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Report to the Ranking Minority Member
Committee on Veterans' Affairs
U.S. Senate

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VA HEALTH CARE

Potential for Offsetting Long-Term Care Costs Through Estate Recovery

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Human Resources Division

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The Honorable Frank H. Murkowski
Ranking Minority Member
Committee on Veterans' Affairs
United States Senate

Dear Senator Murkowski:

As you know, the federal government faces mounting budget deficits, taxing its ability to meet current demand for Department of Veterans Affairs (VA)-supported hospital and outpatient care from veterans entitled to such care. At the same time, the rapidly aging veteran population is increasing its demand for VA-supported nursing home and domiciliary care.[1] But the provision of nursing home and domiciliary care, unlike the provision of hospital and outpatient care that is mandatory for service-connected and low-income veterans, is optional (i.e., discretionary) for all veterans, including those with service-connected disabilities.[2] This creates a problem: How can VA expand its ability to meet increasing demand for discretionary benefits, such as nursing home and domiciliary care, without increasing government costs or detracting from its ability to meet the health care needs of those entitled to VA care?

With this problem in mind, you asked us to evaluate program options, such as estate recovery[3] and increased cost sharing, that would enable VA to recoup some of the over $1.2 billion it pays annually for nursing home and domiciliary care. Our evaluation should, you said, consider (1) VA's potential savings from such program options, (2) procedures to prevent estate recoveries and increased cost sharing from creating an undue hardship on the spouses or other dependents of affected veterans, and (3) options for administering such programs. We addressed the potential for VA to recoup some of its costs for providing nursing home and domiciliary costs through increased cost sharing in an August 1992 report.[4]

[1]Nursing homes provide care for persons who are not acutely ill or in need of hospital care but require skilled nursing care and related medical services. Domiciliaries provide shelter, food, and necessary medical care on an ambulatory self-care basis to veterans who are disabled by age or disease but not in need of skilled nursing care or hospitalization.

[2]A service-connected disability is one that results from an injury or disease incurred or aggravated during military service.

[3]A process through which a government agency recovers the cost of services provided to a beneficiary by filing a legal claim against the beneficiary's estate.

[4]VA Health Care: Offsetting Long-Term Care Costs by Adopting State Copayment Practices (GAO/HRD-92-96, Aug. 12, 1992).

This report addresses the potential to recoup such costs through estate recovery.

To assess the potential for VA estate recoveries, we (1) compared VA's legislative authority to make estate recoveries with that of state Medicaid programs,[5] (2) analyzed data on veterans' ownership of assets reported in VA's 1987 Survey of Veterans, released in 1989, and Survey of Medical System Users, released in 1990, and (3) compared the assets of VA nursing home and domiciliary users with those of Medicaid recipients, using data from our March 1989 report on Medicaid estate recovery programs.[6] Because only limited data were available on veterans' incomes and assets, we were unable to estimate potential recoveries if VA were given the same estate recovery authority currently granted to states. To identify (1) procedures to prevent undue hardships on veterans and their families and (2) options for administering a recovery program, we relied primarily on information in our 1989 report describing key features of the Oregon Medicaid estate recovery program. The Oregon program is generally viewed as the most effective Medicaid estate recovery program and is frequently cited as a model for use by other states planning to establish or expand recovery programs. Appendix I contains a more detailed discussion of our scope and methodology.

Background

VA spent about $1.2 billion in fiscal year 1991 to provide nursing home and domiciliary care to 75,000 veterans in VA-owned and community facilities. Unlike most VA health care benefits, the provision of nursing home and domiciliary care is discretionary for all veterans. Veterans with a medical need for nursing home care are eligible to receive such care in VA and community facilities, but the provision of such care is limited to the number of beds available in VA nursing homes and funds available to purchase care from community nursing homes.[7] Eligibility for VA domiciliary care is limited to veterans with incomes not exceeding VA's maximum annual pension rate for single veterans needing aid and

[5]Medicaid is a federally funded, state-administered assistance program that provides medical care, including nursing home care, to needy people. It became effective in January 1966 under the authority of title XIX of the Social Security Act, as amended (42 U.S.C. 1396). Within broad federal limits, states set the scope and reimbursement rates for medical services offered under Medicaid and make payments directly to providers who render services.

[6]Medicaid: Recoveries From Nursing Home Residents' Estates Could Offset Program Costs (GAO/HRD-89-56, Mar. 7, 1989).

[7]In community nursing homes under contract with VA, veterans who do not have service-connected disabilities are limited to 6 months of care.

attendance ($12,187—effective Dec. 1, 1992).[8] Care is also limited to the number of beds available in VA-operated domiciliaries.

For nursing home care, VA is required to collect a fee, commonly known as a copayment, from certain nonservice-connected veterans with incomes above a designated level ($18,844 for a single veteran—effective Dec. 1, 1992). VA pays the full cost of care for other veterans receiving care in VA or contract community nursing homes.[9] VA also pays the full cost of domiciliary care for eligible veterans. Copayments account for less than one-tenth of 1 percent of VA's costs to provide nursing home and domiciliary care in VA and community facilities.

VA is authorized to recover any unpaid nursing home copayments from veterans' estates. VA is not authorized, however, to recover its remaining costs (over 99 percent of its costs for providing nursing home and domiciliary care) from veterans' estates. Appendix II contains additional details on VA-copayment requirements.

To be eligible for nursing home care under Medicaid, persons must meet specified income and assets limits, which vary by state. Frequently, persons enter nursing homes as private-pay patients and convert to Medicaid after having spent their available income and resources on nursing home care. And, once eligible, patients must apply their income, with certain exceptions, toward the cost of their nursing home care on a continuing basis. Medicaid pays the difference between the Medicaid payment rate and the amount of the recipients' income applied toward the cost of care.

Although Medicaid recipients are generally allowed to keep their homes for as long as they or certain of their dependents need them, states are authorized by title XIX of the Social Security Act to recover part of the nursing home costs paid by Medicaid from recipients' estates if the Medicaid recipient had no surviving spouse or children who are under 21, blind, or totally and permanently disabled. Individuals are not allowed to give away or transfer ownership of assets for less than fair market value

[8]A veteran who is a patient in a nursing home or otherwise determined by VA to be in need of the regular aid and attendance of another person, or is permanently housebound, may be entitled to higher income limitations or additional benefits.

[9]When a veteran who is already entitled to the aid and attendance allowance (see footnote 8) under either the compensation or the pension program is placed in a nursing home at VA's expense, the additional compensation or increased pension for aid and attendance is generally reduced to a lesser rate. In addition, when a veteran having neither spouse nor child is furnished nursing home care by VA, entitlements in excess of $90 monthly are paid to a revolving fund at the VA medical center providing the care. These funds are available to help defray the operating expenses of the medical center.

within 30 months of applying for Medicaid eligibility if the intent of such action is to qualify for Medicaid.

Estate recovery programs can be cost-effective. For example, Oregon recovered about $7 million between July 1, 1991, and June 30, 1992, about 13 times more than it cost the state to administer its Medicaid recovery program. In addition, we reported in 1989 that six states that did not have Medicaid estate recovery programs could potentially recover 68 percent of the Medicaid nursing home benefits paid for recipients who owned homes.[10]

Results in Brief

VA could potentially offset a significant portion of its nursing home and domiciliary care costs if it had the same authority states were given to operate estate recovery programs under Medicaid. VA is authorized to recoup unpaid nursing home copayments through estate recoveries, but such copayments cover less than one-tenth of 1 percent of VA's costs for providing care. However, VA—unlike state Medicaid programs—is not authorized to recover its remaining costs for providing nursing home and domiciliary care or to prevent veterans from giving away or transferring ownership of assets to avoid future recovery.

The potential for recovering nursing home and domiciliary costs through estate recoveries may be greater for veterans than for Medicaid recipients. VA appears to have greater potential because (1) home ownership—the primary asset of most elderly persons—is significantly higher among elderly VA hospital users than among Medicaid nursing home recipients and (2) veterans living in VA facilities generally contribute much less of their incomes toward the cost of their care than do Medicaid recipients, allowing veterans to build bigger estates. Veterans using VA-supported nursing homes and domiciliaries appear to have hundreds of millions of dollars in assets that could, upon their death or the death of their surviving spouses and dependent children, be used to help offset VA's costs for providing care.

Oregon's successful Medicaid estate recovery program could serve as a model for a VA program to recover nursing home and domiciliary costs. Because VA already recovers certain debts through estate recovery, an administrative framework for an estate recovery program is in place. Advocacy groups for the elderly generally accept the Oregon program

[10]Medicaid: Recoveries From Nursing Home Residents' Estates Could Offset Program Costs (GAO/HRD-89-56, Mar. 7, 1989).

because of provisions protecting recipients and their families from undue hardships. Similar provisions could be adopted by the Congress to help improve veterans' acceptance of an estate recovery program.

VA Has Limited Authority to Recover Medical Care Costs From Veterans' Estates or Restrict Asset Transfers

Except under very limited circumstances, VA can recover only debts owed to VA from veterans' estates.[11] Such debts include overpayments of VA compensation and pension benefits, defaults on home loans, and unpaid beneficiary copayments for medical care. VA medical center and district counsel officials were unaware of any recoveries of unpaid nursing home copayments from veterans' estates. They said that unpaid copayment amounts are generally too small to justify the effort that would be required to recover from their estates. Copayment charges amount to less than one-tenth of 1 percent of VA's costs for providing nursing home and domiciliary care; unpaid amounts are even less.

By contrast, states are authorized, under Medicaid law, to recover from recipients' estates up to the full cost of nursing home care paid on their behalf by Medicaid. Through the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, the Congress acted to help states ensure that all resources of nursing home recipients not needed to support spouses or dependent children were applied toward the cost of their care. In TEFRA, the Congress made it clear that all assets owned by Medicaid nursing home recipients—including home equity—could eventually be used to help pay for their care. TEFRA also made it easier for states to (1) restrict transfers of asset ownership for the purpose of establishing Medicaid eligibility, (2) impose liens against a recipient's estate to help preserve the asset for future recovery, and (3) recover correctly paid costs of services from the estates of Medicaid recipients. Similar authority to preserve assets and eventually recover up to the full costs of nursing home and domiciliary services provided to veterans would be critical to the success of a VA estate recovery program.

Because about 41 percent (± 7 percentage points) of VA nursing home and domiciliary users are married, a significant portion of potential recoveries would be lost unless VA, like the Oregon Medicaid program, is authorized to seek recoveries from the estates of surviving spouses.

[11]VA can make limited recoveries of compensation and pension benefits from the estates of incompetent veterans who have no dependents (spouse or children) and who are institutionalized in a government facility.

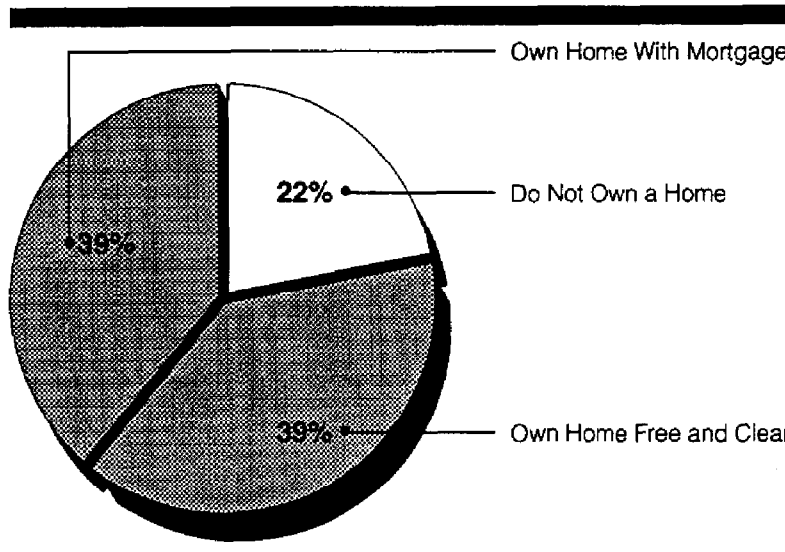
Potential for Recoveries May Be Greater Under VA Than Under Medicaid

Veterans who obtain VA-supported nursing home and domiciliary care appear to be more likely than Medicaid nursing home recipients to have assets, such as home equity and other more liquid assets. These assets could be used to offset a portion of VA's costs for providing them nursing home and domiciliary care. VA nursing home and domiciliary users also have greater potential for accumulating assets while they are institutionalized in VA-supported facilities because few veterans are required to make copayments. Therefore, as a group, VA nursing home and domiciliary users appear to offer greater potential for estate recovery than Medicaid nursing home recipients.

As with most elderly Americans, the home is most likely the primary asset of many elderly veterans and potentially a primary source of estate recoveries. About 14 percent of Medicaid nursing home recipients in the eight states included in our 1989 review had equity in a home or other real property that could, upon their death, be used to offset a portion of the cost of their care. In addition, among the veterans most likely to become VA nursing home and domiciliary users—VA hospital users age 65 and older—the incidence of home ownership is much higher. An estimated 78 percent of VA hospital users aged 65 or over had equity in a home. As shown in figure 1, about half of the veterans who owned a home owned it free and clear of debt.[12]

[12]Our estimate of home ownership is based on VA's 1987 Survey of Veterans. The survey determined whether veterans had been VA hospital inpatients but not whether they had been VA nursing home or domiciliary users. Therefore, we analyzed home ownership data for VA hospital users aged 65 and over—the group we believed most likely to become nursing home and domiciliary users. We estimated that 183,230 (± 65,913) veterans aged 65 or over were VA hospital inpatients during 1987. Of this group, an estimated 78 percent (± 15 percentage points) said that they owned their homes. Of these homeowners, 50 percent (± 20 percentage points) said that they owned the home free and clear of a mortgage.

Figure 1: Home Ownership Among VA Hospital Users Aged 65 and Over



Compared with the estates of Medicaid nursing home recipients, the estates of VA nursing home and domiciliary users are also more likely to include assets other than a home—such as bank accounts and securities—that also could help defray the costs of their care. Unlike VA nursing home and domiciliary users, Medicaid recipients must spend their available income and assets on their own health care before they can become eligible for Medicaid, and they must continue to apply their income toward the cost of their care while living in the nursing home. In contrast, veterans are not required to spend their income or liquidate assets to qualify for VA nursing home care. In fact, less than 1 percent of veterans discharged from VA and contract community nursing homes were required to make copayments while in the nursing home. Even for the few who do make copayments, the copayment amounts to $12.24 a day over a 90-day period.[13] As shown in table 1, veterans retain most of their income even if copayments are required.

[13]In fiscal year 1990, such copayments totaled only about $260,000 or less than one-tenth of 1 percent of program costs. We reported on copayments in VA Health Care: Offsetting Long-Term Care Costs by Adopting State Copayment Practices (GAO/HRD-92-96, Aug. 12, 1992).

Table 1: Income Retained by VA Nursing Home Users

	Veteran 1	Veteran 2
Income[a]	$18,844	$18,845
Copayments	$0	$ 4,469[b]
Income retained by veteran	$18,844	$14,376

Note: The hypothetical cases used in this table are based on users who have no spouse or dependents and who do not have a service-connected disability.

[a]A VA nursing home user who has no spouse or dependents and who has no service-connected disability is required to make copayments if his or her annual income exceeds $18,844. As explained in appendix II, a veteran with an annual income of $18,644 or less could be required to make copayments if his or her annual income plus net worth exceeds $50,000.

[b]Veterans who do not qualify for free care and are VA nursing home users are required to pay $652 for each 90 days of care plus a $5 per day copayment. The maximum total payment for 1 year of care would be $4,469, computed as follows: ((365/90) x $652) + (365 x $5)).

Based on available fiscal year 1987 data, we estimated the value of assets, other than the home, owned by VA hospital users who at some time in 1987 had been VA nursing home or domiciliary users. As a group, these veterans owned net assets—other than home equity—that had an estimated value from about $81 million to $301 million.[14]

Procedures Can Be Established to Prevent Hardships on Veterans and Their Families

An estate recovery program would shift more of the burden of paying for nursing home and domiciliary care from the government to those veterans obtaining VA-supported nursing home and domiciliary care. While the effect of this cost shift is decreased by, in effect, delaying payment until after the death of the beneficiary, estate recoveries can, nonetheless, create hardships for some veterans' families. Establishing procedures to prevent recoveries from creating undue hardships on veterans' families could increase veterans' acceptance of an estate recovery program. Such procedures, required under title XIX of the Social Security Act, are cited as one of the principal reasons for public acceptance of Oregon's Medicaid estate recovery program.

Advocacy groups for the elderly in Oregon told us that they had not heard any complaints about that state's Medicaid estate recovery program, and

[14]Our estimate is based on data reported by veterans in VA's Survey of Medical System Users, which was issued in 1990. As used in this report, net assets equal liquid assets plus real property (other than a home) plus any other assets minus liabilities associated with these assets. We estimated that about 42,485 to 55,763 of VA's 1987 hospital inpatients had, at some time, used a VA nursing home or domiciliary. Of these inpatients, about 21 percent (7,327 to 12,909) owned assets (other than home equity) that were greater than their liabilities. Of those with net assets, 14 percent (± 5 percentage points) reported net assets of $5,000 to $200,000, with a median value of $15,000. In total, the nursing home and domiciliary users reported net assets with an estimated value from about $81 million to $301 million ($191 million ± $110 million).

that the state has been reasonable in working out arrangements where recovery would cause a hardship to the recipient's family. If a Medicaid recipient has assets at the time of death and has no surviving spouse or children who are under age 21, blind, or totally and permanently disabled, Oregon's Estate Administration Unit takes steps to recover the cost of care provided. However, if the recipient has a surviving spouse, the unit takes no action to recover funds at that time; instead, the unit recovers from the spouse's estate upon his or her death. Furthermore, the unit takes no action to recover from the spouse's estate as long as there are surviving children who are under age 21, blind, or disabled. Finally, it works with families if there are extenuating circumstances where estate recoveries would create an undue hardship on the family. Advocacy groups for the elderly in Oregon told us that the state's estate recovery program allowed sufficient flexibility to (1) avoid undue hardships on recipients' heirs, (2) protect the interests of caretakers of the elderly, and (3) accomplish recoveries without imposing liens on property.

Oregon Medicaid Program Could Serve as Model for Administering a VA Recovery Program

Oregon is considered to have one of the most effective Medicaid estate recovery programs and is frequently cited as a model for other states. Many features of the Oregon program that help account for its success could, in our opinion, be included in an expanded VA estate recovery program. Some of these features exist in VA's current program.

First, Oregon's program emphasizes the early identification and preservation of assets. This process begins when a person applies for Medicaid or other public assistance in Oregon. During the application process, caseworkers inquire about the assets currently held or disposed of within 2 years of applying for assistance. The caseworkers may verify this information with banks and county assessor's or county recorder's offices. Caseworkers forward the asset information to Oregon's central Estate Administration Unit.

VA currently collects data on income and assets—other than personal residence and personal property—from certain veterans seeking care at VA medical facilities. To implement a recovery program for nursing home and domiciliary care, VA would need to expand this program to obtain and verify data on more nursing home and domiciliary users. VA's program, however, is not as effective as it could be in obtaining and verifying

information on veterans' income.[15] Correcting such problems will be essential if VA is to establish an effective estate recovery program.

Second, Oregon established a central unit to administer estate recoveries. The unit has a staff experienced in legal, property, and probate transactions. A manager heads the unit and is assisted in carrying out the recovery process by three estate administrators. All four positions require a law degree or an equivalent background in law and experience in real property transfers, probate laws, and interpreting wills and assets. A clerical staff of five and a resource coordinator assist the administrators. Oregon, a state official told us, collected about $13 for every $1 spent administering the estate recovery program during the 12-month period ending June 30, 1992.

VA already has a central debt recovery unit—known as the Debt Management Center—in St. Paul, Minnesota, which can use estate recovery to recoup debts owed to VA. However, the Debt Management Center is not responsible for collecting debts created when veterans fail to make copayments for medical services, including nursing home copayments. Each VA medical center manages the collection of copayments for VA medical services it provides. The Debt Management Center, on the other hand, collects debts arising from overpayments of compensation, pensions, and educational assistance benefits and from loan defaults in the home mortgage program. If appropriate, the Debt Management Center can request that VA district counsels file claims against veterans' estates in probate courts to recover these debts.[16]

Third, Oregon's Estate Administration Unit tracks assets to ensure that the assets are being used to pay for the recipients' care and not being given away to others. If any applicant/recipient is unable to manage his or her own financial affairs, the Estate Administration Unit petitions the court to appoint a conservator to ensure that the recipient's assets are preserved to permit the recovery of correctly paid benefits from the estate.

[15]Veterans Benefits: Millions in Savings Possible From VA's Matching Program With IRS and SSA (GAO/HRD-92-37, Dec. 23, 1991); and VA Health Care: Verifying Veterans' Reported Income Could Generate Millions in Copayment Revenues (GAO/HRD-92-159, Sept. 15, 1992).

[16]According to the VA District Counsel Manual, 27.12, the District Counsel may file a proof of claim pursuant to state probate law, or VA may elect not to follow state probate time limits (58 Comp. Gen. Dec. 778 (1979)). The U.S. claim has priority (31 U.S.C. 3713). The Comptroller General may act as a special administrator to recover the debt. Transferees and fiduciaries may be liable (38 U.S.C. 3501; 31 U.S.C. 3713; 16 Comp. Gen. Dec. 365 (1936)). This authority is limited by the Department of Justice that has authorized VA District Counsels to file suit to recover debts less than $1,200 or $5,000, depending on the judicial district; otherwise, VA must refer the case to the U.S. Attorney.

VA, on the other hand, can appoint, or ask the court to appoint, an estate conservator for incompetent veterans only if they receive VA benefit payments, such as compensation or pension payments. This is done to ensure that the VA payments are used for the veteran's benefit.

Fourth, consistent with federal requirements, if a Medicaid applicant/recipient has transferred ownership of property without adequate compensation within 30 months of applying for Medicaid or at any time after applying, Oregon's Estate Administration Unit offers the recipient several options that make the full market value of the asset available for recovery by the state. If one of these options is not agreed to, the applicant/recipient is declared ineligible to receive Medicaid assistance for a period of time. If a VA estate recovery program were implemented, VA would need similar authority to ensure the program's effectiveness.

Conclusions and Matters for Congressional Consideration

Estate recovery programs can help meet financial strains on the government's health care efforts. In the near future, the number of older veterans will grow rapidly, and this growth will likely bring an increased demand for VA nursing home and domiciliary care. Recovery programs can help ease the strain on already limited government resources. One option would be to use funds recovered through estate recovery to expand the number of veterans served by VA. Another option would be to return the funds to the Treasury to help offset the deficit.

Several benefits offered by estate recovery programs are that they

- can be structured to recover costs without placing undue hardships on the elderly. The interests of both the government and veterans and their heirs can be served. Institutionalized veterans need not give up their homes and other assets to receive benefits when they or their spouses are alive. Recovery would be initiated only after the death of the veteran and the veteran's spouse. In addition, safeguards can be written into the system to prevent or delay recovery when there is a dependent or disabled child.
- are consistent with the government's commitment to provide medical care to veterans. The provision of nursing home and domiciliary care is discretionary for all veterans. With safeguards in place to protect the spouse and dependent children from undue hardship, the real policy issue is whether the government should have the right to recover a portion of its costs of providing a discretionary benefit to veterans or whether the veterans' assets should be allowed to pass to the adult children or other heirs.

- can more than pay for themselves. Oregon's Medicaid estate recovery program recoups about $13 for every $1 spent administering the program. From a financial standpoint, the cost and effort involved in setting up a recovery program appear to be justified. In addition, VA already has much of the framework for an effective recovery program.

An obvious disadvantage of estate recovery programs is the shifting of costs from the government to those veterans obtaining VA-supported services. Such a cost shift may be viewed as a decline in the nation's commitment to meet the health care needs of its veterans. But, VA's current goal is to meet the nursing home care needs of only about 16 percent of veterans needing such care. The remainder generally pay for nursing home care themselves or spend most of their income and assets on nursing home care before qualifying for Medicaid. Thus, to the extent estate recoveries are used to fund care for more veterans, the cost shifting might result in improved services for veterans.

The Congress may wish to consider authorizing VA, like state Medicaid agencies, to recover up to the full costs it incurs to provide nursing home and domiciliary care from the estates of veterans who received care. These funds could be used to help offset increased operating costs, fund care for more veterans, or both. To implement an effective program, the Congress also may wish to consider giving VA authority—similar to Medicaid—to preserve veterans' estates by preventing asset transfers to family members or others that would circumvent cost recovery.

Any change in VA's estate recovery and asset transfer authorities should be accompanied by adequate safeguards—similar to those in Medicaid law and those incorporated in Oregon's recovery program—to provide the flexibility needed to help avoid undue hardships on veterans and their families.

Agency Comments and Our Evaluation

In a letter dated June 8, 1993, the Secretary of Veterans Affairs said that he agrees with our contention that estate recovery programs can be cost effective, but has some reservations regarding use of this method of offsetting costs in VA's nursing home and domiciliary programs. (See app. III.) Specifically, VA said that

- eligibility reform might preclude any type of estate recovery for veterans in the mandatory care category;

- other options exist for offsetting costs of long-term care that are not addressed in our report;
- it would be premature to move into estate recovery until health reform initiatives and their associated costs are finalized;
- estate recoveries should be considered only if VA is allowed to retain the revenues associated with the collections; and
- implementation of an estate recovery program would likely be perceived as a reduction in the country's commitment to its veterans.

Eligibility Reform Would Preclude Any Type of Estate Recovery

VA said that although its nursing home and domiciliary programs provide discretionary not mandatory benefits, to date it has paid for this care from its annual budget without funds from other sources. VA said that as the veteran population ages, it is seeing a shift from traditional inpatient care to outpatient and long-term care programs. Based on this shift and what it is seeing in terms of who will receive care versus who may receive care under the law, the Veterans Health Administration is pursuing eligibility reform; providing long-term care as part of a full continuum of care is one of the options being considered. For service-connected veterans, VA said it believes long-term care services should be considered a mandatory rather than a discretionary benefit. This, in VA's opinion, would preclude any type of estate recovery.

In our opinion, shifting long-term care benefits from discretionary to mandatory would not preclude the establishment of an estate recovery program. In fact, an estate recovery program could provide one means for financing such an expansion. The Congress could decide to establish an estate recovery program covering all veterans receiving long-term care services or exclude certain veterans, such as service-connected veterans receiving care for their service-related disabilities, from the recovery program. For example, the Congress has exempted veterans with service-connected disabilities rated at 50 percent or higher from the copayment requirements for outpatient drugs, but requires other service-connected veterans to make copayments for those outpatient drugs needed to treat nonservice-connected conditions.

Other Options Exist for Offsetting Costs

VA said that there are alternatives to long-term care that we did not address in our report. VA cited hospital-based home care and adult day health care programs as options that can be more cost-effective than nursing home and domiciliary care.

While we agree that hospital-based home care and adult day health care can, under certain circumstances, reduce the costs of providing services to patients who otherwise would be in a long-term care facility, such programs do not offset costs. In addition, to the extent that they generate new demand for long-term care services from veterans who would not otherwise require care in a long-term care facility, they may actually increase long-term care costs. Estate recovery programs provide one option for financing the alternative long-term care service programs mentioned by VA.

Move Into Estate Recovery Would Be Premature

VA said that it would be premature to move into estate recovery until a series of initiatives that will affect VA and its delivery of health care are finalized and their associated costs determined. These initiatives include, VA said, the national health care plan the Administration is developing, the legislative proposal for eligibility reform VA is considering, and the managed-care concept the Veterans Health Administration is examining that will assess community-based and social services to augment VA services. VA said that each of these initiatives will affect its budget and the allocation of dollars for patient care.

We believe that estate recoveries should be considered during deliberations on such initiatives rather than after they have been completed. An important consideration in developing reform plans, both nationally and within the VA health care system, is how any expanded health care benefits will be financed. If, as VA is proposing, long-term care is made a mandatory benefit for service-connected veterans and other veterans in the mandatory care category, the demand for and the cost of providing such care can be expected to increase dramatically. This could especially be the case if VA expands its use of community-based and social services to augment existing long-term care services available from VA facilities. Estate recoveries could provide one means for financing such an expansion.

Similarly, VA should, in our opinion, participate in national health care reform deliberations as reforms are developed rather than waiting to react once they are finalized.

VA Should Be Allowed to Retain Recoveries

VA believes that it is essential that estate recovery be considered as an avenue for offsetting costs in the future only if VA is allowed to retain the revenues associated with the collections. VA said that it would have serious

concerns regarding the budget if estate recovery dollars were used as an offset to future budgets.

How recovery dollars are put to use is a policy matter that the Congress would have to resolve. For example, a central fund could be established for recoveries to be used for a designated purpose, such as purchase of additional nursing home care for veterans in community facilities. It should be noted, however, that allowing individual facilities to retain recoveries (above the amounts spent to operate their recovery programs) might benefit those medical centers serving wealthier veteran populations. In addition, it could create an incentive for individual medical centers to admit to their nursing homes those veterans with the greatest assets in order to increase future recoveries. Returning the recoveries to the Treasury or placing them in a central recovery fund would, in our opinion, limit the incentive of medical centers to admit veterans with the greatest assets.

Estate Recovery Program Would Be Perceived as a Reduction in the Nation's Commitment to Its Veterans

VA said that implementation of an estate recovery program is likely to be perceived as a reduction in the country's commitment to its veterans. VA said that policy formulators will have to debate whether our nation is willing to provide a benefit to its service men and women or issue a loan to be paid back upon the death of the veteran.

We agree. As this issue is debated it would be important to keep in mind that both options—cost-free nursing home care and an interest-free loan to pay for nursing home care—should be viewed as special benefits available only to veterans. Currently, VA's goal is to provide nursing home care to 16 percent of the veterans entering nursing homes. This creates a question of equity because the remaining 84 percent of veterans entering nursing homes must rely primarily on Medicaid or their own funds to pay for nursing home care. An effective estate recovery program might enable VA to meet the long-term care needs of more veterans within the available budget.

We are sending copies of this report to the Secretary of Veterans Affairs and interested congressional committees. We will also make copies available to others upon request.

This report was prepared under the direction of David P. Baine, Director, Federal Health Care Delivery Issues. If you have any questions you can call him at (202) 512-7101. Other major contributors are listed in appendix IV.

Sincerely yours,

Janet L. Shikles

Janet L. Shikles
Assistant Comptroller General

Contents

Abbreviations

GAO	General Accounting Office
VA	Department of Veterans Affairs
TEFRA	Tax Equity and Fiscal Responsibility Act

Scope and Methodology

To compare the Department of Veterans Affairs' legal authority to recover its nursing home and domiciliary costs from veterans' estates with the authority of state Medicaid programs to make estate recoveries we (1) reviewed pertinent VA statutes, policies, and procedures; (2) interviewed officials at VA's headquarters and its district offices in Atlanta and Washington, D.C., and VA's Debt Management Center in St. Paul, Minnesota; and (3) compared the information gathered on VA estate recovery with information on Medicaid estate recovery programs contained in our 1989 report.

To assess the potential for VA to recover a portion of its costs of providing nursing home and domiciliary care from veterans' estates, we needed to know the extent of assets owned by veterans who use VA-supported nursing homes and domiciliaries. VA does not systematically collect asset data from all veterans who use its medical facilities because, for most veterans who use these facilities, the amount of their assets does not affect their eligibility for care or their copayments. As a result, we used two of VA's most recent national surveys of veterans—the 1987 Survey of Veterans and the Survey of Medical System Users—to analyze asset ownership among veterans who use, or are likely to use, VA nursing homes and domiciliaries.

First, we analyzed data from VA's 1987 Survey of Veterans to assess potential home ownership among VA nursing home and domiciliary users. This survey contained the only readily available data on veterans' home ownership. VA designed the survey to evaluate its own programs and to assess the status and well-being of veterans nationwide. The survey enabled us to identify data on home ownership for hospital inpatients but not for nursing home and domiciliary patients. Therefore, we analyzed home ownership data for VA hospital inpatients aged 65 and over—the group we believed most likely to become VA nursing home and domiciliary users. For most veterans, admission to a nursing home or domiciliary must be preceded by a VA hospitalization. The survey did not report data on the value of homes owned by veterans.

The Census Bureau conducted the 1987 Survey of Veterans based on its Current Population Survey—a monthly nationwide survey designed to obtain information on the employment status and other characteristics of the population. Each month, one-eighth of the households in the Current Population Survey are dropped from the sample and replaced by new households. Veterans who were rotated out of the Current Population Survey between April 1986 and January 1987 were included in the 1987

Survey of Veterans. A total of 11,439 veterans were sampled. A VA contractor completed an independent study in June 1989, validating the survey methodology.

Next, we analyzed data from VA's Survey of Medical System Users to assess whether VA nursing home and domiciliary users have assets other than a home. Although the sample of veterans for this survey was drawn from VA hospital inpatients, the survey reported whether the veterans had been in a VA nursing home or domiciliary. We analyzed data on the liquid assets, such as stocks, bonds, and bank accounts; real property other than a home; other assets; and liabilities associated with these assets for those veterans who had used VA nursing homes or domiciliaries. From these data we estimated the inpatients' net assets (other than home equity).[1]

The Survey of Medical System Users was conducted by Arawak Consulting Corporation under contract to VA. The survey was designed to provide detailed data on the entire population of veterans who used VA hospital inpatient facilities during fiscal year 1987. The overall sampling frame for medical system users consisted of VA's closed fiscal year 1987 Patient Treatment File and the VA patient census as of September 30, 1987. Between August 1988 and May 1989, interviews were completed with 2,865 veterans who had been hospital inpatients in a VA medical center during fiscal year 1987. Veterans who were in VA nursing homes or domiciliaries during fiscal year 1987 were therefore excluded from the survey unless they had been hospitalized at some time during that year.

In using data from VA's 1987 Survey of Veterans and Survey of Medical System Users, we estimated veteran populations, incidence of home ownership, and net asset dollar values using sampling error rates providing 95-percent confidence that each variable's actual value falls within the range of our estimates. The chances are 19 out of 20 that the actual population values will fall within the range defined by our estimate plus or minus the sampling error.

Our review was performed from March to November 1992 in accordance with generally accepted government auditing standards.

[1]Net assets equal the sum of liquid assets, real property other than a home, and any other assets minus liabilities associated with those assets.

The Department of Veterans Affairs Copayment Requirements

This appendix describes VA's legislative authority for collecting copayments and the system VA uses to assess veterans' ability to pay for nursing home care.

Legislative Authority for VA's Copayment Requirements

The Veterans Health Care Amendments of 1986 (P.L. 99-272) require VA to collect a fee, commonly referred to as a copayment, from certain veterans who receive nursing home care in its facilities or in community nursing homes under VA contract. The requirement applies to any veteran, unless he or she meets at least one of the following criteria:

- has a service-connected disability;
- is a former prisoner of war;
- is a veteran of the Mexican border period or World War I;
- was exposed to certain toxic substances or radiation and needs treatment for related conditions; or
- has a nonservice-connected disability and is unable to defray the cost of care. Veterans eligible for Medicaid, receiving a VA pension,[1] or having financial resources below a prescribed level are considered unable to defray the cost of care.

The law specifies that veterans not meeting these criteria must agree to pay, for each 90 days of nursing home care, an amount equal to Medicare's inpatient deductible. In fiscal year 1992, these veterans were required to pay $652 for each 90 days of care in a VA nursing home or contract community nursing home.

The Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) expanded the copayment requirements for veterans not meeting one of the criterion that exempts veterans from copayments. In addition to the 90-day period copayment required under the 1986 law, these veterans are required to pay an additional $5 for each day of nursing home care in a VA nursing home or contract community nursing home. In total, the maximum daily copayment for one 90-day period of nursing home care is $12.24 per day [($652/90)+ $5 = $12.24].

With regard to VA domiciliaries, Public Law 100-322 limits eligibility for admission to veterans with incomes that do not exceed VA's maximum annual pension rate. For example, in 1992, the maximum rate for single

[1]Veterans receiving VA pensions are not required to pay for their care. However, under 38 C.F.R. 3.551, the pensions of veterans without dependents are reduced to not more than $90 per month 3 months after admission to a VA nursing home. The pensions of veterans in VA domiciliaries and community nursing homes are also reduced.

veterans needing aid and attendance was $11,832. All veterans who meet this income test automatically qualify for free domiciliary care.

System Used by VA to Assess Ability to Pay for Nursing Home Care

If a veteran does not automatically qualify for free care, VA must assess the veteran's income and assets and his or her family's income to determine whether a copayment is required.

To determine a veteran's ability to pay, VA first determines the income of the veteran, the veteran's spouse, and any dependents. The types of income include Social Security benefits, U.S. Civil Service retirement, U.S. Railroad Retirement, military retirement, unemployment insurance, any other retirement income, total wages from all employers, interest and dividends, workers' compensation, black lung benefits, and any other income from the calendar year before the veteran's application for care.

If the income is greater than a prescribed amount, the veteran must pay the copayment. In 1992, the prescribed income threshold was $18,844 for a veteran with no dependents; and the threshold is adjusted upward for each dependent. Regardless of how much any veteran's income exceeds the limit, each veteran pays $652 for each 90-day period of nursing home care, plus $5 per day.

If the income is below the prescribed threshold, VA will assess the veteran's income and assets to determine his or her ability to pay. The types of assets included in the assessment are stocks, bonds, notes, individual retirement accounts, bank deposits, savings accounts, and cash. Primary residence and personal property are excluded. The veteran's debts are subtracted from the market value of the assets to determine net worth. If the sum of the veteran's annual income and net worth exceeds $50,000, the veteran must pay the copayment. However, the veteran's case will be reviewed periodically by VA to determine if the veteran must continue to make copayments. If the sum of the veteran's income and net worth is $50,000 or less, the veteran is not required to make copayments.

Comments From the Department of Veterans Affairs

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

JUN 8 1993

Mr. David P. Baine
Director, Federal Health
Care Delivery Issues
U. S. General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Baine:

I have read your draft report, **VA HEALTH CARE: Potential for Offsetting Long-Term Care Costs Through Estate Recovery** (GAO/HRD-93-68), and I agree with GAO's contention that estate recovery programs can be cost effective. To be sure, they must be comprehensive and must not inflict economic hardship on a veteran's heirs. Your report presents an excellent example of offsetting costs by citing the State of Oregon's experience with savings obtained through its estate recovery program. However, as GAO's report states, unlike the Oregon program, the Department of Veterans Affairs (VA) is authorized only to recoup unpaid nursing home copayments through estate recoveries. These collections amount to less than one-tenth of one percent of VA's cost for providing care. Also unlike Oregon, VA is not authorized to recover its remaining costs for providing nursing home and domiciliary care, nor is VA authorized to prevent veterans from giving away or transferring ownership of assets to avoid future recovery.

While estate recovery programs can be cost effective, I have some reservations regarding this method of offsetting costs in VA's nursing home and domiciliary programs. Even though nursing home and domiciliary programs are discretionary, not mandatory, benefits, to date VA's budget has allowed us to provide this care. If we were not to receive sufficient funding to provide the care, VA would have no legal authority to offset the cost of care against a veteran's estate. As the veteran population ages, we are seeing a shift from traditional inpatient care to outpatient and long-term care programs. Based on this shift and on what we are witnessing in terms of who will receive care versus who may receive care under the law, the Veterans Health Administration (VHA) is pursuing eligibility reform. Some eligibility reform discussions have included providing a full continuum of care that would include long-term care. For service-connected veterans, I believe this care would be considered mandatory under the law rather than a discretionary benefit. This would preclude any type of estate recovery.

I suggest alternatives to long-term care exist that GAO has not addressed. For example, VHA's hospital-based home care and

Mr. David P. Baine

adult day health care programs can be more cost effective than nursing home and domiciliary care.

Additionally, several initiatives are under way that will impact on VA and its delivery of health care:

- The Administration is developing a national health care plan that will most certainly impact on VA.
- VA is considering a legislative proposal for eligibility reform.
- VHA is examining a managed care concept that will assess community based and social services to augment VA services.

Each of these initiatives could have an impact on VA's budget and the allocation of dollars for patient care. Until these initiatives and their associated costs are finalized, I believe it is premature for VA to move into estate recovery.

I also believe it is essential that estate recovery be considered as an avenue for offsetting costs in the future only if VA is allowed to retain the revenues associated with the collections. I would have serious concerns regarding the budget if estate recovery dollars were used as an offset to future budgets.

In closing, I believe implementation of an estate recovery program, as GAO suggests, is likely to be perceived as a reduction in the country's commitment to its veterans. Such an initiative calls into question the very essence of a benefit versus a loan. Policy formulators will have to debate whether our nation is willing to provide a benefit to its service men and women or issue a loan to be paid back upon the death of the veteran.

The enclosure presents a number of technical statutory conditions I believe GAO should consider prior to presenting its report to the Congress. Thank you for the opportunity to comment on your report.

Sincerely yours,

Jesse Brown

Enclosure
JB/vz

Enclosure

DEPARTMENT OF VETERANS AFFAIRS COMMENTS
ON GAO DRAFT REPORT, VA HEALTH CARE: Potential for Offsetting Long-Term Care Costs Through Estate Recovery
(GAO/HRD-93-68)

There are a number of existing statutory conditions to which I invite your attention. When a veteran who is already entitled to the aid and attendance allowance under either the compensation or pension program is placed in a nursing home at VA expense, the additional compensation or increased pension for aid and attendance is generally reduced to a lesser rate. In the case of a pension recipient without dependents, a further reduction is also likely. These considerable savings to the government result from award adjustments under existing law.

Title 38 U.S.C. 5503(a)(1)(B) provides that where a veteran having neither spouse nor child is furnished nursing home care by VA, entitlements in excess of $90 monthly are paid to a revolving fund at the VA medical facility furnishing the nursing care. This is available to help defray the operating expenses of the medical center. This revolving fund was established by Public Law 102-568 to help pay for nursing home care.

GAO's report does not distinguish between potential long-term care entitlements for compensation and pension recipients. This would seem to be at odds with longstanding legislative precedents. Service-connected veterans' receipt of compensation and medical care for their service-connected disabilities has been independent of their overall income and other resources. VA pension, which is an income maintenance program, and medical care for nonservice-related disease or injury have on the other hand been contingent on an individual's means.

Now on p. 5.

If the footnote on page 6 is referring to payments withheld under 38 U.S.C. 5503 (b)(1)(A), I should advise that this provision applies to incompetent veterans who have no dependents (spouse or children) and who are institutionalized in a government facility. The last sentence is misleading in that it implies that conservators (fiduciaries) are appointed for the purpose of recovering funds. We offer the following additional information:

(1) Upon the death of an incompetent veteran whose VA benefits were paid via an institutional award, VA may recoup such funds remaining in patient accounts if the veteran had no surviving spouse, children (regardless of age or marital status), or dependent parents.

(2) Upon the death of an incompetent veteran with no will or no heirs, the fiduciary must turn over any VA-derived funds to VA if those funds would otherwise escheat to the state.

(3) When a veteran (competent or incompetent) dies without spouse, next of kin, or heir while being furnished care or treatment by VA in any facility or medical center activity, any personal property, including money, not disposed of by will reverts to General Post Fund.

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