



COMMONWEALTH of VIRGINIA
Department of Medical Assistance Services

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MEMORANDUM

TO: The Honorable Terence R. McAuliffe
Governor of Virginia

The Honorable Thomas K. Norment, Jr.
Co-Chairman, Senate Finance Committee

The Honorable Emmett W. Hanger, Jr.
Co-Chairman, Senate Finance Committee

The Honorable S. Chris Jones
Chairman, House Appropriations Committee

FROM: Cynthia B. Jones

A handwritten signature in black ink that reads "Cynthia Jones".

SUBJECT: Report on Findings and Recommendations for Developing an
Improved Estate Recovery Program

The 2016 Appropriation Act, Item 310 (O)(1) requires the Department of Medical Assistance Services (DMAS), in collaboration with the Department of Social Services (DSS), to report on the findings and recommendations for developing an improved estate recovery program to assist in maximizing the recovery of assets of deceased Medicaid beneficiaries, including the cost of initiating and operating such a program with options that include developing an in-house program or contracting with a third party vendor to perform some or all of the identification and recovery, and the cost benefit and legal implications of the various options. The department shall submit its findings and recommendations for developing an improved estate recovery program to the Governor and the Chairman of the House Appropriations and Senate Finance Committees by December 1, 2016.

Should you have any questions or need additional information, please feel free to contact me at (804) 786-8099.

CBJ/
Enclosure

pc: The Honorable William A. Hazel, Jr., MD, Secretary of Health and Human Resources

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

ADMINISTERING MEDICAID AND THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM IN VIRGINIA



DMAS' mission is to provide a system of high-quality and cost-effective health care services to qualifying Virginians and their families.

The Medicaid program, signed into law by President Lyndon B. Johnson on July 30, 1965, celebrated its 50th year in 2015.

Medicaid is a joint federal and state program authorized under Title XIX of the Social Security Act that provides health and long-term care coverage for specific groups of Virginians with low incomes. In Virginia, Medicaid is administered by the Department of Medical Assistance Services (DMAS) and is jointly funded by Virginia and the federal government. Virginia's federal matching rate, known as the Federal Medical Assistance Percentage (FMAP) is generally 50%, so Virginia receives \$1 of federal matching funds for every \$1 Virginia spends on Medicaid.

Medicaid is primarily available to children in families with low-income, pregnant women, elderly, individuals with disabilities, and parents below strict income limits.

DMAS also administers Virginia's Children's Health Insurance Program (CHIP) known as FAMIS. FAMIS covers children and pregnant women in families earning too much to qualify for Medicaid but too little to afford private insurance.

All states must follow federal Medicaid/CHIP guidelines regarding who is covered, but set their own income and asset eligibility criteria. Virginia's eligibility criteria are among the strictest in the nation.



Report to the General Assembly Findings and Recommendations for Developing an Improved Estate Recovery Program December 1, 2016

2016 Appropriation Act, Item 310 (O)(1) The Department of Medical Assistance Services, in collaboration with the Department of Social Services, shall require Medicaid eligibility workers to search for unreported assets at the time of initial eligibility determination and renewal, using all currently available sources of electronic data, including local real estate property databases and the Department of Motor Vehicles for all Medicaid applicants and recipients whose assets are subject to an asset limit under Medicaid eligibility requirements.

(2) The Department of Medical Assistance Services, in collaboration with the Department of Social Services, shall develop a plan to improve the Medicaid estate recovery program in the Commonwealth. The department shall evaluate all public and private resources and data sources available to proactively identify assets, including but not limited to real estate and financial assets, including those identified during the eligibility determination process and those that may not have been reported, of Medicaid recipients and all methods available to initiate recovery from estates for which the value of the assets is likely to exceed the cost of recovery. The department shall also include the cost of initiating and operating such a program with options that include developing an in-house program or contracting with a third party vendor to perform some or all of the identification and recovery. The study shall examine both the cost benefit and legal implications of the various options and also evaluate and propose changes, as may be needed, to the Code of Virginia that may assist in maximizing the recovery of assets of deceased Medicaid beneficiaries.

(3) The department shall submit its findings and recommendations for developing an improved estate recovery program to the Governor and the Chairman of the House Appropriations and Senate Finance Committees by December 1, 2016.

Background

Federal law requires state Medicaid programs to operate estate recovery programs for individuals age 55 or older. The programs must seek to recover payments from the individual's estate for nursing facility services, home and community-based services, and related hospital and prescription drug services. States have the option, an option which Virginia exercises, to recover payments for all other Medicaid services provided to individuals 55 or older. In 2015, the Joint Legislature Audit and Review Commission (JLARC) issued a study which contained several findings and recommendations related to the estate recovery program at the Department of Medical Assistance Services (DMAS). The study found that the program does not proactively identify assets that may be recoverable from the estates of deceased

Medicaid beneficiaries, which limits the state's ability to seek reimbursement for the cost of Medicaid expenditures. That JLARC finding resulted in language in the 2016 Appropriations Act directing DMAS to require eligibility workers to search for unreported assets at the time of initial eligibility determination and to develop a plan to improve the estate recovery program.

Actions Taken To Date

The estate recovery process used by DMAS staff was last updated in February 2015. The process begins when the enrollment system terminates a recipient from Medicaid due to death. If the member is subject to estate recovery (only members age 55 and over are subject to estate recovery), the Medicaid Management Information System (MMIS) will automatically send a letter to the recipient’s last known address or their representative. The letter asks that the representative or the estate administrator return information about whether an estate exists. If information is returned to DMAS indicating that an estate exists, either as a response to the letter or as a referral, estate recovery staff will initiate a case. The staff will determine if an estate exists and its value, and then attempt to recover any funds from the estate that are owed to Medicaid.

In February 2015, the MMIS system began automatically generating the letters. Based on FY 2016 data, it appears that the automatic letters, combined with an additional staff member (hired on a part-time basis in February 2015 and made full-time in December 2015), have increased the value of recovered assets. As shown in the table below, the value of recovered assets in FY 2016 more than doubled over the value of recovered assets in FY 2015.

State Fiscal Year	Value of Assets Recovered	Number of Staff
2012	\$987,461	1.0
2013	\$748,880	1.0
2014	\$880,175	1.0
2015	\$686,985	1.5
2016	\$2,213,294	2.0

Local departments of social services also have the ability to access DMV records as well as local real estate property records to verify resources. In January 2016, eligibility workers added the Virginia Asset Verification System (which provides information on banking records) to the databases they check for unreported assets at the time of eligibility determination. The eligibility workers now record any assets identified using these tools in the Virginia Case Management System (VaCMS). In addition, DMAS and DSS staffs are collaborating to develop a monthly report from VaCMS which will identify the reported assets of any deceased Medicaid recipients in the prior month. Once this report is available, it will provide estate recovery staff with the asset information for each deceased recipient, thereby improving DMAS’ ability to

pursue estate recoveries. It is too early to tell whether these changes will result in additional assets being identified and recovered.

Review of Other States' Estate Recovery Programs

DMAS staff informally surveyed estate recovery staff in other states regarding their programs. Recovery efforts across the 18 states that responded varied, however, a few common themes emerged.

Staffing

Most states had more staff working on their estate recovery efforts than Virginia and they also usually had at least one attorney working on their estate recovery team. Most states reported using state employees to conduct estate recovery. The table on the following page shows the staffing levels for the 18 states that responded to DMAS staff's informal questionnaire.

Contractors

Only two states, Iowa and Ohio, indicated a heavy reliance on contractors for conducting estate recovery. In the case of Iowa, the entire estate recovery program is operated by a contractor. The contractor uses a staff of 10, which includes two attorneys, to conduct the estate recovery program. Iowa reports collecting over \$25 million per year in recovered funds, and the private contractor receives 8 percent to 10 percent of any amount recovered. Ohio maintains a staff of six state employees to operate their estate recovery program, but they also contract with 20 private attorneys throughout the state to assist with the recovery efforts. Ohio reports collecting approximately \$42 million per year in recovered funds, and the private attorneys receive 20 percent of any amount they assist with recovering.

Asset Databases

Some states with relatively successful programs employed some type of database to search for real estate records. In most cases, states subscribed to a database such as LexisNexis Accurint or CoreLogic RealQuest, and in-house estate staff used the database(s) to search on a case-by-case basis for unreported assets of deceased Medicaid recipients subject to estate recovery. The states that used a database indicated that it was a useful tool to assist with identifying assets, but appropriate staffing levels are required to make full use of the tool.

State	Size of Aged (65+) Medicaid Population ¹	Number of Estate Recovery Employees ²	Number of Attorney Employees	Amount Recovered in Most Recent Fiscal Year ²
California	1,038,300	56.0	1.0	\$69,900,000
Hawai'i	25,800	4.5	1.5	\$5,983,018

Iowa	44,300	10.0*	2.0*	\$25,189,872
Idaho	19,200	N/A	N/A	\$8,870,300
Kansas	37,700	1.5	0.5	\$10,268,341
Kentucky	98,300	5.0	0.0	\$5,823,514
Louisiana	117,100	10.0	1.0	\$287,927
Maryland	77,000	13.0	1.0	\$10,000,000
Missouri	96,300	3.5	0.0	\$14,556,885
New Hampshire	16,300	4.0	N/A	\$4,950,000
Nevada	30,800	12.0	4.0	\$2,976,884
Ohio	178,700	26.0	21.0**	\$42,000,000
Oklahoma	66,300	3.0	1.0	\$4,328,036
Oregon	62,900	21.0	4.5	\$20,000,000
South Dakota	13,000	2.5	0.5	\$3,200,000
Vermont	22,300	2.5	0.5	\$1,260,164
Washington	100,300	13.5	0.5	\$17,500,000
Wyoming	6,000	N/A	N/A	\$2,618,220
Virginia	112,900	2.0	0.0	\$2,213,294

* Iowa's estate recovery employees, including the 2 attorneys, are contractors.

** Ohio uses 20 attorneys on a contract basis to represent the state in estate recovery cases.

Sources

1. Kaiser Commission on Medicaid and the Uninsured and Urban Institute estimates based on data from FY 2011 MSIS. Because 2011 data were unavailable, 2010 data was used for Florida, Kansas, Maine, Maryland, Montana, New Mexico, New Jersey, Oklahoma, Texas, and Utah.
2. Data from informal survey of states conducted by DMAS staff.

Liens

Many states use liens as a tool in pursuing estate recoveries. Virginia's estate recovery program does not currently use liens. A lien binds property to a debt and provides notice that someone besides the property owner has an interest in that property, but a lien is not a claim. Liens can be placed on property prior to a recipient's death ("pre-death lien") or after a recipient's death ("post-death lien"). Post-death liens do not appear to provide much advantage over how Virginia currently pursues recoveries because the lien would not be imposed until after DMAS became aware of the death.

Pre-death liens are imposed on the real property of living recipients determined to be permanently institutionalized in a nursing or medical facility, except when one of the following individuals reside in the home: a spouse, a child under 21, a blind or disabled child of any age, or a sibling who has an equity interest in the home. The main advantage of using pre-death liens is that it would prevent the sale of a recipient's home before Medicaid had a

chance to recover expenses. However, liens cannot be used for all recipients subject to estate recovery (recipients over age 55 receiving home and community based services could not be subjected to liens because they still live in their homes).

Options to Improve Virginia's Estate Recovery Program

(1) Increase staffing for estate recovery

One option to improve the estate recovery program would be to increase staffing levels. Other states interviewed by DMAS staff indicated that an appropriate staffing level is the most important factor influencing the robustness of the estate recovery program. Other states with similarly sized populations of aged Medicaid recipients, specifically Washington, Missouri, Kentucky and Maryland, report collecting between 3 and 8 times as much as Virginia's estate recovery program (when adjusted for the size of the Medicaid population). While other factors (such as the ability to impose liens and the use of public records databases) may also influence their outcomes, these states all had higher levels of staffing than Virginia. Most states had at least one estate recovery staffer per 25,000 recipients age 65 or over. In Virginia, staffing for that ratio would result in 4.5 full time equivalents (FTEs) dedicated to estate recovery.

While estate recovery activities can result in recovered funds that offset Medicaid's medical expenses, DMAS cannot use recovered funds to pay for the costs associated with additional estate recovery staff. If legislators decide to increase staffing levels, the General Assembly would need to appropriate funds in the administrative budget for additional estate recovery staff. The approximate cost, including salary and fringe benefits, of one additional estate recovery staff member is \$78,011 (total funds) per year. Of this amount, \$39,006 would come from general funds. The cost of increasing estate recovery staffing from 2.0 FTEs to 4.5 FTEs would be \$195,028 (total funds) or \$97,514 (general funds) per year.

(2) Subscribe to a public records database

Another option that may improve the estate recovery program is subscribing to a public records database, as some of the states interviewed indicated they do. While the states that used these systems indicated that they were useful, they also indicated that the database subscription did not replace appropriate staffing levels. Additionally, DMAS and DSS are currently in the process of improving the amount of data available for estate recovery efforts, as described earlier in this report. While subscribing to a public records database may be helpful in recovery efforts, the data improvements currently underway should be completed and implemented first to determine what data is already available to staff, thereby avoiding duplication of efforts. If a database were subscribed to at some point in the future, the annual cost would be \$15,000 to \$18,000 (total funds) per year, depending on the subscription system and options chosen. The General Assembly would need to appropriate funds in the DMAS administrative budget for this subscription.

(3) Evaluate the appropriateness of directing DMAS to impose pre-death liens

DMAS does not currently impose any liens on property belonging to recipients of Medicaid. Federal law allows states to impose liens on property of recipients if the recipient is at least 55 years old and the recipient and certain family members do not reside in the home. Imposing such liens may improve estate recovery collections because they would ensure that DMAS was aware of the recipient's death before the property could be sold.

The number of pre-death liens that could be imposed is uncertain. These types of liens can only be imposed on the property of a subset of the individuals who are subject to estate recovery. Federal law prohibits imposing liens on a recipient's property when the recipient, their spouse, their children under age 21, their blind or disabled children, or certain siblings still live in the house. As a result of these restrictions, as well as other uncertainties, the extent to which imposing pre-death liens will improve recoveries via estate recovery is uncertain.

If the legislature wants DMAS to impose pre-death liens, DMAS will need legal authority to do so. The *Code of Virginia* §63.2-409 references pre-death liens and DMAS recipients of long term care (LTC); however, it does not provide DMAS with clear authority to impose them. The legislature should also determine whether DMAS must use a judgement lien or if the Department should have authority to impose administrative liens. Administrative liens are the most straightforward option for the Commonwealth. Currently, the administrative lien process is used by both the Virginia Department of Taxation and the Virginia Employment Commission. To utilize the administrative process, DMAS would need statutory authority to use a Memorandum of Lien. Alternatively, DMAS could utilize the judgement process, but this process would be resource-intensive for both DMAS and OAG.

In addition, DMAS will need approval from the federal government to amend its State Plan for Medical Assistance Services ("State Plan"), and promulgate state regulations related to the imposition of liens. DMAS would also need to work closely with the DSS and the Office of the Attorney General to develop a plan for placing liens and implementing this process. This would include additional staff at the OAG.

Summary

In conclusion, Virginia could increase the robustness of its estate recovery program. Direction and funding from the General Assembly could increase Virginia's estate recoveries by adding additional estate recovery staff, funding a subscription to a public records database, and directing and funding DMAS to impose pre-death liens.