Waiver program, which incorporates MER. When Mr. Ruhl's wife died, the state demanded payback in the amount of \$226,611.35. The state would allow him to live in his home, but upon his death, the home would have to be sold and funds given to the state. The county tax assessor estimates that his house is worth \$81,470. Tony Leys, *After People on Medicaid Die, Some States Aggressively Seek Repayment From Their Estates*, *KFF Health News* (Mar. 2, 2023), <https://khn.org/news/article/medicaid-estate-repayments> (accessed July 24, 2023). The article also was published by NPR under a different title: Tony Leys, *They Could Lose the House — to Medicaid*, NPR (Mar. 1, 2023), <https://www.npr.org/sections/healthshots/2023/03/01/1159490515/they-could-lose-the-house-to-medicaid> (accessed July 24, 2023).

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1 For a complete review of the implementation of Medicaid estate recovery (MER) in various states, see Kristine J. Williams, *The Future of Estate Recovery: An Analysis of Different State Approaches and Changes*, 16 NAELA J. 17 (2020).

MACPAC findings and recommendations and published an issue brief arguing forcefully for the repeal of MER as a program that produces little benefit and conflicts with a number of national priorities.

The negative impact of MER is the subject of Section V. The findings published in the MACPAC report demonstrate that MER impacts a broad population, including not just those traditionally considered to be welfare recipients but also *middle-class taxpayers*.<sup>3</sup>

Section VI discusses the wide-ranging implications on MER as part of a public benefits program. The treatment of people participating in the Medicare program is compared with the treatment of those who also receive Medicaid. In addition, this section examines MER as a regressive federal estate tax, imposed without exemption on taxpayers of modest means, while taxpayers who are exorbitantly wealthy enjoy a generous exemption before incurring any estate tax liability. The existence of such inequitable tax policy flies in the face of the nation's fundamental guarantee of equal protection of the laws, the foundation of U.S. democracy. But the comparison does not end with fairness considerations. The same economic arguments in favor of the generous exemption apply equally, if not more forcefully, to the harm caused to our country by MER. This section concludes with the recognition that MER is an irrational policy that our nation can no longer afford.

The conclusion rests on two fundamental propositions: America's greatest asset is its people, and all people are created equal. To this, we can add a third: America faces unprecedented economic challenges in the 21st century, and to stay competitive we must invest in the development of our greatest asset: our people. Necessarily, the question must be: "Does MER impair our country's ability to meet these challenges?" The answer presented here: "Yes. MER must be terminated."

## II. A Brief History of Medicaid Estate Recovery

The Medicaid program was enacted in 1965, when America was at the peak of the post-World War II boom. A family with a single wage-earner could have a house in the suburbs, with grandma taking up the spare bedroom. People could get jobs right out of high school with the expectation of a lifetime career. College education was affordable without the need for student loans. It was a time of unprecedented prosperity. The United States had the preeminent economy in a world still recovering from World War II.

In Medicaid's original enactment, MER was optional. It was made mandatory for all states by provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93), codified at 42 U.S.C. § 1396p(b). The impetus for the requirement was a 1989 General Accounting Office report stating that a MER program could recoup an estimated 68% of the Medicaid long-term care budget from nursing home recipients who owned homes.<sup>4</sup> The projected savings, however,

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3 The term *taxpayers* is italicized because it is an undefined term when used in political discourse. Virtually every person pays taxes in some way. The term *middle-class* is italicized for the same reason: It is a vague undefined term when used in political discourse.

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4 U.S. Gen. Acctg. Off., *Medicaid: Recoveries*

never materialized. A 2005 policy brief on a study by the Department of Health and Human Services reported, “[I]t 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.”<sup>5</sup>

The current movement to review and question MER’s efficacy was spurred by MACPAC.<sup>6</sup> In the summer of 2020, MACPAC announced it would study Medicaid’s role in addressing systemic racism and racial and ethnic disparities in health. Its comprehensive report was released in March 2021.<sup>7</sup> Chapter Three of the report reviews MER and recommends

that the program be limited and optional for states. MACPAC’s recommendations quickly received support from advocacy organizations for older adults and persons with disabilities.

In February 2022, U.S. Rep. Jan Schakowsky from Illinois introduced the Stop Unfair Medicaid Recoveries Act (H.R. 6698) in the 117th Congress, which called for complete termination of MER. The bill had 15 co-sponsors and significant support among advocates for older adults and persons with disabilities. Congress took no action on the bill. The legislation was expected to be reintroduced during the 118th Congress, but at the time of writing it has not.

### III. 19th Century Rationale for Payback of Welfare Benefits

Payback or recovery has been a component of American welfare laws and programs since the beginning of government assistance for the needy. At first blush, such a payback requirement is illogical. It is as if someone gave to charity and expected the charity to pay them back. Why would welfare policy demand repayment from the poor? The answer lies in the fact that these assistance programs were based on English *poor laws*,<sup>8</sup> which were founded on the “Protestant ethic.” The focus was on the recipient, who was out of work and was expected to pay back the relief given upon returning to work. As David C. Baldus wrote in his review of the policy of payback:<sup>9</sup>

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*From Nursing Home Residents’ Estates Could Offset Program Costs* (Mar. 1989), <https://www.gao.gov/assets/hrd-89-56.pdf> (accessed Aug. 4, 2023).

- 5 U.S. Dept. of Health & Human Servs., *Medicaid Estate Recovery*, Policy Brief #1 (Apr. 2005), <https://aspe.hhs.gov/sites/default/files/private/pdf/74101/estaterec.pdf> (accessed July 26, 2023).
- 6 “The Medicaid and CHIP Payment and Access Commission (MACPAC) is a non partisan legislative branch agency that provides policy and data analysis and makes recommendations to Congress, the Secretary of the U.S. Department of Health and Human Services, and the states on a wide array of issues affecting Medicaid and the State Children’s Health Insurance Program (CHIP). The U.S. Comptroller General appoints MACPAC’s 17 commissioners, who come from diverse regions across the United States and bring broad expertise and a wide range of perspectives on Medicaid and CHIP.” MACPAC, *About MACPAC*, <https://www.macpac.gov/about/macpac> (accessed July 26, 2023).
- 7 Medicaid & CHIP Payment & Access Comm., *Report to Congress on Medicaid and CHIP* (Mar. 2021), <https://www.macpac.gov/wp-content/uploads/2021/03/March-2021-Report-to-Congress-on-Medicaid-and-CHIP.pdf> (accessed July 26, 2023) [hereinafter *MACPAC Report*].

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8 Va. Cmmw. U., VCU Libs. Soc. Welfare History Project, *English Poor Laws: Historical Precedents of Tax-Supported Relief for the Poor*, <https://socialwelfare.library.vcu.edu/programs/poor-laws> (accessed July 26, 2023).

9 David C. Baldus, *Welfare as a Loan: An Empirical Study of the Recovery of Public Assistance Payments in the United States*, 25 Stan.

The dominant influence over welfare policy in the North has been the Protestant or middle class ethic, which sees the improvidence, idleness, and immorality of poor persons as the cause of their poverty. From this perspective, public assistance is viewed with alarm as a disincentive to work and saving. Recovery, however, is viewed as an antidote which encourages savings for both the short and long run, and promotes self-reliance and mutual aid within the family.<sup>10</sup>

Baldus observed that in the South, a different ethic prevailed against welfare policy. While middle-class welfare officials supported it, the politics were controlled by Populists:

The Populist views welfare for the aged as a pension — due as a matter of right. Recovery is considered a threat to private property and an unjust strategy of the privileged to guarantee the rich man his “castle” while ensuring that the poor man will be kept in his place of poverty and dependence. Thus, the lines on recovery in the South are drawn between middle class welfare officials and legislators and the “pork barrel” or “country” boys who are “soft on poverty.”<sup>11</sup>

Three main arguments have been made in support of MER. The program:

1. Encouraged people to seek employment;
2. Increased the amount of funds available to the assistance program; and
3. Avoided unjust enrichment of recipients and their families who “failed to support needy parents.”<sup>12</sup>

In response to the Great Depression, the New Deal policies of the Roosevelt admin-

istration shifted payback targets away from out-of-work recipients<sup>13</sup> to the estates of deceased recipients on the theory that recovery from estates would encourage family support of the older adult.<sup>14</sup> Some 30 years later, Medicare and Medicaid were enacted at the same time as amendments to the Social Security Act.<sup>15</sup> Medicare, which was considered the health insurance part of Social Security, was administered by a newly established Bureau of Health Insurance in the Social Security Administration. Medicaid, administered by the Bureau of Family Services of the Welfare Administration, was considered a welfare program.<sup>16</sup> Consequently, Medicaid included the option for MER with the now-familiar limitations:

there shall be no adjustment or recovery (except, in the case of an individual who was 65 years of age or older when he received such assistance, from his estate, and then only after the death of his surviving spouse, if any, and only at a time when he has no surviving child who is under age 21 or is blind or permanently and totally disabled) of any medical assistance—correctly paid on behalf of such individual under the plan ...<sup>17</sup>

13 The Social Security Act of 1935, which established the national program of unemployment assistance, did not require payback of benefits. See Daniel N. Price, *Unemployment Insurance, Then and Now*, 1935–85, 48 Soc. Sec. Bull. 22 (1985), <https://www.ssa.gov/policy/docs/ssb/v48n10/v48n10p22.pdf> (accessed July 26, 2023).

14 Baldus, *supra* n. 9, at 328.

15 Medicaid was enacted in Public Law 89–97 title I, part 2, section 121 (July 30, 1965), and enrolled as Title XIX of the Social Security Act, codified at 42 U.S.C. § 1396a *et seq.* (2023).

16 Bruce C. Vladeck, *Unloving Care: The Nursing Home Tragedy* 51–52 (Basic Books 1980).

17 Social Security Act § 1902(a)(18), codified at

L. Rev. 123 (1973).

10 *Id.* at 220–221.

11 *Id.* at 221 (footnotes omitted).

12 *Id.* at 131.

As noted previously, MER became mandatory for all states with the passage of OBRA 93.<sup>18</sup> At that time, the poor law justifications were made again. Stephen Moses, an advocate of long-term care insurance, argued that it was improvident for individuals not to plan for long-term care. In his view, estate recovery was intended to “create an incentive for people to plan responsibly” by purchasing and maintaining long-term care insurance. Moses asserted, “We will have to come to terms with the reality that you have to take personal responsibility and pay your own way,” and “If people can’t pay the premiums for their private insurance, they’re going to lose the insurance.”<sup>19</sup>

In supporting mandatory estate recovery, Newt Gingrich, former speaker of the House, alluded to the immorality of poor persons, saying that programs were exploited by “con artists and layabouts,” people who “want to be 70 pounds overweight, drink a quart of hard liquor a day, pay no attention to exercise, and then tell you it’s your obligation to make [them] healthy.”<sup>20</sup>

A modern version of the argument that family and friends should support the poor was advocated by Matthew Pakula, who wrote of “combating” the wave of indigent older adults and argued for federal

filial responsibility laws to require adult children to support their parents.<sup>21</sup>

We offer a brief response to these arguments. In response to Gingrich’s argument, one can be virtually certain that no long-term care conditions are caused by immorality and improvidence. In fact, 59% of long stay (100 days or longer) nursing home residents have Alzheimer’s disease or other dementias,<sup>22</sup> conditions not brought on by a person’s moral lapses or failure to provide for the future. Further, Medicare has no problem paying for the medical conditions to which Gingrich alluded. In response to the Moses argument, by 2013 the long-term care insurance industry had collapsed as the result of free market forces. Sales of such insurance policies peaked in 2003. In 2002, 102 companies were selling policies; by 2013 only 15 were. The insurance could no longer be sold because of rapidly rising premiums.<sup>23</sup> In response to Pakula’s argument, the simple fact is that middle-class adult children cannot afford to pay \$94,900 per year<sup>24</sup> for their

42 U.S.C. § 1396(a)(18) (1965).

18 42 U.S.C. § 1396p(b).

19 Sarah True, *Debt After Death: The Painful Blow of Medicaid Estate Recovery*, U.S. News & World Rpt. (Oct. 14, 2021), <https://www.usnews.com/news/health-news/articles/2021-10-14/debt-after-death-the-painful-blow-of-medicaid-estate-recovery> (accessed July 26, 2023).

20 Rachel Corbett, *Medicaid’s Dark Secret*, The Atlantic (Oct. 2019), <https://www.theatlantic.com/magazine/archive/2019/10/when-medicaid-takes-everything-you-own/596671> (accessed July 26, 2023).

21 Matthew Pakula, *The Legal Responsibility of Adult Children to Care for Indigent Parents*, Brief Analysis 521, Natl. Ctr. for Policy Analysis (2005).

22 Alzheimer’s Assn., *2022 Alzheimer’s Disease Facts and Figures* 69, [https://www.alz.org/media/Documents/2022-Facts-and-Figures-Report\\_1.pdf](https://www.alz.org/media/Documents/2022-Facts-and-Figures-Report_1.pdf) (accessed July 26, 2023).

23 Marc A. Cohen et al., *Exiting the Market: Understanding the Factors Behind Carriers’ Decision to Leave the Long Term Care Insurance Market*, U.S. Dept. of Health & Human Servs., Off. of Asst. Sec. for Plan. & Evaluation (June 30, 2013), <https://aspe.hhs.gov/reports/exiting-market-understanding-factors-behind-carriers-decision-leave-long-term-care-insurance-market-1> (accessed July 26, 2023).

24 From the 2021 *Genworth Cost of Care Survey*, which reported annual costs of \$20,280 for adult day health care, \$108,405 for a nursing home private room, and \$94,900 for a

parents' nursing home care and still save money for retirement. A major problem today is that most retirees have insufficient retirement savings.<sup>25</sup> For adults in the sandwich generation, who are raising their children while paying for their parents' care — with money they do not have — the alternative is for them to leave work at the peak of their careers and become unpaid caregivers. Few would argue that this is the best use of their workforce training, skills, and experience.

#### IV. The 2021 Medicaid and CHIP Payment and Access Commission Report

##### A. Review of the Findings

MACPAC's 2020 announcement of its

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semiprivate room, Genworth Financial, Inc. (Feb. 7, 2022), <https://pro.genworth.com/riiproweb/productinfo/pdf/131168.pdf> (accessed July 26, 2023). KFF, formerly the Kaiser Family Foundation, analyzed the figures. Priya Chidambaram & Alice Burns, *10 Things About Long-Term Services and Supports (LTSS)*, KFF (Sept. 15, 2022), <https://www.kff.org/medicaid/issue-brief/10-things-about-long-term-services-and-supports-ltss> (accessed July 26, 2023).

25 Many writings on the subject have been published. See e.g. Ltr. From Charles A. Jeszeck, Dir., Educ., Workforce & Income Sec. Issues, U.S. Govt. Accountability Off., to Bernard Sanders, U.S. Sen., *Retirement Security: Most Households Approaching Retirement Have Low Savings, an Update* (Mar. 26, 2019), <https://www.gao.gov/assets/gao-19-442r.pdf>; Natl. Council on Aging, *Your Guide to Money-Saving Benefits in Retirement* (July 12, 2022), <https://ncoa.org/article/your-guide-to-money-saving-benefits-in-retirement>; Alana Semuels, *This Is What Life Without Retirement Savings Looks Like*, *The Atlantic* (Feb. 22, 2018), <https://www.theatlantic.com/business/archive/2018/02/pensions-safety-net-california/553970> (all three documents accessed July 26, 2023).

intent to study Medicaid's role in addressing systemic racism and racial and ethnic disparities in health quickly drew support from the older adult and disabled communities. In November 2020, 35 advocacy organizations for these communities published a letter identifying four major national problems caused by MER's implementation: (1) MER prevents families from escaping poverty; (2) MER exacerbates the racial wealth gap; (3) MER's financial benefit to states is minimal; and (4) capitated-based recovery in managed care programs may far exceed the cost of benefits the beneficiary received.<sup>26</sup>

In March 2021, MACPAC released its report to Congress.<sup>27</sup> MACPAC recommended major changes to MER in Chapter 3, Medicaid Estate Recovery: Improving Policy and Promoting Equity:

- 3.1 Congress should amend Section 1917(b)(1) of Title XIX of the Social Security Act to make Medicaid estate recovery optional for the populations and services for which it is required under current law.
- 3.2 Congress should amend Section 1917 of Title XIX of the Social Security Act to allow states providing long term services and supports under managed care arrangements to pursue estate recovery based on the cost of care when the cost of services used by a beneficiary was less than the capitation payment made to a managed care plan.

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26 Ltr. From [Advoc. Orgs. for Older Adults & the Disabled] to Medicaid & CHIP Payment & Access Commn. (MACPAC), *Medicaid Estate Recovery* (Dec. 9, 2020), [https://justiceinaging.org/wp-content/uploads/2021/03/MACPAC-Estate-Recovery-Sign-on-Letter\\_11.27.20-FINAL.pdf](https://justiceinaging.org/wp-content/uploads/2021/03/MACPAC-Estate-Recovery-Sign-on-Letter_11.27.20-FINAL.pdf) (accessed July 26, 2023).

27 *MACPAC Report, supra* n. 7.

3.3 Congress should amend Section 1917 of Title XIX of the Social Security Act to direct the Secretary of the U.S. Department of Health and Human Services to set minimum standards for hardship waivers under the Medicaid estate recovery program. States should not be allowed to pursue recovery for: (1) any asset that is the sole income producing asset of survivors; (2) homes of modest value; or (3) any estate valued under a certain threshold. The Secretary should continue to allow states to use additional hardship waiver standards.<sup>28</sup>

**Recommendation 3.1** is the result of MACPAC's overall findings indicating that MER does not produce the promised Medicaid program savings. The average amount recovered was only 0.5% to 0.6% of the national long-term care budget for long-term care services and supports (LTSS) for the years 2015-2019.<sup>29</sup> These findings echo the 2005 findings of the Department of Health and Human Services study that found MER failed its purpose.<sup>30</sup> Moreover, the recoveries particularly hit the poor population. The average home equity was \$27,419 and the net wealth only \$46,692.<sup>31</sup>

**Recommendation 3.2** highlights serious MER inequities in capitated managed care programs in that many recipients' estates are subject to recovery for much more than the cost of care the recipient received. In one instance, the state attempted to recover \$200,000 from the estate of

a disabled recipient who had received no care at all.<sup>32</sup>

**Recommendation 3.3** is based on the finding that waiver of recovery due to undue hardship is rarely granted, despite guidance from the Centers for Medicare & Medicaid Services (CMS) in the *State Medicaid Manual* (SMM). MACPAC emphatically recommends that states not be allowed to pursue recovery for these three items: (1) sole income-producing assets; (2) homes of modest value; and (3) estates whose value falls under a certain threshold. The standards used by the states vary widely. Some states waive recovery if an heir would be "at risk of becoming eligible for public assistance."<sup>33</sup> Mississippi waives recovery if the value of estate assets is less than \$5,000 and there is no arrangement for the deceased recipient's burial. Only 8 of 48 states waive recovery from a home of modest value.<sup>34</sup>

The effect of these stingy exemptions results in rare MER exemptions due to undue hardship. Iowa granted the most waiv-

28 *Id.* at 72.

29 *Id.* at 89.

30 See discussion *supra* n. 5.

31 *Id.* at 81, as amended by *Erratum* published on MACPAC website, <https://www.macpac.gov/publication/medicaid-estate-recovery-improving-policy-and-promoting-equity/>.

32 *MACPAC Report, supra* n. 7, at 86. An article in *U.S. News & World Report* shows how this managed care option can punish families who try to minimize Medicaid use and keep a family member independent: Anita Kite's father needed help in his home for a few hours a day when his children could not be there. The family applied to Medicaid for in-home care, which lasted 7 months before Kite's father had to move to assisted living, where he lived for a year before he died. His Social Security check was \$1,100 a month short of the assisted living charge. Medicaid covered that. When Kite's father died, his family estimated it would have to pay back \$20,000 to \$30,000 but got a bill for nearly \$67,000, which was the result of the managed care plan's monthly capitation of \$3,252 for every month he was approved for Medicaid assistance, regardless of the amount of care he received. *True, supra* n. 19.

33 *MACPAC Report, supra* n. 7, at 88.

34 *Id.*

ers: 57 out of 3,359 estates.<sup>35</sup> MACPAC found that between 2017 and 2020, in nine states, out of 210,830 cases of estate recovery, only 360 exemptions from recovery were granted due to undue hardship.<sup>36</sup> In effect, there is virtually no exemption from MER due to undue hardship.

*B. The Health and Human Services Secretary Failed to Follow the Law in Establishing the Standards for Hardship Exemption From Medicaid Estate Recovery*

MACPAC recommends that Congress amend Title XIX of the Social Security Act “to direct the Secretary of the U.S. Department of Health and Human Services to set minimum standards for hardship waivers.”<sup>37</sup> The findings supporting Recommendation 3.3 make it clear that the Health and Human Services secretary<sup>38</sup> failed to follow the plain language of the statute and establish criteria that the states must use in consideration of undue hardship. OBRA 93 provides that there shall be no recovery if it would cause undue hardship:

[T]he [state] *agency shall waive the application of this subsection ... if such application would work an undue hardship as determined on the basis of criteria*

*established by the [Health and Human Services] Secretary.*<sup>39</sup>

CMS provides guidance to the states in the SMM on the application of the undue hardship exemption. The guidance grants states “flexibility in implementing an undue hardship provision” and “suggests” that the states provide “special consideration” to waive recovery if:

(1) [the property is] the sole income producing asset of survivors (where such income is limited), such as a family farm or other family business; (2) [the property is] a homestead of modest value; or (3) [there are] other compelling circumstances. [CMS] *suggests* that [states] consider the examples listed above in developing [their] hardship waiver rules, *but does not require* [states] to incorporate these examples once [states] have considered whether they are appropriate for determining the existence of an undue hardship.<sup>40</sup>

SMM § 3810 does not define the exemption for a homestead of modest value but leaves its determination to “the methodology the State uses.”<sup>41</sup> The SMM guidance suggests that a home of modest value may be defined as one whose value is 50% or less of the average price of homes in the county where the home is located.

In defining a homestead of modest value, the methodology the State uses to set a threshold level for the market value of a “homestead of modest value” *cannot be set so high as to negate the intent of the estate recovery program*. For purposes

35 *Id.* at 91.

36 *Id.* The nine states are Alaska, Arizona, Georgia, Iowa, Maryland, Missouri, New York, Oregon, and Wisconsin.

37 *Id.* at 74.

38 The Secretary of Health and Human Services is responsible for administering the Medicaid program. At the time of the Health and Human Services secretary’s ruling, the agency administering Medicaid was the Health Care Financing Administration (HCFA), which was established in 1977, and was renamed the Centers for Medicare & Medicaid Services (CMS) in 2001.

39 42 U.S.C. § 1396p(b)(3)(A) (emphasis added).

40 U.S. Dept. of Health & Human Servs., Ctrs. for Medicare & Medicaid Servs., *State Medicaid Manual* (SMM) § 3810I(1) (emphasis added).

41 *Id.*

of this provision, a homestead of “modest value” can be defined as fifty percent (50%) or less of the average price of homes in the county where the homestead is located, as of the date of the beneficiary’s death. Describe [the state’s] methodology for determining a home of modest value in [the] State plan.<sup>42</sup>

Only eight states provide for such an exemption. If the homestead is the only significant asset in a Medicaid recipient’s estate, why is it that all states do not provide an exemption for a homestead of modest value? It is evident from the scant number of estate recoveries exempted that the states that do provide an exemption for a homestead of modest value have ignored the CMS guidance. It is also evident that these states set a home value so low as to negate the statutory intent of undue hardship.

The Fourth Circuit Court of Appeals reviewed CMS’ implementation of undue hardship in *West Virginia v. Thompson*.<sup>43</sup> The court observed, “The Secretary [of Health and Human Services] has the responsibility of determining whether proposed state plans and plan amendments meet federal Medicaid requirements.”<sup>44</sup> The Health and Human Services secretary has flexibility in construction of undue hardship with the limit that its implementation represents “a reasonable accommodation of conflicting policies that were committed to the [state] agency’s care by statute. *Chevron*, 467 U.S. at 845, 104 S. Ct. 2778.”<sup>45</sup>

The *Thompson* court approved the SMM provision, stating, “In defining a homestead of modest value, the methodology the State uses to set a threshold level for the market value of a ‘homestead

of modest value’ cannot be set so high as to negate the intent of the estate recovery program.”<sup>46</sup> By the same logic, the market value of a homestead of modest value cannot be set so low as to negate the intent of allowing for undue hardship.

Given the fact that the states grant so few estate recovery exemptions due to undue hardship, it is reasonable to conclude that the Health and Human Services interpretation of MER has negated the statutory intent to allow any exemption from estate recovery.

## V. Negative Impact of Medicaid Estate Recovery

### A. MER Adversely Affects Poor and Disabled Communities in Conflict With Policies Intended to Improve Those Same Communities

Advocacy groups for older adults, persons with disabilities, and the poor quickly supported MACPAC’s recommendations. In April 2021, NAELA and four other advocacy groups published an issue brief detailing MER’s adverse effects:

- It places an undue burden on poor families;
- Estate recovery keeps families in poverty;
- It exacerbates racial wealth gaps;
- The financial benefit to states is minimal.<sup>47</sup>

46 *Id.* at 208. The quotation is from CMS guidance provided in the *State Medicaid Manual*. The court approved CMS’ interpretation and implementation of undue hardship and agreed with the agency that if the state defines the value of a home of modest value at \$50,000 or less, the result is that any such home in the state could meet the modest value standard without a finding of undue hardship, thus negating the statutory intent. *Id.* at 214.

47 Just. in Aging, W. Ctr. on L. & Poverty, Cal. Advoc. for Nursing Home Reform, NAELA, and Natl. Health L. Program, *Issue*

42 *Id.* (emphasis added).

43 475 F.3d 204, 208 (4th Cir. 2007).

44 *Id.*

45 *Id.* at 214.

The issue brief raises the unfairness resulting from the recovery of the capitated share of the cost of a managed care program instead of the actual cost of caring for the Medicaid recipient. The issue brief further expands on the burden of MER on the poor, which leads to community deterioration through home disrepair, abandonment, and homelessness:

[A] Medicaid recipient at death generally can own only one thing of any significant value: their home, which is considered an exempt asset for determining Medicaid eligibility. That home ownership is usually the product of decades of monthly mortgage payments, often at great sacrifice. ...

Especially with homes of modest value, as noted by the Urban Institute (and many others), home ownership is an important wealth-building source and a foundation for economic stability. ...

These financial burdens can affect not just a family, but the neighborhood in which they live. In economically oppressed neighborhoods, the burden of estate claims can contribute to disrepair, abandonment, or homelessness, with multiplying negative consequences.<sup>48</sup>

Neighborhood deterioration is foreseeable if families know they will lose their homes to estate recovery. Such families have no incentive to maintain, repair, insure, or pay taxes on their homes.

The issue brief highlights MER's impact on minority groups. MER imposes

burdens on individuals who are least able to shoulder them, and by disrupting their ability to keep a home for their families, MER cuts off opportunities, the effects of which may be felt for generations. The issue brief notes the billions of dollars federal programs spend to address the affordable housing crisis, concluding "It makes little sense to add to the housing affordability crisis by taking stable and affordable housing away from low-income families due to a family member's health care needs."<sup>49</sup>

In conclusion, the authors of the issue brief recommend complete elimination of MER.

It is curious that after the release of MACPAC's findings on the damage MER does to communities — and the outpouring of support for MACPAC's recommendations from the affected communities — that the Stop Unfair Medicaid Recoveries Act had only 15 co-sponsors. After introduction, no action was taken by the Democrat-controlled House of Representatives. Although it may be true that the House may have considered MER insignificant compared with the other issues it had to face, it also may be true that the full scope of the harm that MER causes our country is not appreciated. MER adversely affects more than the poor.

MER harms all of us and is a luxury we can no longer afford.

### *B. MER Adversely Affects Working Family Communities*

It is beyond question that MER falls hardest on disadvantaged communities, be they minority, disabled, or poor. Compared

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*Brief: Medicaid Estate Claims: Perpetuating Poverty & Inequality for a Minimal Return* (Apr. 2021), <https://justiceinaging.org/wp-content/uploads/2021/04/Medicaid-Estate-Claims.pdf> (accessed Aug. 5, 2023 [hereinafter *Issue Brief*]).

48 *Id.* at 4.

49 *Id.*

with other communities, these communities have a much higher percentage of the population that suffers from poor health, exacerbated by a lifetime of inadequate health care. The issue brief, published by advocacy organizations with experience working in these communities, observed that estate recovery compounds these historic harms in poor and minority communities.<sup>50</sup> However, not all recipients of Medicaid long-term care services and supports are from disadvantaged communities. Many are from middle-class working family communities. This rarely acknowledged observation is supported by Medicaid eligibility rules and MER data in the MACPAC report.

An applicant for Medicaid long-term care services and supports may be either categorically eligible or “medically needy.”<sup>51</sup> Even though the income of applicants in the latter group exceeds the maximum for categorical programs, these applicants are otherwise resource eligible.<sup>52</sup> Given the horrific cost of nursing home care, \$94,900 per year, and the higher cost of full in-home care, the middle-class working population can qualify as medically needy and resort to Medicaid for assistance in paying for long-term care.

The medically needy eligibility rules applicable to aged and disabled groups

allow an applicant to have a significant estate. In 2024, a married applicant and spouse could have the following asset resources:

- A home with a maximum value of \$713,000;
- Furnishings and personal property;
- \$2,000 in countable assets for the applicant and up to \$154,140 in liquid assets for the at-home spouse;
- A motor vehicle; and
- Prepaid funeral and burial arrangements.<sup>53</sup>

The net worth of the vast majority of Medicaid long-term care recipients is substantially less than these maximums. However, the MACPAC Report found that the fourth quartile of recipient estates subject to MER is made up of persons of some significant net worth.

In the MACPAC report, estate recoveries are broken down by the average amount collected from the estates of participants in the Health and Retirement Study. The bottom quartile of the group had negative net wealth; the second quartile’s average net wealth was \$304; the third quartile had an average net wealth of \$17,709, including \$12,880 in home equity; and the highest quartile had \$173,436 in net wealth, including home equity of \$98,694.<sup>54</sup> Note that this study

50 *Id.*; see *supra* n. 24 and accompanying text.

51 The medically needy are persons whose income and resources fall within Medicaid program limits after their incurred expenses for medical or remedial care are deducted. 42 C.F.R. § 436.3 (2023).

52 Medicaid is a means-tested program, with maximum allowances for income and assets. For an overview of program eligibility, see Congressional Research Service, *Medicaid Financial Eligibility for Long-Term Services and Supports* (Mar. 7, 2017), <https://crsreports.congress.gov/product/pdf/R/R43506>.

53 For spousal impoverishment allowances, see U.S. Dept. of Health & Human Servs., Ctrs. for Medicare & Medicaid Servs., *2024 SSI, Spousal Impoverishment, and Medicare Savings Program Resource Standards*, <https://www.medicaid.gov/sites/default/files/2023-11/cib11142024.pdf> (accessed Jan. 1, 2014). For resource exclusions in general, see 20 CFR §416.1210.

54 *MACPAC Report, supra* n. 7, at 81. The amounts reported were the result of an analysis by LeadingAge LTSS Center at UMass Boston, which was hired by MACPAC to review the Health and Retirement Study, a nationally

used data from 2012-2016. Average home prices have increased significantly since then. In 2015, the mean sale price of a home was \$289,200. In 2023, it had risen to \$416,100 — a 44% increase.<sup>55</sup> It can be assumed, then, that MER from homes of recipients in the highest quartile have risen accordingly. Note that the values reported are those of the recipient's decedent's estate, which necessarily means after they spent significant sums on long-term care both before and during receipt of Medicaid benefits. What was their net worth before application for Medicaid?

It is assumed that long-term care Medicaid applicants are persons of average net worth. How much is an average American retiree worth? A study published by Vanguard Group, Inc., reports a median savings of retirees 65 and older of \$87,700 and an average of \$280,000.<sup>56</sup> Another estimate, based on data from the 2019 Survey of Consumer Finances, published by the Board of Governors of the Federal Reserve System, reports a median value of retirement holdings of \$83,000, with an average of \$357,920, for retirees 75 and older.<sup>57</sup> The average value of a home in 2023 in the United States was \$349,329.<sup>58</sup>

Assuming that Medicaid recipients are “average,” then their home and savings alone will be worth some \$434,329. If we add their furnishings, personal property, car, and funeral/burial arrangements, we may conclude the average recipient's net worth is over \$500,000. It is this medically needy group of “middle-class” taxpayers that fall into the upper quartile of the amount paid to MER. In dollars and cents, MER falls most heavily on individuals in the highest quartile and imposes a demoralizing set of hardships on them as well.<sup>59</sup>

Arguments in favor of welfare pay-back have been based on the Protestant or middle-class ethic that people who apply for Medicaid long-term care benefits are poor because of their own failings. A common element of the Gingrich, Moses, and Pakula arguments in favor of mandatory estate recovery is that if people do not pay their own way, taxpayers must pay the bill. What these arguments do not recognize is that the Medicaid long-term care benefit is used by long-time taxpayers. In 2018, 63% of the long-term care population in nursing homes was over age 75.<sup>60</sup> This includes those who have been taxpayers for

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representative longitudinal survey of adults age 50 and older published by the University of Michigan Institute for Social Research. The data used in the survey was compiled from the years 2012, 2014, and 2016.

55 *Infra* n. 58.

56 Vanguard Group, Inc., *How America Saves 2022* 47 (2022).

57 Alana Benson, *What Is the Average Retirement Savings by Age?* (updated June 23, 2023), <https://www.nerdwallet.com/article/investing/the-average-retirement-savings-by-age-and-why-you-need-more> (accessed July 29, 2023).

58 Jack Caporal, *Average House Price by State in 2023* (July 31, 2023), <https://www.fool.com/>

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[the-ascent/research/average-house-price-state/](https://www.fool.com/the-ascent/research/average-house-price-state/) (accessed August 30, 2023). The average value was derived from the Zillow Home Value Index.

59 *See e.g.* Leys, *supra* n. 2. Mr. Ruhl would fall in the top quartile. The loss of the family home was devastating to him and his daughter.

60 M. Sengupta et al., *Post-Acute and Long-Term Care Providers and Services Users in the United States, 2017–2018*, Natl. Ctr. for Health Statistics, Vital and Health Statistics, Series 3, Number 47 (May 2022), [https://www.cdc.gov/nchs/data/series/sr\\_03/sr03-047.pdf](https://www.cdc.gov/nchs/data/series/sr_03/sr03-047.pdf). The study found that 27.2% of the nursing home long-term care population was age 75 to 84 years and 36.4% was age 85 and over.

decades. A person age 85 or older has paid taxes for 65 to 70 years. More than a few of these individuals are military veterans. The decades-long taxpayer has a right to ask, “Haven’t I paid enough in taxes to get something back?” No other government service (e.g., unemployment benefits, Medicare, national defense, highways, education, police, fire) demands payback.

## VI. MER Conflicts With Policies Supporting Medicare and the Federal Estate Tax Exemptions

If taxpayers have to pay back the government for programs they funded with their taxes, what is the rationale for Medicaid payback?

### *A. Medicare Pays for Very Expensive Treatment and Is Available to Those Who Did Not Pay Into the Program Through Payroll Taxes*

Medicare brings this paradox into sharp focus. If a Medicaid long-term care recipient over the age of 65 receives Medicare-covered inpatient hospital services, there will be no payback for those services since Medicare does not require payback. Consider the cost of cardiac surgery. KFF, formerly the Kaiser Family Foundation, estimated that the average inpatient cost for cardiac surgery, not including posthospital care, ranged from \$75,688 to \$117,000 in 2018.<sup>61</sup> This amount can be more than Medicaid would pay for a year of nursing home care. Neither Medicare nor Medicaid will demand payback from the recipient.

KFF also analyzed Medicaid spending for nursing home care. In 2015, when

the average retail yearly cost of nursing home care was \$85,000, Medicaid paid wholesale,<sup>62</sup> the average being \$65,868.<sup>63</sup> This average does not take into consideration that recipients must pay their monthly income to the nursing home each month. For example, if that were \$2,000 per month, Medicaid would pay \$24,000 less to the nursing home each year. That annual Medicaid payment would be \$33,820 to \$75,132, which is less than the Medicare payment for cardiac surgery.

It is often observed that Medicare is social insurance paid for by workers’ FICA payroll taxes. What is rarely observed is that Medicare eligibility does not require any contribution through payroll taxes. A 65-year-old person without work history can purchase Medicare Part A.<sup>64</sup> The monthly cost in 2024 is \$505 per month.<sup>65</sup>

### *B. MER Is an Estate Tax That Conflicts With Federal Policies Supporting Exemptions From Estate Tax*

The authors of the MACPAC report observe, “[E]state recovery is a regressive form of program financing, particularly

62 The terms *retail* and *wholesale* are not used in the KFF report but reflect the fact that Medicaid pays less by virtue of its contract with nursing homes.

63 Nationwide, 832,460 nursing home residents received Medicaid in 2015. Nursing home care spending was \$54,832,318,000. KFF, *Medicaid’s Role in Nursing Home Care* (June 20, 2017), <https://www.kff.org/infographic/medicaids-role-in-nursing-home-care> (accessed July 29, 2023).

64 42 U.S.C. § 1395i 2; 42 C.F.R. at § 406.20.

65 Medicare Interactive, *Eligibility for Premium-Free Part A If You Are Over 65 and Medicare-Eligible*, <https://www.medicareinteractive.org/get-answers/medicare-health-coverage-options/original-medicare-costs/eligibility-for-premium-free-part-a-if-you-are-over-65-and-medicare-eligible> (accessed Jan. 1, 2024).

61 Daniel McDermott et al., *How Costly Are Common Health Services in the United States?*, Peterson-KFF Health System Tracker (November 4, 2020), <https://www.healthsystemtracker.org/chart-collection/how-costly-are-common-health-services-in-the-united-states/>.

given federal tax policies that provide substantial protection for those with more assets.<sup>66</sup> Given that MER is collected upon the death of a Medicaid recipient, it is a tax on the recipient's estate, which is why it is called Medicaid *estate recovery*. Compared with the federal estate tax applicable to millionaires, the disparity in exemption is shocking. To put it bluntly, the federal estate tax exemption for those who die in 2024 is \$13,610,000;<sup>67</sup> the Medicaid exemption is \$0.<sup>68</sup>

In 2003, Congress agreed to raise the exemption from federal estate tax from \$1 million per person to \$5 million by 2010.<sup>69</sup> In 2023, it stood at \$12.92 million per person or \$25.84 million per

married couple.<sup>70</sup> The rationale offered for the change was that the federal estate tax generates costs to the economy that far exceed any potential benefits it might arguably produce. The same is true of MER.

The rationale of Congress to raise the estate tax exemption was expressed in Congress's Joint Economic Committee paper *The Economics of the Estate Tax: An Update*,<sup>71</sup> which asserted that the estate tax:

- Discourages savings and investment;
- Penalizes work, savings, and thrift;
- Inhibits economic efficiency;
- Stifles innovation;
- Discourages risk takers willing to exploit new technologies; and
- Creates obstacles to passing on family capital to the next generation.<sup>72</sup>

The paper noted that inheritances play an important role in "alleviating the liquidity constraints that impede the formation and success of small businesses." These impacts were "especially significant for minority groups."<sup>73</sup>

### *C. Application of the Policies Supporting Federal Estate Tax Exemptions Demonstrates the Harm MER Does to Our Country*

A question arises that has not been subject to study. If the federal estate tax

66 *MACPAC Report*, *supra* n. 7, at 95.

67 Internal Revenue Serv., *IRS Provides Tax Inflation Adjustments for Tax Year 2024*, <https://www.irs.gov/newsroom/irs-provides-tax-inflation-adjustments-for-tax-year-2024> (accessed Jan. 1, 2024).

68 Recall the Populist argument relayed by Baldus. The law guarantees the rich man his castle, and the poor man's home is at risk. Baldus, *supra* n. 9, at 221. In advocating for MER repeal, the author of this article notes that both major parties wish to attract Populist voters. See interview by Amna Nawaz, PBS NewsHour, with Matthew Continetti, author of *The Right: The Hundred-Year War for American Conservatism* (Why the GOP Has a History of Attracting Populist Views) (May 17, 2022), <https://www.pbs.org/newshour/show/why-the-gop-has-a-history-of-attracting-populist-views> (accessed Aug. 11, 2023); Austin Ahlman, *Democrats Rediscover Populism — and Not a Moment Too Soon*, Am. Prospect (Nov. 28, 2022), <https://prospect.org/politics/democrats-rediscover-populism-not-a-moment-too-soon> (accessed Aug. 11, 2023).

69 Mark Luscombe, J.D., LL.M., CPA, *Historical Look at Estate and Gift Tax Rates*, Wolters Kluwer (Mar. 9, 2022), <https://www.wolterskluwer.com/en/expert-insights/whole-ball-of-tax-historical-estate-and-gift-tax-rates> (accessed Aug. 11, 2023).

70 Katherine L. Keating, *Increased Gift and Estate Tax Exemption Amounts for 2023*, Foley & Lardner LLP (Feb. 13, 2023), <https://www.foley.com/en/insights/publications/2023/02/increased-gift-estate-tax-exemption-amounts-2023> (accessed Aug. 11, 2023).

71 U.S. Cong. Jt. Econ. Comm., *The Economics of the Estate Tax: An Update* (June 2003), [https://www.jec.senate.gov/public/\\_cache/files/0b5f298b-e2a6-4836-8c6a-2a7bffe035f4/the-economics-of-the-estate-tax--an-update-06-18-03.pdf](https://www.jec.senate.gov/public/_cache/files/0b5f298b-e2a6-4836-8c6a-2a7bffe035f4/the-economics-of-the-estate-tax--an-update-06-18-03.pdf) (accessed July 2023).

72 *Id.*

73 *Id.* at 7–9.

impedes the formation and success of small businesses, and if these impacts are especially significant for minority groups, then does MER not do the same? Does MER not have the same negative economic effect on communities as does the federal estate tax? There is no logical reason why it would not. Does MER not negatively impact communities as raised above?<sup>74</sup>

MER harms communities by removing any incentive to preserve and protect property that will be lost to MER. MER takes a person's home, the "foundation for economic stability."<sup>75</sup> And it is this stability that can support the startup and success of small businesses in the community.<sup>76</sup>

Inheritance can provide working families with the capital they need to improve their workforce skills through career education. If inheriting family capital is important to the consideration of the federal estate tax, why is it not important in the reevaluation of MER? Moreover, is there any reason to think that MER does not disadvantage risk-takers willing to learn and exploit new technologies? This point relates to the national priority that workers must learn new technologies and develop

their skills — unfortunately at their own expense.<sup>77</sup>

There is no question that supporting postsecondary education benefits communities. "As many as 11 million adults from low income families could benefit from post-secondary education and training," with the result of "adding more than \$120 billion to the national wealth."<sup>78</sup> But

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77 It is understood that the American workforce must learn new technologies if the nation is to remain competitive in the 21st century. In 2018, President Trump issued Executive Order 13845 — Establishing the President's National Council for the American Worker, stating: "[T]he economy is changing at a rapid pace because of the technology, automation, and artificial intelligence that is shaping many industries, from manufacturing to healthcare to retail. For too long, our country's education and job training programs have prepared Americans for the economy of the past. The rapidly changing digital economy requires the United States to view education and training as encompassing more than a single period of time in a traditional classroom. We need to prepare Americans for the 21st century economy and the emerging industries of the future." (July 19, 2018), <https://www.presidency.ucsb.edu/documents/executive-order-13845-establishing-the-presidents-national-council-for-the-american-worker> (accessed Aug. 5, 2023). The Biden administration has promoted community college opportunities for self-initiated career education. Secretary of Commerce Gina Raimondo said in support, "Career connected education programs are essential to the success of the American economy ... ." U.S. Dept. of Educ., *U.S. Department of Education Launches New Initiative to Support Career-Connected Learning and Increase Job Pathways for Young Americans* (Nov. 19, 2022), <https://www.ed.gov/news/press-releases/us-department-education-launches-new-initiative-support-career-connected-learning-and-increase-job-pathways-young-americans> (accessed Aug. 5, 2023).

78 Anthony P. Carnevale, *Postsecondary Education and Training As We Know It Is Not Enough* 9–10, Georgetown U. & Urban Inst. (Apr. 2010),

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74 See points raised in *Issue Brief, supra* n. 47.

75 *Issue Brief, supra* n. 47, at 4.

76 Numerous articles have been published on the importance of small businesses to local communities. See e.g. Martin Rowinski, *How Small Businesses Drive the American Economy*, *Forbes* (Mar 25, 2022), <https://www.forbes.com/sites/forbesbusinesscouncil/2022/03/25/how-small-businesses-drive-the-american-economy/?sh=235551694169> (accessed Aug. 5, 2023); Austin Nijhuis & Kim Zeuli, *The Critical Role Small Businesses Play in Inner City Revitalization*, ICIC, <https://icic.org/blog/critical-role-small-businesses-play-inner-city-revitalization> (accessed Aug. 5, 2023).

where will these adults get the money to pay for this education? The Department of Education under the Biden administration established a website designed to help workers find that education — which must be funded at their own expense.<sup>79</sup>

MER does conflict with and harm the nation's economic priorities. The economic impact of MER on employment and on the formation and success of small businesses should be studied further.<sup>80</sup>

## VII. Conclusion

MER is a failed program based on invalid 19th century assumptions that con-

flict with many urgent national priorities. It must be terminated as part of adapting all U.S. policies to the realities of the 21st century. When Medicaid was enacted in 1965, the United States was the preeminent world superpower with economic supremacy. Now, our nation's preeminence is strongly challenged, and if we do not adapt, we will fall behind.

It is time to end the illogical propositions that we improve poor communities by removing their wealth, and that millionaires need inheritance and relief from estate tax to sustain our economy but working families do not. Our nation's workforce must invest in career education at their own expense so that we retain our global competitiveness. And finally, our country cannot afford to lose the input of trained and valuable employees at the peak of their careers because they need to become caregivers for parents.

We must remember the admonition that All People Are Created Equal and recognize that there are brilliant and talented citizens in poor and working family communities who cannot make their best contributions to society because MER deprives them of opportunities to make these contributions.

Older adults, persons with disabilities, and their advocates, which include NAELA attorneys and our clients, should rally in support of the Stop Unfair Medicaid Recoveries Act and actively advocate for the termination of MER.

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<https://www.urban.org/sites/default/files/publication/28536/412071-Postsecondary-Education-and-Training-As-We-Know-It-Is-Not-Enough.PDF> (accessed Aug. 5, 2023).

79 Adults can begin furthering their career education by using the following website to help them find schools and programs and secure the necessary financing to attend them. U.S. Dept. of Educ. College Scorecard, *Find the Right Fit*, <https://collegescorecard.ed.gov> (accessed Aug. 5, 2023).

80 The author does not deny the challenges ahead caused by the aging of baby boomers, Generation X, and millennials and the declining birth rate. The "excess cost growth in health care and past tax and spending policies that contributed to today's outsized deficits both contribute importantly to the difficult fiscal adjustments that will be necessary in years ahead." Efficiencies in all aspects of the U.S. health care system must be improved, and tax policy must be reexamined. But whatever changes are needed, MER has been proved to be harmful. Natl. Research Council, *Aging and the Macroeconomy: Long-Term Implications of an Older Population* (2012), <https://www.ncbi.nlm.nih.gov/books/NBK148823> (accessed Aug. 5, 2023).