

# Potential Reforms to Medicaid Estate Recovery



Federal law requires states to recover certain Medicaid costs after an enrollee dies. For individuals 55 or older — or those who are permanently institutionalized at any age — Medicaid must seek repayment for nursing home care, home and community-based services, and related hospital and prescription drug services. States may even expand recovery to all other Medicaid services, except Medicare cost-sharing paid on behalf of Medicare Savings Program beneficiaries. Because a person's home is excluded from consideration when they apply for Medicaid — and they can typically have no more than \$2,000 in other assets — their home is often the only significant financial asset that can be used to satisfy a claim when Medicaid seeks to recoup the cost of care.

As a result, Medicaid Estate Recovery disproportionately affects individuals with limited means. These individuals often do not have the financial ability to work with elder law attorneys who can structure their estates to ensure they can pass what is often their only remaining asset — the family home — to loved ones when they die.

**Given the harm caused to many families by Medicaid Estate Recovery, policymakers are urged to consider alternatives to the current law. Several alternatives are presented below for consideration.**

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**Prohibiting Medicaid Estate Recovery:** Repealing the current policy and prohibiting states from making claims against an individual's estate to recover Medicaid costs would eliminate the dilemma people face between obtaining needed care and putting their family's future security at risk. This option seeks to level the playing field, ensuring that people of limited means and individuals who traditionally have had difficulty building generational wealth, such as people of color, have the same opportunities as other older Americans.

The Stop Unfair Medicaid Recoveries Act, which would fully repeal Medicaid Estate Recovery, is expected to be introduced by Representative Jan Schakowsky (D-Ill.) in the 119th Congress.

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**Making Medicaid Estate Recovery Optional for States:** Before the current Medicaid Estate Recovery requirement was signed into law as part of the Omnibus Budget Reconciliation Act of 1993, just 22 states — less than half — had Medicaid Estate Recovery programs, according to a 2021 [report](#) by the Medicaid and CHIP Payment and Access Commission (MACPAC). West Virginia, for example, unsuccessfully filed a lawsuit against the federal government to have the federal recovery requirement declared unconstitutional, and Michigan started the program only when faced with losing its Medicaid funding.

Making Medicaid Estate Recovery optional would allow states to determine if Medicaid Estate Recovery best fits the needs of their residents. Should states still want to participate, they could do so under this policy.

Making Medicaid Estate Recovery optional for states was one of the MACPAC [recommendations](#) to Congress in its 2021 report.

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**Instituting a Federal Standard for Cost-Effectiveness Thresholds:** Although federal law requires states to recover assets from the estates of Medicaid long-term services and supports (LTSS) beneficiaries, states may choose to go beyond the federal minimum, meaning that individuals could experience more aggressive policies based simply on where they live. One way to ensure individuals across states are treated more fairly is setting a cost-effectiveness threshold to determine whether the value of the estate is worth the administrative costs of recovering from it.

In some cases, the cost of going after an estate is more than the amount the state would receive. In fact, Medicaid Estate Recovery offset only [between](#) 0.1% and 1% of states' Medicaid costs in fiscal year (FY) 2019,

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the most recent data available, making it a poor return on investment. Just [five states](#) accounted for almost 40% of all recoveries in FY 2019. Additionally, the cost to recover the home may be even greater if the family has not maintained the property or paid property taxes because they are concerned about losing the home.

Requiring states to establish a cost-effectiveness threshold within federal parameters would ensure a more uniform approach across the country. It is important that these standards are designed to protect the most vulnerable people whose homes do not have a high financial value but provide a place for the beneficiary's family to live and build long-term security. Possible federal approaches include ensuring that the state recovers more than the cost it takes to collect the money, or that the amount collected is at least 50% of the claim.

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**Requiring States to Report on the Source of Recovered Funds:** Little data exists about Medicaid Estate Recovery overall, and information is particularly scarce concerning the source of funds recovered by the program. For example, states do not collect information about how much of the funds they recover come from first-party special needs trusts recognized by the Medicaid statute (42 U.S.C. § 1396p(d)(4)(A) or (C)), which protect the assets of an individual with a disability while still allowing them to qualify for Medicaid LTSS. When they die, however, the state is required to be reimbursed for the cost of their care through the trust's payback requirement. As a result, the state recoups money for benefits they received from assets other than their home. Requiring states to make information publicly available about the various sources of assets recovered would demonstrate whether states are putting families through extreme stress over loss of their home for an even lower return on investment than the total recovery number suggests.

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**Providing Legal Aid for Older Americans:** Title III-B of the Older Americans Act (OAA) [established](#) a legal services network to assist older Americans with, among other areas, their health care, housing, long-term care, and financial security. OAA is specifically targeted to help “older individuals with the greatest economic or social needs.”

Including Medicaid Estate Recovery in the categories of legal assistance covered under the act would allow beneficiaries with limited means to receive free legal services on how to protect their homes while also receiving Medicaid LTSS. As a result, it would help reduce disparities between Medicaid beneficiaries over the age of 60 and other older Americans who can more easily access knowledgeable legal counsel to protect their assets.

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**Allowing Post-Mortem Exempt Home Transfers:** A Medicaid beneficiary can transfer their home to a family member or certain statutory special needs trusts for their benefit during their lifetime and avoid a transfer penalty, while keeping their benefits, as long as they meet certain requirements. For example, the home can be transferred to:

- a spouse, a child under 21, or a disabled child of any age.
- a child who has provided care for the beneficiary for at least two years when the beneficiary would have been medically eligible to enter a nursing home or receive home and community-based services, delaying their entry into institutional care.
- a sibling who has an equity interest in the home.
- a third-party trust for a family member under age 65 who has a disability, such as a grandchild.

While some states also allow exempt transfers after death (post-mortem), others do not. Family members of beneficiaries who have died in states that do not allow transfers after death must show that they qualify for an undue hardship exemption. The term “undue hardship” is not defined in federal law but generally refers to a situation where an obligation imposes a significant difficulty or expense on family members.

This proposal would change the statute to allow family members who would have met the requirements for exempt transfers – such as those listed above – to automatically qualify for an undue hardship exemption if paperwork was not filed before the beneficiary's death. It would also level the playing field between individuals who can afford estate planning while alive and those who learn about exempt transfers only once the beneficiary has died.

**Giving States the Option to Recover Only for Cost of Services Actually Received:** When states that use managed care arrangements to provide LTSS attempt to recover the cost of monthly premiums for managed care — known as capitated payments — they are going after a set amount paid monthly to the managed care plan, regardless of the actual cost of services the individual used. For individuals with less-intensive health care needs, this means their families may wind up paying more through Medicaid Estate Recovery than the cost of the care their loved one received. If states had the option to recover funds only for expenses actually incurred, they would only seek to recover what they actually spent for the care of the individual, putting a lesser financial burden on some families. Nationally, managed care entities collectively cover a large proportion of individuals who have received LTSS; they are capable of reporting this data to the state to ensure recovery amounts are accurate.

Amending the statute to allow states to recover based on the actual cost of care — when the cost of services used by a beneficiary was less than the capitation payment made to a managed care plan — was one of MACPAC's [recommendations](#) to Congress in its 2021 report.

**Excluding Certain Homes:** The ability of state Medicaid agencies to file a Medicaid Estate Recovery claim against a home that serves as the sole income-producing asset (think of a family farm), one of modest value, or one under a certain financial threshold can pose especially significant harm to a beneficiary's family members.

- In the case of a sole income-producing asset, the children of the individual on Medicaid may lose not only the family home but also their livelihood.
- Homes are considered to be of modest value if they are worth about half the value of the average family home in the county. For these residents, their home may not be worth enough to justify the state's administrative costs in pursuing it. At the same time, pursuing recovery may rob their children of the chance to build generational wealth and possibly achieve the American Dream of homeownership.
- Homes that are valued under a certain threshold could likewise be excluded to alleviate any unfairness in going after the estates of those who can least afford it.

By seeking to file claims against the estates of individuals with limited means or those running a family or small business, the current policy perpetuates poverty and penalizes those who may already be suffering financially.

Excluding assets that are the sole incoming-producing asset for survivors, homes of modest value, and estates valued below a certain threshold was one of MACPAC's [recommendations](#) to Congress in its 2021 report.

**Excluding Individuals with Limited Means:** Many of the people hit hardest by Medicaid Estate Recovery are individuals with limited means. To qualify for Medicaid LTSS, an individual can have a maximum of \$3,000 in gross monthly income in 2026 in states that cap income; in “medically needy” states, their income must be less than the average cost of care. They typically must also have \$2,000 or less in financial resources, excluding assets such as a home, one car, and personal effects. As they try to make ends meet, these individuals and their family members may not have the financial resources to hire an elder law attorney who can help them understand the complex Medicaid system and steps they can take now to plan for their future.

Excluding Medicaid beneficiaries earning less than 138% of the federal poverty level from Medicaid Estate Recovery would ease their financial burden and give them an opportunity to build generational wealth by removing the threat of a claim on their home.

Legislation to modify certain asset recovery rules under Medicaid Estate Recovery ([H.R. 8094](#)) was introduced in the 118th Congress by Representative Tom Kean Jr. (R-NJ).

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