Yes, the government can take your home after a Medicaid recipient dies. Here's how to protect yourself.

If you don't defend against Medicaid estate recovery, states are required to go looking for reimbursement, and real estate is often the only asset left

By Beth Pinsker FOLLOW

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Jackie Keller and the house she battled the government to keep. She took care of her mother (shown with her at right) in the home.
Photo: MarketWatch photo illustration/Photos courtesy Jackie Keller

Key Points

About This Summary

- Under the federal Medicaid estate-recovery policy, states are required to seek reimbursement for long-term care costs from the estates of deceased enrollees.
- A 2021 report shows aggregated annual collections of about $700 million, while the total annual Medicaid spending is close to $1 trillion.

The estate that Jackie Keller fought the government to keep is not a grand mansion with manicured lawns, or anything that could be used as a set for HBO's show "The Gilded Age." Rather, it's a modest three-bedroom house on the edge of the Echo Mountain forest in Oregon, where Keller took care of her mother and disabled older brother until the end of their lives. When she took over the mortgage after her mother died, she got a stern letter from the state of Oregon that said she owed just over $70,000 to reimburse for care her mother received through the Medicaid program.

The cost was insurmountable to Keller. She was in her 60s, living on Social Security, and the house was in an area that had been devastated by a major fire a few years before. If she had to sell it to pay off the debt, she would have walked away with very little to start a new life.

"The bottom line is they do not tell you what they are up to when they offer you all these services," Keller told MarketWatch. "And then they take your home."

Or at least they try to. Keller decided to fight, and she ended up getting the claim against her family property dropped.

Not everyone succeeds.

Medicaid estate recovery has been a mandated federal policy since 1993, set up primarily to recoup rising costs. Workers pay taxes into the system throughout their careers, but if a person over age 55 receives Medicaid benefits for long-term medical care, states are required to seek reimbursement after antipoverty programs like the Supplemental Nutrition Assistance Program, or SNAP, after a person's death.

The argument in favor of the estate-recovery program is something like "don't ask your neighbor to pay for your care," according to Dennison Keller, an elder-law attorney in Ohio. "I might be in the minority on this, but I think if the estate-recovery system helps the state maintain the programs, sometimes it's the price you have to pay," he said.

The chief argument against the asset-recovery program is that the money recouped is just a drop in the bucket compared with the Medicaid budget, but it can mean everything to individual families that have few assets left.

"It was created to drive people to private long-term-care insurance, but it continues to drive these gaps [in homeownership]," said Mandi Spishak-Thomas, an assistant professor at the Rutgers Institute for Health, Health Care Policy and Aging Research. Spishak-Thomas became a leading researcher on the issue after her grandmother died and the state where she lived filed a claim against the estate, forcing her uncle to sell the house to pay the bill. "It feels like we have enough data to say this policy isn't doing anything but harming low-income Black families, and white families too," she said.

Recent data on the enforcement amounts are not publicly available, but a 2021 report shows aggregated collections of about $700 million a year, while Medicaid's annual total spending is close to $1 trillion. A few states stand out as the major enforcers, with Massachusetts, New York, Pennsylvania, Ohio and Wisconsin accounting for 40% of all collections.

The prospect that the government can "take your house" if you are on Medicaid scares

Skip to main content applying for benefits in the first place. It sends a few scurrying about it," said elder-law attorney Mark Munson, who helps clients manage Medicaid in a way that diminishes the chances the government will ask for sums that will force their families to sell property in order to pay. "I'm in this little community of Wausau, Wisconsin, and it's $15,000 [a month] to be in a nursing home here. For somebody who has a net worth of $500,000, that's a very frightening number. They will pay for legal services to protect assets so they can qualify for Medicaid and make sure that the assets also avoid estate recovery," he said.

For those without protection, "You just have to pay the bill," said Cynthia Letsch, an elder-law attorney in Iowa. "People come to me with the letters, and I say, 'Too bad you didn't come to me sooner.'"

There are exceptions that can be claimed, and this is where the need for families to play defense comes in. The official rules on estate recovery take up just three paragraphs on Medicaid's website. "States may not recover from the estate of a deceased Medicaid enrollee who is survived by a spouse, child under age 21, or blind or disabled child of any age. States are also required to establish procedures for waiving estate recovery when recovery would cause an undue hardship," the website says. The Centers for Medicare & Medicaid Services had no comment.

John Ford, director of the Elder Law Project at the Northeast Justice Center in Massachusetts, pointed out that when somebody goes into a nursing home, they are concerned about medical issues, not legal ones. "Even though it's on the application form, people don't pay attention. They just get stuck," said Ford. "When the loved one dies and the house goes into probate, then they get a rude awakening."

What to do

both of which declined to comment. But most states run their own programs according to the rules set by their legislative bodies. These vary greatly and are constantly changing.

Massachusetts recently softened its statutes so that only federal Medicaid dollars, and not anything involving state funds, would be subject to recovery. Iowa is one of several states that limits recovery to only what is in the recipient's official probate estate at death, which allows for several defensive planning strategies. At the other end of the spectrum, Oregon broadened its recovery program to include assets that are beyond the probate estate, making planning more complicated but still not impossible.

> 'People come to me with the letters, and I say, "Too bad you didn't come to me sooner."'
> — Cynthia Letsch, elder-law attorney

The onus is on the family to prepare. They need to know what probate is (it's the legal process of validating a will or settling an estate without one) and what counts as assets in a person's estate (anything left in the deceased person's name that does not pass through a trust or beneficiary designation). And they have to do it well in advance of any illnesses, because Medicaid has a five-year look-back period for eligibility. That often means finding a qualified estate lawyer and retitling assets, which is beyond the financial literacy and affordability of many people who are on their way to qualify for a program that generally requires income and assets below $2,000 a year.

The first line of defense is knowing what the government is allowed to come after with Medicaid estate recovery, then working on whittling that pile down to nothing. Statistics

ts at estate recovery than completions, so this strategy works

Here's what's at risk:

- Real estate
- Primary car
- Family businesses and farms
- Financial assets
- Valuable belongings (farm equipment, jewelry, art)
- Life insurance

A house is usually the biggest sitting duck for estate-recovery claims. Medicaid lets recipients qualify for care while owning a house, especially if there's a well spouse at home. Once notified of the death of a Medicaid recipient who listed a house as an asset on their application, the state (or the third-party contractor on behalf of the state) will send a letter claiming priority order for payment. If their spouse is still alive, the state will wait until their death and then send a payment letter to the heirs.

Retitling a house usually involves a lawyer, because it has to be recorded properly, and there are liabilities involved if it is not. It's best to do this at least five years before Medicaid comes into the picture. An ill homeowner can file a quitclaim deed to get their name off a jointly owned property, or if they are the sole owner, they can transfer the deed to another person.

An elder-law specialist, however, will most likely recommend a trust called a Medicaid

Skip to main content 'hich offers more protections for the owner, who can, for pooled funds revert to Medicaid, but the Medicaid Asset Protection Trust funds go to the designated heirs.

It can be more difficult to extract clients from family businesses and farms, and for families to split these assets. Letsch, the elder-law attorney in Iowa, said she often hears from families trying to untangle messes with farms because they've been given bad advice. A mom and dad typically give the farm to their kids while they're still living but reserve a life estate, which means the parents get to stay on the farm, and the kids get to have a step up in basis to the fair market value after both parents die.

"But if mom or dad has to go to a nursing home, that life estate has value," Letsch said. "It's really bad to go onto Medicaid with a life estate. We can't sell it. What we end up doing is have the kids give the whole farm back to mom or dad, and we start planning over again."

Holding on to a car is easier, but not without complications. "I always tell people, it's not the million-dollar estate that has people cursing probate. It's the '72 Ford Torino up on blocks in your garage," said Keller. "You can't even scrap a car without a proper title."

Keller has had to negotiate with Medicaid authorities in Ohio on behalf of clients who came to him trying to hold on to a car that they inherited. "We have been able to go to them and say, 'If we give you X, can we keep the car for the child?' They have a job to go to. I don't try to pull fast ones. But if you approach it that way, and let them know what's going on, sometimes they'll say no, but they are always reasonable."

For financial accounts, what matters for Medicaid estate recovery when it comes to nursing-home care is how much is in the ill person's name at what's called the

Skip to main content st day of the month when the person last slept at home in their connect all the dots in the best-case scenario," she said.

Her way of structuring assets is to move everything to the well spouse. She very rarely sees both clients decline in health at once, but she builds in contingencies in case the well spouse should die first, such as creating a special-needs trust through a will for the ill spouse.

The first thing she does is look at the noncountable-asset column. The spouse can pay off the mortgage, so now those funds are not countable. One car is a noncountable asset, so maybe mom trades her old one in for something new. They can prepay for funerals and give gifts, as long as they do so ahead of the look-back period. Then mom spends down everything that was on dad's side of the column that would be countable when Medicaid comes looking to get its money back.

"It's all aboveboard and legal. People say, you can't do that, but, yes, you can," Letsch said.

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One final move is to purchase a Medicaid-compliant single-premium immediate annuity. It has to be actuarially sound, return all the money in equal monthly lifetime payments, and be irrevocable and nontransferable. The state is the beneficiary.

"It's not uncommon to get an annuity that pays out as much as $65,000 per month. I can get $100,000 back in two months," said Letsch. "That really lessens our risk. You can rebuild savings accounts."

Life insurance can refill coffers when all else is gone and can possibly save a family from

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an Ramsey's family faced an estate-recovery bill after his recovery funds that were requested," he said.

But the right kind of life insurance matters, and finding those policies typically involves consulting an elder-law attorney and a financial planner. Otherwise, the funds could end up counted as part of the Medicaid recipient's estate. In some states, the cash value of whole life insurance, if it pays to the estate, is recoverable.

The costs for all of this planning vary widely, based mostly on the value of the assets you're trying to shield. Letsch said her planning fee generally runs to $10,000. Keller said his range is anywhere from $750 to $25,000. "If they've got $200,000 scattered in 20 different accounts, that's different than $1 million in one IRA," he said. Some lawyers will take cases pro bono, and agencies like Ford's Northeast Justice Center don't charge fees for these cases.

Scramble defense

For now, Medicaid estate recovery is a fact of American life. Changing the system would require legislative action, since it was Congress that created the estate-recovery process in the first place. Rep. Jan Schakowsky, an Illinois Democrat, has been trying for several years to get a bill through the House of Representatives but could not move the ball before her upcoming retirement in January.

"This legislation will not retire with me. Plans are already under way to ensure another Member carries this effort forward," she said in a statement. "One of the greatest challenges is that there is very little publicly available information about Medicaid estate recovery. This is a policy that operates largely out of the public eye, which is why so many families are blindsided when they receive a notice to pay up. That is why I ... with advocates and raise this issue in conversations with my recovery is more education about estate planning. Only about 30% of adults in the U.S. have wills, and that's the estate-planning procedure with the highest participation rate, according to the annual report from Trust & Will, a company that provides online estate-planning services.

Most of the tens of thousands of families that get caught up in Medicaid estate recovery every year find themselves dealing with the issue after they get a letter with a claim amount.

Even if you decide just to pay, you may need the help of a lawyer, because you have to make sure that you are properly discharged from the debt and have clear title to your property. Wisconsin attorney Munson said that in his state, the attorney fees to deal with the estate recovery come off the top of the settlement amount, not out of the pocket of the heirs. If they owe $20,000, he said, "They can hire us and we'll get the release letter. The law firm gets $4,000 and the state gets $16,000."

"I think it's a fiction that people are sitting on assets," said Natalie Kean, managing director of health policy for Justice in Aging, an advocacy group. "Homeownership is one of the most effective ways to build wealth, and we're just discriminating and stripping lower-income families — and particularly communities of color — of the ability to build wealth and in the future not need to rely on Medicaid."

Exceptions are not necessarily automatic, even for a spouse or a minor child, and they can be especially difficult to get for a caregiver child. You have to actively press your case, and sometimes you have to be a squeaky wheel. Families often end up back in the position where they need an elder-law attorney who knows their way around Medicaid recovery procedures, because they can be the squeakiest wheels.

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made moves to sell the house. Ford was able to step in and work out a deal.

"Medicaid reduced the claim from $260,000 down to $100,000 and then the city of Lynn loaned $100,000 to Habitat for Humanity, which rehabbed the home and gave Gunning a lease," Ford said. "It was a good result for him. I use him as an example of people who don't think about consulting an attorney unless you are in jail."

In Iowa, Letsch is sometimes able to negotiate directly with the third-party administrator hired to recover funds from an estate: Sumo Group, a subcontractor of Health Management Systems. Their line, she said, is this: "The law is the law, and if you owe the money, you owe it." That said, if someone has an exception and can convince the head of the team in Iowa of it, they may drop the case. Sumo Group directed questions to the state of Iowa, which declined to comment.

In Jackie Keller's case, she got caught in several estate-recovery issues at once, all made more complicated by Oregon's shifting rules.

After the Echo Mountain fire in 2020, Keller's mother got nervous about her disabled son's future. "We were lucky. Our house did not burn down, out of over 500 that did. My mother became concerned, because what if something happened to her and I was unable to take care of my brother?" Keller said.

But then her brother died unexpectedly and her mother's condition worsened. Keller took care of her mother at home, but she also got some Medicaid-funded services along the way. When she died, Oregon claimed the house hadn't been transferred properly and that Keller had never been properly documented as a caregiver child.

Keller tried to talk to the state directly but got nowhere. When she told an acquaintance

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e are not your friends. You need a lawyer, right away."

can't afford to fight them."

She was interested in testing the new rules in Oregon, and the case ended up getting featured in the local press. "We have some case law which says they can void a real-estate transaction if it's done for the purpose of avoiding recovery. But this was an expansion beyond that," Rowan said. She has been pushing for rules to protect caregiving children and to limit recovery from small estates, both of which would have helped Keller.

Eventually, Rowan was able to secure a letter from the state saying that it will no longer pursue the claim against Keller's house.

"I'm still in the house. It's my house," Keller said, crying. "The bottom line is that people are not made aware. They offer you all these services. I've paid my taxes, I've been a good person. I believe very strongly in this family home. I have a daughter, and this will be her home one day. Everybody who has died in our family is underneath the cherry tree."

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