

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**MEDICAID ESTATE RECOVERY  
PROGRAMS**



**JUNE GIBBS BROWN**  
Inspector General

MARCH 1995  
OEI-07-92-00880

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# EXECUTIVE SUMMARY

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## PURPOSE

To describe States' efforts in implementing Medicaid estate recovery programs, focusing on long term care recoveries.

## BACKGROUND

Working within Federal guidelines and requirements, each State has its own Medicaid rules and provisions governing Medicaid long term care eligibility. The States submit a State Plan that, when approved by the Health Care Financing Administration (HCFA), provides the basis for the payment of federal funds to cover at least half of the expenditures incurred by the State in providing medical assistance and administering programs.

The Omnibus Budget Reconciliation Act of 1993 (OBRA) requires States to recover expended Medicaid funds from the estates of Medicaid long term care decedents. In this manner, States are able to return monies back to their Medicaid program and the Federal government.

## METHODOLOGY

We conducted a mail survey of the 50 State Medicaid agencies in October 1993. Topics addressed include eligibility policy, asset verification, Medicaid recipient fraud referrals, estate recoveries by type and amount, Medicaid liens, death and spousal information, and trusts and other influences on estate recovery.

We selected five States in the spring of 1994 to visit based on information and materials received from the mail survey and our analysis of cost recovery information. We chose Massachusetts, Minnesota, Missouri, Oregon and Wisconsin because, when compared to all States, information indicated they had aggressive methods in place to recover assets. At these States we interviewed State agency staff and State fraud investigators to supplement information from the surveys.

## FINDINGS

### *Twenty-seven States Have Estate Recovery Programs*

Many States had recovery programs prior to passage of OBRA '93. Some of these States are now assisting the States which are facing difficulties in meeting OBRA's mandate.

Due to the complexity of establishing recovery programs, 16 States without recovery programs plan to employ a consultant or have State staff develop procedures, while 12 said they would adapt procedures from another State's recovery program. Ten of

these same States responded that they would employ a combination of both of the above strategies, thus the duplication of responses.

### *Mature Recovery Programs are Generally Successful and Cost-Effective*

States with recovery programs report that they are cost-effective and return substantial amounts of money to the State and Federal governments.

- ▶ States with programs recovered over \$85 million in FY 1993, with the average amount of Medicaid estate recoveries per State being \$3.1 million. The State of California had the highest amount with over \$21 million in FY 1993.
- ▶ Most successful recovery programs are comprised of an aggressive, well-trained staff that have a strong emphasis in recoveries from the sale of homes.

### *Existing Programs Provide Lessons on Operational Challenges*

States have experienced various challenges in their efforts to establish effective and efficient estate recovery programs.

- ▶ **Enabling Legislation**

According to HCFA, 40 of 50 States will require authorizing or confirming legislation to implement the OBRA '93 mandatory requirements, including those States that already had recovery programs prior to passage of the Act. Some States have asked for and received extensions from their HCFA regional office, allowing them to delay the implementation date for starting an estate recovery program.

- ▶ **Insufficient Resources and Limited Staffing**

Sixteen States provided information to us on staffing levels. These States had one to six individuals assigned to their program. Often these staffers are part-time or work only a small percentage of time on estate recovery cases.

- ▶ **Liens on Homestead Properties**

In estate recovery programs, real properties are the biggest source of revenue recouped for the State Medicaid programs. Yet, only 14 States file liens. Of these, only six States use the lien recovery authority granted by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Liens are viewed by many States as politically unpopular.

- ▶ **Out-of-State Assets**

If a Medicaid applicant does not disclose out-of-State assets, those assets may go undetected and the applicant may improperly obtain Medicaid eligibility.

▶ **Surviving Spouse Estates**

States that keep files on surviving spouses say eventual recovery can be substantial. Yet, at the time of our survey, only 10 States reported that they pursue this type of recovery. The remaining States cite difficulty in tracking the death of a surviving spouse and the disposition of the estate.

*HCFA has taken Action to Provide States with Technical Assistance*

The HCFA has conducted numerous training and technical assistance conferences on estate recovery during the last two years, including substantial new efforts since the time we completed our survey.

**RECOMMENDATIONS**

We believe that improvements in the recovery of long term care costs will result in substantial savings over time for both the Federal and State governments. As such, we believe that States' progress in implementing OBRA 1993 requirements deserves scrutiny and attention.

We offer the results of our study to reinforce HCFA's own initiative in this area. We support HCFA's efforts to provide training and technical assistance to States who are attempting to establish recovery programs or to improve the productivity of existing units. These efforts are extremely important to the success of OBRA 1993. As a concern and expressed need mentioned numerous times by the States, we support HCFA's continued efforts to provide training and technical assistance and act as a clearinghouse for identification of effective practices, as well as to monitor States' activities and progress.

The operational challenges reported to us by States, and confirmed in the research literature, our prior work in this area, and in discussion with HCFA staff, merit special attention. Without overcoming these operational challenges, the impact of OBRA 1993 will be reduced and the savings that would be generated put in jeopardy. As a result, we make the following three recommendations to HCFA:

*The HCFA should develop performance indicators to track States' progress in implementing the OBRA 1993 requirements.*

Such performance indicators would encourage States to staff their recovery units appropriately and use all available tools, such as TEFRA liens, to obtain appropriate recoveries. This would aid in identifying States with particular problems, establish expectations and a method for benchmarking progress, and yet allow States flexibility in finally choosing the mix of tools to achieve expected results.

***The HCFA should target mechanisms for recovery that have high dollar payoff and identify strategies to help make necessary information available to State agencies to pursue those mechanisms.***

States have difficulty pursuing out-of-State assets and surviving spouse estates because of a lack of information; yet, these are important areas for States to pursue and can offer substantial savings to the State. Some of those information needs can only be met by interstate data sharing and cooperation, which HCFA could facilitate. The HCFA may wish to convene interested groups to specifically talk about possible solutions to these problems, which could require Federal legislation. For example, these could include mandating TEFRA liens and providing for better legislative support for spousal recoveries.

***The HCFA should monitor closely States' progress in obtaining enabling State legislation and pursue legislative authority to impose sanctions or penalties if States do not act within a reasonable period of time to implement OBRA 1993.***

One of the most difficult problems for HCFA to address is the reluctance that might exist in some States to implement OBRA 1993 requirements. While HCFA should allow States time to enact the appropriate legislation, some kind of penalties should be available for HCFA to use if States don't take action within a specified time frame.

We have no way of estimating the potential savings to the Medicaid program that could result if all States were to adopt proven cost-effective estate recovery techniques. However, the experiences of the most successful States we studied indicate that such savings would be quite substantial, amounting to tens of millions of dollars per year nationwide.

## **COMMENTS**

The HCFA concurred with all the recommendations in this report. (See Appendix D). The HCFA has since developed performance indicators which the regions are currently reviewing, and have issued compliance letters to 12 States. Also, the technical advisory group on third party liability met on February 16, 1995 to discuss strategies for implementing our recommendation to impose sanctions or penalties.

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# INTRODUCTION

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## PURPOSE

To describe States' efforts in implementing Medicaid estate recovery programs, focusing on long term care recoveries.

## BACKGROUND

### *Eligibility for Medicaid Long Term Care*

Each State has its own Medicaid rules and provisions governing Medicaid long term care eligibility. These include the guidelines and limitations established by Part 430 of "Grants to States for Medical Assistance Programs" in Title XIX of the Social Security Act and implementing Medicaid eligibility regulations (42 Code of Federal Regulations 430).

Medicaid coverage of long term care is intended for those individuals with inadequate resources to provide for themselves. As such, persons with substantial assets are not eligible. However, in determining eligibility for Medicaid long term care, States may count only income and assets that are available to the applicant or recipient, i.e., those funds under the applicant's control. Certain assets and resources (which can often be of any value) are exempt, including the home (in many cases), burial policies, small savings accounts, and funds to maintain the spouse in the home. There is also a provision for coverage of persons with a higher dollar amount of assets who have incurred long term care expenses. Once these individuals have depleted their excess resources, they may qualify for Medicaid. In addition, they must also reduce their excess income each month in order to remain eligible.

Studies have found that individuals can qualify for Medicaid quickly and easily while preserving income and assets from recovery. Two Office of Inspector General (OIG) reports, Medicaid Estate Recoveries (OAI-09-86-00078) and Transfer of Assets: A Case Study in Washington State (OAI-09-88-01340), issued in the late '80s, found that "many elderly recipients retain sizeable estates which pass to their heirs without reimbursement of public costs."

A March 1989 U.S. General Accounting Office report entitled Recoveries from Nursing Home Residents' Estates Could Offset Program Costs (GAO/HRD-89-56) found that States need programs to deal with both transfer of assets and recovery from estates. This study found that Medicaid recovers little of its nursing home costs from recipients' estates and that expanding the programs to recover from estates of institutionalized recipients under age 65 would increase recoveries. In the eight States studied, as much as two-thirds of the amount spent for nursing home care for Medicaid recipients who owned a residence could be recovered from their estates or from the estate distribution to their spouses. The report concluded that estate recovery programs can achieve savings while treating the elderly equitably and humanely.

### *Recoupment of Medicaid Long Term Care Benefits from Assets*

According to a 1992 Health Care Financing Administration (HCFA) and American Public Welfare Association collaborative project, States are having limited success with the recoupment of money from the estates of deceased Medicaid recipients. At that time, only nine States were pursuing the recovery of property held in joint tenancy and only five States attempted to recover property transferred through living trusts.

Liens on property are another intricate issue. Section 1917 (a)-(c) of the Social Security Act [42 United States Code 1396p(b)] says that the State "must seek adjustment or recovery from the individual's estate or upon sale of the property subject to a lien, at a minimum, of the amount spent by Medicaid on the person's behalf for services provided in a nursing facility...." The law applies this to permanently institutionalized individuals who the State determines cannot reasonably be expected to be discharged and return home, including individuals who qualify as both permanently institutionalized individuals and who are at least 55 years old.

Prior to 1993 only a few States used liens as a means to recover Medicaid payments. These States followed the rules outlined by Section 1917 of the Social Security Act and can utilize the lien recovery authorization granted by the 1982 Tax Equity and Fiscal Responsibility Act (TEFRA). TEFRA liens have great authority to recoup under many circumstances, yet most State legislatures are reluctant to approve this law.

States are required to seek recovery of the amounts spent by Medicaid on permanently institutionalized individuals over the age of 55 for nursing facility services, home and community based services, and related hospital and prescription drug services. At State election the State can, in addition to these services, collect for any other services provided under the State plan. Recoveries may come either from the individual's estate (after death) or from the sale of property subject to a lien (which could be during the individual's lifetime). In addition, the HCFA State Medicaid Manual issuance of September 1994 maintains that "States are not required to use the Supplemental Security Income intent to return home rule for purposes of determining whether an individual is permanently institutionalized for purposes of estate recovery."

Effective October 1, 1993, the Omnibus Budget Reconciliation Act requires all States to establish recovery programs. These programs may be developed in any manner that is approved by each State. However, the law permits a delayed compliance date for States requiring authorizing or conforming State legislation. Nevertheless, the State must take action during its first legislative session after August 1993, with a delayed compliance date no later than the first day of the first quarter immediately after the close of the first legislative session.

Even though the law mandates action during the first legislative session after August 1993, 12 States do not plan to enact legislation on estate recovery programs until calendar year 1995, according to a July 1994 HCFA Transmittal. These States have requested and been granted legislative extensions from their respective HCFA regional offices.

## METHODOLOGY

### *Mail Survey*

The inspection was conducted in two phases. In phase one, we conducted a mail survey of the 50 State Medicaid agencies. While the survey was comprised of many closed-ended questions, we also used some open-ended questions that provided more in-depth information to explain and expand upon close-ended responses.

The surveys were submitted to State Medicaid agencies in late October 1993. We received our final State responses in late May 1994.

### *Five State Sample*

In phase two, we selected a judgmental sample of five States based on the information obtained from phase one. We chose Massachusetts, Minnesota, Missouri, Oregon and Wisconsin because of the comparative effectiveness of their estate recovery programs and information completed on their surveys. We visited each State and used data collection instruments to conduct interviews with State Medicaid agency staff and State Medicaid fraud investigators. This technique was also used to follow up on responses reported in the surveys.

### *Analysis*

The inspection team summarized and tabulated the responses to all the survey questions. The responses were quantified to determine how many State Medicaid agencies have programs to identify and prevent transfers of assets, the outcomes from these identification systems, how many States have recovery programs, what those programs entail, and the dollar value of assets and estates which have been recovered.

### *Scope*

This report is one of two related reports. A companion report will focus on eligibility determinations, verification of information presented at application, and referrals of potential fraud to Medicaid Fraud Control Units.

We conducted our review in accordance with the *Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

# FINDINGS

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## *Twenty-seven States Have Estate Recovery Programs*

Twenty-two of the 27 States with recovery programs had programs before the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). According to survey information, a few States have been recovering Medicaid expenditures for a couple of decades or more, with a majority of the 27 States beginning their recovery programs in the late '80s/early '90s. Although over half of all States have recovery programs, most of these States still sought authorizing or confirming legislation to implement the OBRA '93 mandatory requirements.

Twenty-three States did not have recovery programs at the time of our review but are now mandated by the OBRA '93 to develop a recovery program in their State. Due to the complexity of establishing a recovery program, 16 of these States plan to employ a consultant or have State staff develop procedures for the program's operation. Twelve said that they would adapt procedures from another State's recovery program, with ten of these States responding that they would employ a combination of both of the above strategies, thus the duplication of responses. One State said they would adapt procedures from an existing tax lien agency. Another State said that they would acquire the input of public special interest groups concerning estate recovery. One State simply did not know how they would develop operational guidelines for a recovery program.

At the time of our review, over half of the 23 States indicated they would need training on procedural issues and guidelines/policies used by other States. Twelve also said that they would need staff training on the law and legal procedures, emphasizing once again the technical complexity of estate recovery programs.

## *Mature Recovery Programs are Generally Successful and Cost-Effective*

- ▶ Existing Programs report in Excess of \$85 Million in FY 1993 Recoveries

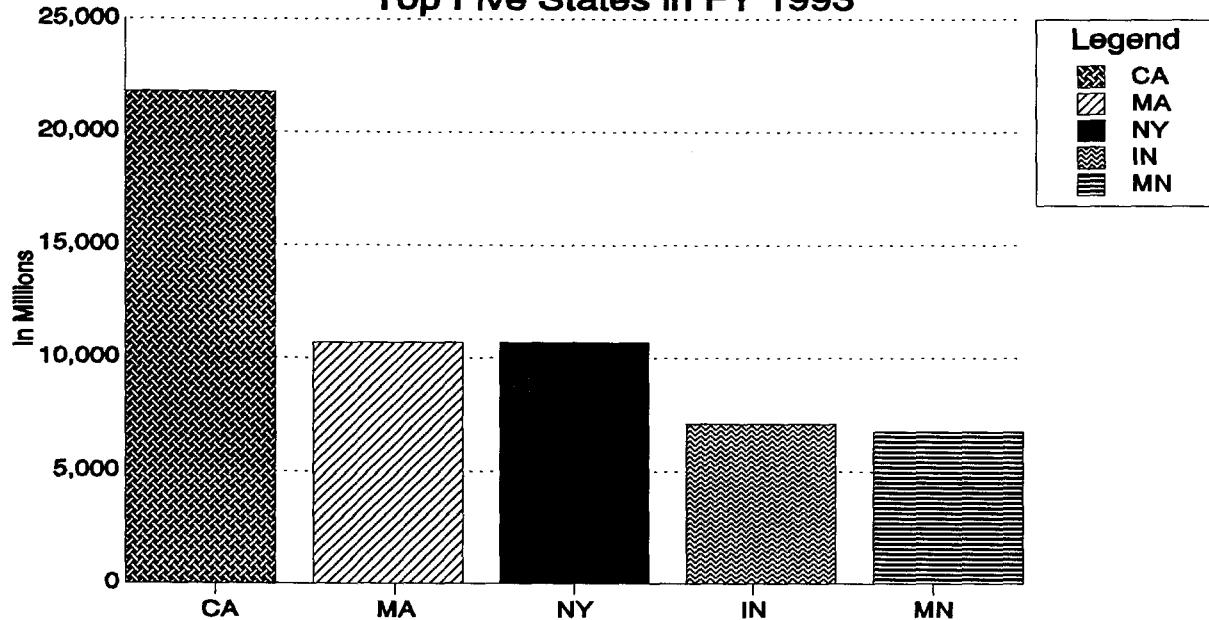
States with recovery programs report that they are cost-effective and return substantial amounts of money to the State and Federal governments. The average amount of Medicaid estate recoveries per State with a recovery program in Fiscal Year 1993 was \$3.1 million. The State of California had the highest amount with over \$21 million in FY 1993. Overall, States recovered over \$85 million (Federal and State dollars) in FY 1993. (See Appendix A).

Of those States that reported budget information, the typical recovery ratio reported was approximately 9 to 1. We did not verify the budget information as accounting methods differ from State to State.

The chart on the following page shows the top five States in terms of dollar amounts recouped in estate recovery.

# ESTATE RECOVERY

## Top Five States in FY 1993



The five States shown above recovered over \$50 million dollars in Medicaid recoveries in FY 1993. In addition, increased collections in FY 1994 and FY 1995 should continue in these States as future projections of recovery look promising. Over the years, these five States have developed well-established, cost-effective estate recovery programs.

We found that those States with mature or long-standing recovery programs were generally more successful than the States with recently developed programs. This should remain true due to the lengthy start-up time associated with developing estate recovery programs. The HCFA Third Party Liability (TPL) Branch confirmed this, stating that it takes two to three years for most recovery programs to become cost-effective.

- ▶ Successful Recovery Units Demonstrate Identifiable Strengths

### *Successful Recovery Units*

- Trained staff
- Aggressiveness
- Focus on Homes
- Inventive!

During our onsite visits, we learned that successful recovery programs had specific strengths. These typically included a well-trained staff that can aggressively or doggedly pursue the verification of income, assets and property. Recovery units that have a strong emphasis in home recoveries and a readiness to litigate usually returned large amounts to the Medicaid program through the sale of real property.

### *Existing Programs Provide Lessons on Operational Challenges*

#### ▶ **Enabling Legislation**

According to HCFA, 40 of 50 States will require authorizing or confirming legislation to implement the OBRA '93 mandatory requirements, including those States that already had recovery programs prior to passage of OBRA '93. As such, State enabling legislation is required for over half of the States which do not have estate recovery programs. Some States have asked for and received extensions from their Attorney General's office, allowing them to delay the implementation date for starting an estate recovery program. HCFA reported in July 1994 that 12 States do not plan to enact legislation on estate recovery programs until calendar year 1995.

States indicate that legislation to establish Medicaid recovery programs is unpopular and difficult to get passed. The give-and-take legislative process to get estate recovery program language approved will take considerable time in some of the States. Also, this type of legislation is quite technical and may require changes in existing State legislation. States which do not have estate recovery programs said that political sensitivity and citizen concerns within the State are often very large impediments in establishing Medicaid estate recovery programs.

#### ▶ **Insufficient Resources and Limited Staffing**

Most of the 27 operating recovery programs are comprised of staff from a variety of disciplines. Professionals with accounting, investigative and legal backgrounds are commonly found in these settings. As shown in Appendix A, over half of the 27 States have one to six individuals assigned to the everyday monitoring and followup of recovery cases. However, few States are able to budget for these positions on a full-time basis. Many of the staffers are currently in a Third Party Liability or Cost Benefits Recovery unit devoting only 1/3 to 1/2 of their time to Estate Recovery. Most States indicate that these limitations severely restrict their recovery capability.

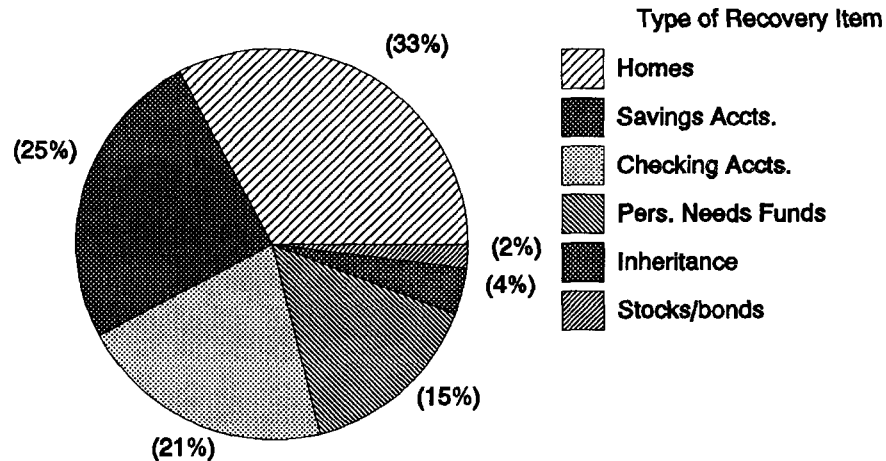
#### ▶ **Liens on Homestead Properties**

In estate recovery programs, real property of the deceased Medicaid long term care recipients is the most frequently recovered item, followed by checking accounts, savings accounts, and personal needs funds of nursing home patients. In terms of dollar amounts recovered, real properties are also the biggest

source of revenue recouped for the State Medicaid program, followed by savings and checking accounts, personal needs funds, and inheritances and stocks/bonds.

## \$ Amt. of Recovery

by Type of Item



Fourteen States file liens on property (See Appendix B). In almost all instances this is a lien placed on the homestead property of the Medicaid long term care recipient. However, many States do not use liens because they believe that liens present a public relations problem. Some States feel that senior lobby groups can prevent home lien recoveries. Some States also choose not to employ liens because of the perception that the elderly have worked all their lives to retain their homestead property. Once they become sick or institutionalized, the appearance may be that the State takes everything away from the Medicaid applicant (including their home).

Six States utilize TEFRA liens. TEFRA liens grant authority to recover costs of all Medicaid services by imposing liens on real property, thus protecting the State's interest in the property in the event that it is sold or transferred. Estate recovery may then be made at the time the property is sold or transferred or upon the death of the Medicaid beneficiary. TEFRA lien benefits are the "immediate recovery of monies when the realty is sold during the lifetime of the beneficiary and the priority position of the State's claim against available probate assets. Funds are reimbursed at settlement from proceeds of sale rather than at the closing of the estate where the State only shares as a general creditor."<sup>1</sup> TEFRA liens, however, have severe restrictions. For instance, TEFRA liens cannot be placed if the non-institutionalized spouse is still living in the home, if there is a child living in the home under the age of 21 or if

<sup>1</sup>from Estate Recovery Reference Guide, produced by the APWA & HCFA, October 1994, pgs. 29-35.

there is a blind or disabled child of any age living in the home. Also, if there is a sibling of the beneficiary who has an equity interest in the home, and the sibling was residing in the home for a period of at least one year immediately before the date of the individual's admission to the medical institution, no TEFRA lien can be placed. These restrictions are a reason why few States use TEFRA liens. In addition, TEFRA liens are as unpopular as estate recovery programs in many States, and will require legislative changes in those States which choose to make TEFRA liens an option.

► **Out-of-State Assets**

The States we visited said they have limited capabilities to determine and verify the existence and amount of a Medicaid recipients's out-of-State financial and property holdings. If a Medicaid applicant does not disclose all out-of-State assets, there is a very good chance that those assets will go undetected and the applicant may improperly obtain Medicaid long term care benefits. States listed several barriers that make it difficult to recover out-of-State property such as probate codes which vary by State, inability to attach liens in other States, and lack of knowledge on how to recover assets in other States.

Another factor that impedes out-of-State asset verification is the inability of States to go beyond what is reported. It is virtually impossible for a State to examine all possible assets. Therefore, unreported assets are not usually investigated. These assets are normally discovered only through fortuitous tips from third parties.

State of Wisconsin staff reported to us during the onsite visit that they had difficulties in learning about out-of-State properties. Even when they did find out about out-of-State property, they had difficulty pursuing recoveries in other States (except a couple of adjoining States with which they had developed cooperative interstate agreements).

The State of Massachusetts said that they do occasionally find out about holdings of out-of-State property of Medicaid long term care recipients. Massachusetts State agency staff said that they follow the particular probate codes of whatever State in which the Medicaid recipient held property. They did not perceive the recovery of identified out-of-State assets as a big impediment because, for example, they would simply follow Florida probate procedure to recover real or vacation property in Miami Beach, Florida. However, they reiterated the problem of seldom finding out about additional and/or out-of-State property holdings.

► **Surviving Spouse Estates**

The OBRA '93 provides for recovery from the estate of a deceased surviving spouse, but only 10 States currently pursue this type of recovery (See Appendix C). The remaining States cite difficulty in tracking the death of a surviving spouse for many reasons: no on-line capability of denoting updated



information on the State Medicaid records, no cross-referenced obituary clipping bureaus, and current low rates of recovery amounts on these types of cases. States also said that the real property is often legally transferred to someone else, preventing recovery.

States also expressed difficulty in monitoring surviving spouse cases. To be successful, the recovery units must keep suspension files with financial and demographic information on all the well spouses of nursing facility patients. Although it is often unwieldy and cumbersome to remain up-to-date and knowledgeable of the status of surviving spouses, States employing this strategy tout its success. Also, while recovery levels are currently low in surviving spouse cases, States feel that the revenue from these recoveries will soon grow considerably.

### *HCFA has taken Action to Provide States with Technical Assistance*

The HCFA has responsibility for monitoring and assisting States in their development of estate recovery programs. It has conducted numerous training conferences for TPL coordinators and Medicaid State representatives. There have also been panel discussions on estate recovery presented at State Medicaid Director's meetings. The HCFA contacted all 50 States in the summer of 1994 to determine implementation dates of recovery programs, and released an "OBRA '93 - Estate Recovery Program Survey Results." The HCFA staff have also attended elder law conferences, discussing its Medicaid recoveries and the fiscal impact of estate recoveries on Medicaid budgets.

In September 1994, HCFA released a State Medicaid manual issuance to provide guidance to States in meeting the requirements of OBRA 1993. In November 1994, HCFA released a resource guide for States in collaboration with the American Public Welfare Association. The HCFA is now scheduled to release a directive on those States which did not initiate an estate recovery program during their State legislature's first legislative session. This forthcoming issuance will report those States which are not in compliance by year-end 1994.

The HCFA has also contracted with a consulting firm to perform an assessment of estate recovery programs in NY, CA, CT, and FL. The assessment will focus on OBRA '93, trusts, and transferring of assets.

These efforts by HCFA respond to the needs expressed by States in response to our survey. In their survey responses, some States indicated an ongoing need for continued technical assistance from HCFA. Thirteen States (at the time of our review in October 1993 - May 1994) desired additional training or technical assistance focused on making their recovery programs more effective. For example, one State said that HCFA should "provide technical assistance and publish uniform guidelines for States to use regarding asset verification procedures." This State also said that HCFA should "conduct workshops or training sessions for State staff." Few States reported networking or sharing best practices with one another. We also found that some States are unaware of the cumulative dollar amount which can be recovered from

personal needs funds of nursing facility patient accounts. In addition, we found that not all States were active in contacting HCFA for technical assistance.

## RECOMMENDATIONS

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We believe that improvements in the recovery of long term care costs will result in substantial savings over time for both the Federal and State governments. As such, we believe that States' progress in implementing OBRA 1993 requirements deserves scrutiny and attention.

We offer the results of our study to reinforce HCFA's own initiative in this area. We support HCFA's efforts to provide training and technical assistance to States who are attempting to establish recovery programs or to improve the productivity of existing units. These efforts are extremely important to these success of OBRA 1993. As a concern and expressed need mentioned numerous times by the States, we support HCFA's continued efforts to provide training and technical assistance and act as a clearinghouse for identification of effective practices, as well as to monitor States' activities and progress.

The operational challenges reported to us by States, and confirmed in the research literature, our prior work in this area, and in discussion with HCFA staff, merit special attention. Without overcoming these operational challenges, the impact of OBRA 1993 will be reduced and the savings that would be generated put in jeopardy. As a result, we make the following three recommendations to HCFA:

***The HCFA should develop performance indicators to track States' progress in implementing the OBRA 1993 requirements.***

Such performance indicators would encourage States to staff their recovery units appropriately and use all available tools, such as TEFRA liens, to obtain appropriate recoveries. This would aid in identifying States with particular problems, establish expectations and a method for benchmarking progress, and yet allow States flexibility in finally choosing the mix of tools to achieve expected results.

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States have difficulty pursuing out-of-State assets and surviving spouse estates because of a lack of information; yet, these are important areas for States to pursue and can offer substantial savings to the State. Some of those information needs can only be met by interstate data sharing and cooperation, which HCFA could facilitate. The HCFA may wish to convene interested groups to specifically talk about possible solutions to these problems, which could require Federal legislation. For example, these could include mandating TEFRA liens and providing for better legislative support for spousal recoveries.

*The HCFA should monitor closely States' progress in obtaining enabling State legislation and pursue legislative authority to impose sanctions or penalties if States do not act within a reasonable period of time to implement OBRA 1993.*

One of the most difficult problems for HCFA to address is the reluctance that might exist in some States to implement OBRA 1993 requirements. While HCFA should allow States time to enact the appropriate legislation, some kind of penalties should be available for HCFA to use if States don't take action within a specified time frame.

We have no way of estimating the potential savings to the Medicaid program that could result if all States were to adopt proven cost-effective estate recovery techniques. However, the experiences of the most successful States we studied indicate that such savings would be quite substantial, amounting to tens of millions of dollars per year nationwide.

#### COMMENTS

The HCFA concurred with our three recommendations. The HCFA has since developed performance indicators which the regions are currently reviewing, and have issued compliance letters to 12 States. Also, the technical advisory group on third party liability met on February 16, 1995 to discuss strategies for implementing our recommendation to impose sanctions or penalties.

## APPENDIX A

### STAFFING AND BUDGET FOR STATE RECOVERY PROGRAMS AS REPORTED BY STATES

STATE	NO. OF STAFF <sup>1</sup>	STAFF DISCIPLINES <sup>2</sup>	RECOVERY PROGRAM BUDGET	TOTAL DOLLAR AMOUNT OF RECOVERY IN 1993
CA	28	A	\$1,450,000	\$21,791,500
MA	6	A C D E	not available	\$10,685,040
NY	No response	Vary/county	not available	\$10,684,429
IN	No response	Vary/county	not available	\$7,093,029
MN	No response	Vary/county	not available	\$6,751,987
IL	23	A B C	\$644,867	\$6,243,522
OR	12	A C E	\$550,000	\$4,000,000
CT	17	B C E	not available	\$3,806,774
WI	5	A B C D	\$346,808	\$3,450,886
NH	5	A C E	\$167,382	\$2,002,058
AL	2	C D	\$99,000	\$1,666,351
WA	5	A B C D	\$89,000	\$1,300,000
MO	5	A C D	\$135,759	\$1,274,876
MD	4	C D E	\$96,174	\$1,162,480
ND	3	C D	\$44,000	\$806,241
ID	2	A C	\$75,000	\$587,580
NJ	2	A C	\$100,000	\$550,300
UT	2	B D	\$26,300	\$414,384
KS	4	A C D	\$120,000	\$178,000
FL	No response	Vary/district	not available	\$159,141
MT	1	B	\$15,000	\$150,000
AR	4	D	\$41,000	\$122,394

STATE	NO. OF STAFF <sup>1</sup>	STAFF DISCIPLINES <sup>2</sup>	RECOVERY PROGRAM BUDGET	TOTAL DOLLAR AMOUNT OF RECOVERY IN 1993
CO	2	C E	\$273,883	\$71,559
HI	9	A C D	\$11,135	\$46,958
VA	7	A B C D E	\$25,000	\$31,629
RI	3	A C D	not available	not available
VT	No response	C	not available	not available
Total Medicaid Estate Recoveries in Fiscal Year 1993				\$85,031,118

<sup>1</sup>No response: States that were unable to report their "No. of Staff" information typically have recovery programs that are operated at the county level.

- <sup>2</sup>A = accountants/analysts (14 States)  
B = investigators (7 States)  
C = "clerical," administrative, and research positions (19 States)  
D = attorneys (13 States)  
E = supervisors/managers (7 States)

# APPENDIX B

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## USE OF LIENS

At the time of our survey (October 1993 - May 1994), the following 14 States reported that they use liens.

Alabama \*  
California \*  
Colorado \*  
Connecticut \*  
Illinois  
Maryland \*  
Massachusetts  
Montana  
New Hampshire  
New Jersey  
New York \*  
Rhode Island  
Utah  
Wisconsin

[The State of Minnesota was planning to begin implementation of TEFRA liens in July 1994, according to a HCFA/APWA survey.]

\* Uses TEFRA liens

# APPENDIX C

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## RECOVERY FROM SURVIVING SPOUSES

At the time of our survey, the following ten States reported that they recover from the estate of the "surviving spouse."

California (pending, due to recent court action in December 1994)  
Illinois  
Kansas  
Minnesota (applies to information from Hennepin county, MN only)  
Missouri  
New Hampshire  
New York  
North Dakota  
Oregon  
Wisconsin



# APPENDIX D


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## AGENCY COMMENTS



## Memorandum

DATE MAR 8 1995

FROM Bruce C. Vladeck   
Administrator

SUBJECT Office of Inspector General Draft Report: "Medicaid Estate Recovery Programs," (OEI-07-92-00880)

TO June Gibbs Brown  
Inspector General

We reviewed the subject final report which describes States' efforts in implementing Medicaid estate recovery programs. Our comments are attached for your review.

Thank you for the opportunity to review and comment on this report. We commend OIG staff for their willingness to act on our previous comments.

Attachment

At the bottom of page 7, the authority of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) liens is overstated. While it is true that TEFRA liens can be placed on the real property of permanently institutionalized beneficiaries, while they are still alive, there are severe restrictions. The TEFRA liens cannot be placed if the community spouse is still living in the home (primary residence) nor can a lien be placed if there is a child living in the home under the age of 21 or if there is a blind or disabled child of any age living in the home. Finally, if there is a sibling of the beneficiary who has an equity interest in the home, and the sibling was residing in the home for a period of at least 1 year immediately before the date of the individual's admission to the medical institution, no lien can be placed. These limitations should be pointed out in the text as reasons why more States are not using TEFRA liens.