West Virginia fights law that makes heirs sell homes to pay off Medicaid bill

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Laura Parker, USA TODAY

CLARKSBURG, W.Va. -- When Cathy Bode's maiden aunt died of old age in 1997, she left her house to her niece.

The blue bungalow on a bluff overlooking this working-class city was Rose Guido's last remaining asset. Her savings had been consumed to pay for the nursing home where she spent her final years. When the savings ran out, Medicaid paid the bill.

A year after 85-year-old Aunt Rose died, Bode got a letter from a collection agency saying her aunt's estate owed Medicaid $51,000. Bode, a schoolteacher, could either reimburse the government or sell the house.

So Bode, who did not have $51,000 or any other place to live, became a bit player in a long-running feud between West Virginia and the federal Medicaid program. State officials are fighting back against a problem that increasingly affects elderly people in nursing homes and their adult children across the country.

The governor, state attorney general and a congressman are working to kill an obscure federal law known as the Estate Recovery Act. They say the law is unfair and inhumane. The text fills just one page of the voluminous Medicaid Act, but it has caused anguish among middle-class Americans in nearly all 50 states.

The showdown in West Virginia could have ramifications nationwide.

The Estate Recovery Act requires states to recoup the costs Medicaid paid for nursing home care from the estates of individuals after they die. To many Americans, that means wiping away the family homestead. To pay that Medicaid bill, many families must liquidate the house that their parents owned and wanted to pass on.

"This is not just an economic issue; this is a cultural issue," says Darrell McGraw, West Virginia's attorney general. "Part of our ethic is work hard, do well, save and pass on to your progeny the results of your labor. This defeats that proposition."

West Virginia is pursuing a multifront attack against the Estate Recovery Act. McGraw, backed by the Legislature, has been suing in federal court since 1998 to have the law declared unconstitutional. Gov. Bob Wise, a Democrat, has asked the government to modify the rules and allow small estates, valued at less than $50,000, to be exempt. This would help Bode, whose aunt's house is assessed at $18,500.

U.S. Rep. Nick Rahall, D-W.Va., is pressing Congress to rewrite the law and allow states to quit the collection program.

Today, Medicaid pays the nursing home costs for slightly more than 1 million seniors.

Don't see it coming

Middle-class Americans are the most affected by the estate recovery program. Those who do not have enough savings to finance the high cost of nursing home care often end up on Medicaid, a program for low-income people. More significantly, they do not take advantage of loopholes in the Medicaid law often used by people with higher incomes. The loopholes allow people to legally transfer assets to their heirs if they do so at least three years before needing Medicaid. Such transfers would protect their property from the government after they die.

In many cases, those affected are unaware that the government could try to collect.

"At no time before mother died did Medicaid ever tell us that they would go after her estate and take her cottage," Glenda Jordan of Charleston, W.Va., said in an affidavit she provided for McGraw's lawsuit. "But about a month after she died, I got a letter putting in a claim. . . . They didn't even give her time to get cold."

Yvonne Lynch of St. Albans, W.Va., received her letter one week after burying her mother. She described in her affidavit the heartbreak of having to dispose of her parents' home.

"My father was a coal miner and . . . my mother sold Avon for about 35 years. I can remember one Christmas how she cried because she was afraid to use $1.98 to purchase a little tea set I wanted for Christmas, saying, 'We need the money for the house payment.' "

Lower-income families that don't shelter their assets pay most of the actual estate recoveries, officials say. That means states like West Virginia are hardest hit by the program because they have large elderly populations, a high rate of home ownership and a high percentage of low-wage jobs. Among the 50 states, West Virginia ranks fourth in the percentage of elderly residents, seventh in home ownership and 48th in personal income.

At any one time, about 470 active estate recovery cases are underway in West Virginia. About 17 collections are made every month. The estates targeted are so small that the average collection is about $14,000, says Silas Taylor, a deputy state attorney general.

Taylor describes the estate recovery program as the final insult to people who worked all their lives and had great difficulty coping with the notion they had to officially become "poor" in order to qualify for Medicaid.

Indeed, tens of thousands of aging Americans are unaware they might have to run through their entire life savings to pay for a nursing home stay before Medicaid would step in.

"There is a notable lack of awareness in the boomer generation," says Nanne Lewine, a lobbyist for AARP, formerly known as the American Association of Retired Persons. "A lot of them assume Medicare will pay for it."

Medicare, the federal health program for people 65 and older, does not cover nursing home care. Medicaid, a federal-state program that helps pay health care costs for the poor and disabled, does.

Forced to spend life savings

To qualify for Medicaid, seniors must first "spend down" their assets, meaning they must spend virtually all their savings to pay for initial nursing home care. When that is gone, Medicaid takes over the cost. After a senior in this program dies, Medicaid routinely puts a lien on the person's house in order to be reimbursed for the nursing home costs.

Estate recovery has been part of the Medicaid law since it was established in 1965. The program was never popular. Until 1993, only about half the states collected from estates.

"It's a program to confiscate the money of middle-class people who have just lost a relative," says Eliot Fishman, a researcher at the Institute for Medicare Practice at Mount Sinai School of Medicine in New York. "Politically, that's not the most enticing revenue source for states."

In 1993, as Congress was facing budget deficits and spiraling Medicaid costs, it made estate recovery a mandatory program and ordered all states to begin collecting.

Today, Fishman says, most of the programs are small and collect less than 1% of what they spend on nursing home care.
Three states refuse to collect at all: Michigan, Georgia and Texas. Officials in those states say there are no plans to begin collecting.

Charles Stuart, spokesman for the Texas Health and Human Services (news - web sites) Commission, says estate recovery has not been authorized by the Legislature. Georgia officials told the federal government in 1998 that the state considers estate recovery too distasteful to pursue, says Andy Boisseau, spokesman for the Georgia Department of Medical Assistance.

Some states opt out

"I find (Georgians) almost unanimously revolt against this mandate," wrote William Taylor, who headed the Georgia department then. "They consider estate recovery a penalty for those persons who have been able to accumulate enough wealth to own their own home."

Florida has an estate recovery program, but the state constitution shields the homestead from creditors. So the state doesn't file claims against homes owned by Medicaid recipients. Yet the issue is so volatile among Florida seniors that Sen. Bill Nelson, D-Fla., vowed in his 2000 Senate campaign to push for repeal of the Estate Recovery Act.

West Virginia also opted to forgo estate recovery, as Michigan, Texas and Georgia did. But Medicaid threatened to cut off funding to West Virginia. The state receives 75% of its Medicaid money from the federal Treasury.

The other three states refusing to participate in the estate recovery program have not been threatened or penalized by the government. West Virginia officials are not sure why their state was singled out. They noted that each state is overseen by different federal regions, whose approaches may vary.

In 1995, the West Virginia Legislature created the required collection program for Medicaid and ordered McGraw, the state attorney general, to sue the federal government.

So far, he is losing. A year ago, a U.S. District Court judge rejected West Virginia's claim. But the judge sympathetically took note of the program's "harsh consequences to West Virginians who are marginally poor." The case is on appeal, and McGraw vows to take it to the U.S. Supreme Court (news - web sites).

Some officials regard West Virginia's efforts as quixotic and out of sync with what the federal government can afford. The rising cost of nursing home care is about 20% of Medicaid's total federal budget.

Officials in other states strongly reject McGraw's premise that the federal government should shoulder the cost for taxpayers. Oregon has had a program since the 1940s to recover Medicaid costs from estates. It serves as the model for many state programs.

"The question is: Should tax dollars be used to care for people who don't have another option? Or should tax dollars be used to preserve the inheritance of their children?" says Mark Gibson, a health care policy adviser to Oregon Gov. John Kitzhaber, a Democrat. "We in Oregon have said it's not the taxpayers' responsibility to preserve an inheritance."

The estate recovery program allows heirs who would be severely impacted to apply for a hardship waiver that would exempt them from repaying nursing home costs.

California, for example, places claims on 3,500 to 4,000 estates a year but exempts about a fourth of them.

Oregon does not pursue claims that would create undue hardship for the heirs. The state is also willing to reduce claims and accept payment plans.

'Have to pursue these assets'

"If they want to retain the home in the family, we're willing to work with them," says Roy Fredericks, who manages Oregon's program. "What we can't do is just pretend that there isn't a claim. We have a public trust, and we have to pursue these assets."

Back in West Virginia, in the blue bungalow on the bluff, Bode learned her application for a hardship waiver was rejected, in part, because she is a niece and not a direct heir. Most states grant waivers only to surviving children. Bode, 54, explained that she lived with her aunt, who was childless, from the time she was 12 until she turned 24. Her aunt paid for her college education.

The Boston collection agency that runs West Virginia's estate recovery program has placed a lien on the house but has not attempted to force a sale. That will come, Bode supposes, if the lawsuit fails and state officials fail to come up with an alternative.

"There's a lot of sentimental value here," she says. "Rose had her house built in 1952. That was her life savings."

A year ago, she watched with dismay as Congress approved a tax break that shields estates worth up to $1 million from any taxation. Yet, she says, there seems to be no protection for people like her.

"I even talked to some lawyers about what to do, but one lawyer said to me, 'Why shouldn't you lose the house?' "