Chapter VI

FOUR STEPS TO REFORMING LONG-TERM CARE

Although it is optional, every state provides a long-term care benefit through its Medicaid program — and not just to the poor. Medicaid is paying for the long-term care of a growing number of middle-class seniors and this is one of the fastest growing areas of state spending. At the time they retire, most seniors do not meet Medicaid income and asset tests for long-term care coverage. Yet, by "spending down" their assets, over time a great many eventually do qualify. In fact, an entire industry of attorneys practicing "elder law" has sprung up in recent years to help seniors transfer assets in order to qualify.

Step No. 1: Encourage Community Care over Institutional Care.

Medicaid encourages institutional care over home care. Although many state programs are changing, they could increase their use of less-expensive

home care.[1] Home care often costs only half as much as a nursing home, and in some high-cost areas, the cost savings from home care may be even greater.[2] Home care in Washington, D.C., costs less than one-third of nursing home care. In Manhattan, a year of home care costs only about one-fifth as much as a year-long stay in a nursing home.[3] And in-home providers offer a range of medical services, including occupational and/or physical therapy.

Ohio, Oregon, Washington and Wisconsin expanded home care and community-based care to help control rapidly increasing institutional care expenditures. These states were able to serve more people while controlling the growth in overall long-term care spending. Between 1982 and 1992 the combined total of nursing home beds in the four states declined 1.3 percent, while total nursing facility beds nationwide increased 20.5 percent.[4]

Ohio's Commission to Reform Medicaid proposed rewarding families who choose lower-cost options that save the state money. This reform would allow the elderly living with family members to receive a few hours of home or personal care per week that could delay their entry into a nursing home. To increase the financial incentives, some assets could be excluded from eligibility tests or shielded from cost recovery.[5]

Step No. 2: Encourage the Use of Assets to Finance Long-Term Care.

There are more than 13 million households headed by people aged 62 years or older. Many seniors own their and homes but are reluctant to tap their equity to pay for nursing home care for fear of losing those homes. A possible solution to this problem is a reverse mortgage. This is a home loan that does not have to be repaid as long as the owner (which could include the spouse of a nursing home resident) lives in the house.[6] By one estimate, more than 6 million senior households could access more than $72,000 in home equity per household using reverse mortgages.[7] This would pay for

a year or more of nursing home care and two or more years of home care in most areas.

Currently, seniors rarely use reverse mortgages for long-term care. Why should they? Home equity is generally an exempt asset when qualifying for Medicaid long-term care. So seniors can obtain long-term care without it.[8] However, the Deficit Reduction Act of 2005 now makes cash-poor seniors ineligible for Medicaid nursing home coverage if their home equity value is greater than $500,000.[9]

Seniors could be required to first tap home equity using reverse mortgages before qualifying for Medicaid. However, such a requirement would have to take into account the needs of a spouse who remains in the home after a partner is institutionalized.[10] A possible alternative is to place a lien on property jointly owned by the spouse, so that the state could recover some of its long-term care costs from the couple's estate. The spouse would be free to live in the house for the rest of his or her life. An added benefit is that more people may plan ahead and purchase long-term care insurance if they are not allowed to shelter their largest asset when qualifying for Medicaid.

Step No. 3: Increase Estate Recovery.

When beneficiaries die, states can recover nursing home costs from their estates. Since seniors can own a home and still qualify for Medicaid in most cases, the estate could include a house, for example.[11] Federal law also permits states to recover personal and real property in which the individual has an interest or legal title. Some states are aggressively pursing estate recovery, and all states receive federal funds to do so.[12]

Future legislation should require that any funds placed in a trust be considered income for determining Medicaid eligibility.[13] It could even eliminate the use of trusts that reduce a senior's current income (which helps them meet the income qualification). The Deficit Reduction Act of 2005 created a five-year waiting period to apply for Medicaid coverage

after a significant gift of property. Property settlements in divorces made prior to Medicaid eligibility should be subject to the same five-year rule as other divisions of property.

Step No. 4: Encourage Private Insurance.

The states now have a new way to encourage private long-term care insurance. It is an outgrowth of a pilot project in New York, Connecticut, California and Indiana called the Partnerships for Long-Term Care that provided financial incentives to purchase long-term care insurance. The plan allowed people to shelter their assets by purchasing a qualifying private insurance policy with a defined amount of coverage. When a policyholder entered a nursing homes, he or she first relied on the insurance. When the insurance was exhausted, special eligibility rules allowed them to receive Medicaid benefits while retaining assets equal to the value of the policy.

In the California and Connecticut Partnership programs, individuals purchased coverage from competing private insurers. For each dollar of coverage, they protected a dollar's worth of assets. For instance, a long-term care policy with $120,000 in benefits allowed an individual to shelter $120,000 in assets and still qualify for Medicaid long-term care. Since most nursing home stays are less than one year, very few of those who purchased these policies applied for Medicaid benefits.

The Deficit Reduction Act allows all 50 states to establish partnership programs. Individuals who purchase such policies can access Medicaid benefits after their insurance runs out — without the means testing required for non-insured applicants.[14]

Long-term care is the fastest growing expense in the Medicaid program. As 77 million baby boomers reach retirement within the coming decade, the program can only grow more insolvent. However, with proper estate planning — using techniques and programs that are already largely available — the impact on seniors does not have to be as bleak.

Notes

1 Enid Kassner, "Medicaid and Long-Term Services and Supports for Older People Fact Sheet," AARP Public Policy Institute, February 2005.

2 For a pamphlet comparing the annual cost of home care and nursing home care across the country, see "Can You Afford the Cost of Long-Term Care?" U.S. Office of Personnel Management. Available at http://arc.publicdebt.treas.gov/files/pdf/fscombined.pdf. Accessed June 19, 2006.

3 Ibid.

4 See "Medicaid Long-Term Care: Successful State Efforts to Expand Home Services While Limiting Costs," U.S. Government Accountability Office, Report No. 152298, August 1994.

5 Ohio Commission to Reform Medicaid, "Transforming Ohio Medicaid: Improving Health Quality and Value," State of Ohio, January 2005.

6 For more information about reverse mortgages see the National Center for Home Equity Conversion at http://www.reverse.org. Accessed July 10, 2006.

7 "Use Your Home to Stay at Home: Program Study Shows That Reverse Mortgages Can Help Many with Long-Term Care Expenses," National Council on the Aging, Press Release and Fact Sheet, April 15, 2004.

8 One solution often discussed is to remove the home-equity exemption and specify that seniors must first exhaust home equity using a reverse mortgage before qualifying for Medicaid long-term care. See Stephen A. Moses, "How to Save Medicaid $20 Billion Per Year and Improve the Program in the Process," Center for Long-Term Care Financing, 2005.

9 "Deficit Reduction Act of 2005: Implications for Medicaid," Kaiser Commission on Medicaid and the Uninsured, February 2006. Available at http://www.kff.org/medicaid/upload/7465.pdf. Accessed June 19, 2006. The Act allows the states to raise the exemption to $750,000.

10 There is a new industry where attorneys develop exotic ways for sick people to hide assets. This needs to be curtailed. For example, spouses divorce disabled partners and refuse to pay for long term care. Under current law, the spouse most likely to be impoverished is not the well spouse, but the disabled spouse prior to entering a nursing home.

11 A home is typically not included in assets for determining Medicaid eligibility.

12 John C. Goodman and Devon M. Herrick, "Reforming Medicaid: More Flexibility for the States," National Center for Policy Analysis, Brief Analysis No. 515, May 13, 2005.

13 A cottage industry of attorneys practicing elder law helps seniors shield funds in so-called Miller trusts, a portion of which cannot be seized to cover the cost of Medicaid.

14 "Summary of the Deficit Reduction Act of 2005 (Pl 109-171) Excerpt from the Jan-Feb. Issue of The ARC/UCP Disability Collaboration Washington Watch," Association of University Centers on Disabilities, February 17, 2006. Available at http://www.aucd.org/Medicaid/DRA_Summary.htm. Accessed June 8, 2006.