Medicaid Recovery in Texas

By Bill Hobby

Texas could be facing a showdown with the federal government over the $5 billion plus Medicaid program because of a little-noticed portion of President Clinton's budget bill approved by Congress last summer.

The law requires states to seek recovery of the costs of nursing home and other long-term care services from the estates of those who receive these benefits through Medicaid. Medicaid is the state-federal program that provides medical care for the poor.

That means that the state could recover at least part of the money it spends on nursing home care for an elderly person by claiming assets, usually a house, left by that person after death. The state could not, however, claim that property as long as there is a surviving spouse, a minor child, or a blind or disabled survivor of any age.

One way for the state to recover the costs would be to enter a lien the property. The lien would be collected only when the property is sold, usually after the Medicaid patient dies.

There were good reasons for the decision. Medicaid is one of the fastest- growing costs of state and federal governments. Texas' Medicaid budget, state and federal, grew from 11 percent of the state budget in 1981 to 16.6 percent in 1992.

The cost of long-term care for the elderly or disabled is a big reason for that growth. The number of elderly and disabled increased 11 percent since 1987 but accounted for 50 percent of the growth in provider payments, according to Comptroller John Sharp's "Fiscal Notes".

There is every reason for state and federal governments to look for ways of recovering some of those costs from the estates of those who incur them. Estate recovery is the law in about 25 states, and some of them have found it very effective.

A person who has more than $2000 in assets is not eligible for Medicaid. To get under that limit and qualify for Medicaid, many people have given their homes or other property to their heirs. Popular disapproval of that practice caused many states and the federal government to pass the estate recovery laws.

Under estate recovery, no elderly person loses their home. No elderly person is saddled with the ruinous costs of (usually terminal) nursing home care. Those costs are simply deducted from the estate (and the taxpayers' bill) when the patient dies.

The hitch is that Texas tried this once with painful political results.

In 1987, as part of a bill reconstituting the Texas Department of Human Services, the Legislature required that liens be filed against estates of Medicaid clients.

No lien could be filed if there was a surviving spouse, dependent child or disabled heir. But 1988 was an election year, and a sharp-eyed consultant put together, and an opportunistic candidate for the Texas Senate paid for, a television spot that showed an elderly woman supposedly facing the loss of her family home because of the Medicaid lien law.

No such thing could have happened.

The target of the ad--one of a large majority of legislators who voted for the bill--lost the election. The opportunistic candidate, former state Senator Temple Dickson, won. Senator Grant Jones of Abilene, sitting Chairman of the Senate Finance Committee, was the loser.

Not surprising then that elected leaders are wary of the idea. The Legislature asked the department to delay implementation. The first bill filed in the 1989 session repealed that part of the law.
The Department of Human Services is exploring ways to implement the federal law, but Commissioner Burt Raiford expressed concern that the dollars recovered would not cover the expense necessary to collect them.

The dilemma also shows that it is easier to talk about cutting Medicaid costs than it is to do it. Containing Medicaid costs sounds great in the abstract. It's the details that are unpleasant.
To whom should we deny the lifesaving operation? Is the infant whose family's income is 186 percent of poverty (who is not eligible for any help) less deserving than the infant in a family whose income is 184 percent of poverty? Should we hold doctors' fees constant and risk having fewer doctors who see Medicaid patients?

Should we put a dollar limit on the expenditures and make it first come, first served?

Should we ration health care by the severity of the health problem, as Oregon now does? Or should we continue to ration it, as Texas now does, by ability to pay?

All choices considered, recovering assets from a client's estate may not be such a bad idea.

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