Long-Term Care In Montana

A Blueprint for Cost-Effective Reform

Presented by

"The Long-Term Care Specialists"

September 24, 1993

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[This report was originally published in Word Perfect and later translated into Word with a resulting loss of some formatting. Readers should be able to discern content and meaning, but may contact the author for clarification if necessary. Current contact information below.]

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EXECUTIVE SUMMARY

Purpose

The purpose of this study was to develop a long-term care policy for Montana which reduces public assistance expenditures by diverting affluent citizens to privately financed care while simultaneously ensuring access for everyone to high quality home, community-based, and nursing home care.

Background

Numerous studies have documented the widespread practice of Medicaid estate planning whereby affluent seniors retain special attorneys to transfer or shelter their income and assets in order to qualify for Medicaid nursing home benefits. Even without sophisticated legal advice, the median senior (in terms of income and assets) has been able to qualify quickly and easily for publicly financed long-term care. Given the ready availability of Medicaid benefits, relatively few seniors have been willing to pay out of pocket for care or to purchase private long-term care insurance. Recently, however, President Clinton's budget, the Omnibus Budget Reconciliation Act of 1993, empowered state Medicaid programs for the first time to control the divestiture of assets effectively and to recover benefits paid to people with sheltered resources from their estates. Properly enforced, these measures will encourage financially able families to plan ahead, buy insurance, and pay privately for their long-term care needs.

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Kirkland, Washington

Major Findings

Montana has a very generous Medicaid nursing home eligibility benefit. The state also covers all but four of the 31 optional services permitted by federal rules. Most seniors who need nursing home care in Montana qualify easily without spending down. Anyone else, regardless of income and assets, can qualify quickly by retaining the right professional advice. Unfortunately, many Montanans also fall victim to bad advice on how to shelter income and assets to qualify for Medicaid. Consequently, very few seniors purchase private protection for the financial risk of long-term care and approximately 62 percent of nursing home residents end up on Medicaid by default. This problem has placed an enormous strain on state finances and threatens to adversely affect access to and quality of care if program eligibility or provider reimbursements have to be cut.

Recommendations

Montana could save $1 to $5 million per year in the short run and up to $13.4 million or more per year in the long run by aggressively implementing and enforcing restrictions on asset transfers, imposing liens on sheltered property, and recovering benefits paid from recipients' estates. These savings derive from a combination of hard dollar recoveries and cost avoidance as seniors opt for private alternatives to public assistance dependency.

ACKNOWLEDGEMENTS AND DISCLOSURES

This project is funded (in part) under an agreement with the Montana Department of Social and Rehabilitation Services, but any statements herein do not necessarily reflect the opinion of the Department. The State of Montana assisted the project by facilitating access to local experts and key staff and public documents of the Department of Social and Rehabilitation Services. The Department also provided conference space, photo-copy support, and local telephone service.

LTC, Incorporated, the contractor, is a private firm specializing in long-term care financing and insurance. The company markets private home health and nursing home insurance throughout most of the United States. LTC, Incorporated is also active in the public policy debate on long-term care financing and publishes a national newsletter--LTC News & Comment--on these subjects.

Stephen A. Moses, the author, is Director of Research for LTC, Incorporated. He writes and speaks extensively on the subjects of Medicaid nursing home eligibility, Medicaid estate planning, liens, estate recoveries, and public/private long-term care financing partnerships. He was previously a Medicaid State Representative (9 years) for the federal Health Care Financing Administration (HCFA) and Senior Analyst (2 years) for the Office of Inspector General of the Department of Health and Human

Services (IG). He directed and authored three national studies for HCFA and the IG on Medicaid estate planning.

We would like to express our appreciation (1) to the 61 respondents and interviewees who provided the information on which this report is based, (2) to Mr. Terry Frisch, TPL Manager (DSRS), for managing the project and organizing and scheduling the interviews, (3) to Roger LaVoie, Administrator, Family Assistance Division (DSRS) and his unit for giving up their conference room for a week and cheerfully assisting with routine administrative support, and (4) to Governor Racicot, Director Peter Blouke, and Administrator Ellery for their support, encouragement, and willingness to break new ground in long-term care management and financing.

PROJECT BACKGROUND

"The purpose of this contract is to develop a policy which makes the most efficient use of long-term care benefit dollars and provides the most benefit possible to those most in need. This includes methods to assure that those who have the resources to pay for their own care do so, thereby preserving benefit dollars for those who do not have sufficient resources." So reads the official agreement between the parties to this contract.

To achieve this goal, I spent one week on site in Helena, Montana; I examined Montana's long-term care eligibility and benefits policies in the context of federal law and regulation; and, I conducted 19 two-hour briefing and interview sessions with a total of 61 interested parties representing public and private sector points of view. In these sessions, I presented a conceptual framework for understanding the long-term care financing problem from a national and state-specific perspective. Each respondent/interviewee received a packet of information containing articles describing the problem and recommending solutions. I solicited analysis, criticism, and recommendations from every participant in the study.

The following report describes the long-term care financing problem and proposes a solution for Montana. The proposed solution is designed to target scarce public welfare resources to

those who need them most while providing a stronger incentive for affluent seniors and their heirs to plan ahead, take care of themselves, and avoid reliance on public assistance. Given the brief, two-week duration of the project, this report is necessarily concise and only suggestive.[1] It can point the direction, but a lot of additional work will be necessary to operationalize and implement these recommendations. At the request of state management, I close this report with a proposal on how to achieve its principal recommendations and savings without additional appropriations or FTE's (full-time equivalents.)

[1] For more detail, see the author's Wisconsin report: Stephen A. Moses, The Senior Financial Security Program: A Plan for Long-Term Care Reform in Wisconsin, LTC, Incorporated, Kirkland, Washington, 1992.

NATIONAL PERSPECTIVE

When Medicaid came into existence in 1965, it became the first major third-party financing source for long-term care. Although Congress intended Medicaid mainly to assure access to mainstream health care for poor women and children, the program's nursing home component grew explosively. Medicaid's long-term care benefits were limited exclusively to nursing home care as a means to control utilization and cost.

Before 1981, there were no federal restrictions on the transfer of assets to qualify for Medicaid nursing home benefits. Anyone in need of long-term care could give away resources and qualify immediately. Faced with the choice of free nursing home care or paying out of pocket for home care or assisted living, most people opted for Medicaid. This is why we lack a strong home and community-based care system in America despite seniors' preference for the lower level of care.

With virtually unlimited public funds available for nursing home care, the nursing home industry grew rapidly to take full advantage of the new funding source. By the mid-1970's, Medicaid costs were already too big. The federal government responded with a national mandate for "health planning." On the principle that "you cannot pay for a bed that does not exist," certificate of need (CON) program's attempted to control the supply of nursing home beds.

Predictably, however, with supply limited, price and demand began to rise. To prevent price increases from eliminating all the savings from supply controls, state Medicaid programs began to restrict Medicaid nursing home reimbursement levels. Gradually, a differential developed between private-pay and Medicaid rates. Today, the average Medicaid program pays only 80 percent of the private-pay nursing home reimbursement rate. This holds true approximately for Montana. According to the United Seniors Health Cooperative, this level of reimbursement is less than the cost of providing the care.

With both supply and price of nursing home beds capped, demand skyrocketed. If they were willing to accept low Medicaid rates, nursing homes could fill all of their beds with ease. Consequently, occupancy in nursing homes nationally escalated to 95 percent (92 percent in Montana.) With occupancy so high, the need to compete for new residents declined. Given low reimbursement rates and the absence of competition, quality suffered according to many observers. So government stepped in with the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) and mandated heavy and expensive new quality controls without appropriating sufficient additional funding to pay for them.

The nursing home industry responded with good faith efforts to implement the OBRA '87 requirements, but also with threats, usually successfully implemented if challenged, of "Boren" suits

to assure appropriate financing. The Boren Amendment of 1980 permitted nursing homes to demand, and legally enforce, minimally adequate Medicaid reimbursement rates. Today, with public financing in severe crisis, the providers and the government are in a standoff with fewer and fewer options for compromise. Providers need higher reimbursement rates to meet the quality requirements of OBRA '87, but the taxpayers have said "enough" and refuse to underwrite continued unlimited growth in public benefits.

In the meantime, governmental controls on price and supply have also had a deleterious effect on the demand side. With easy access to publicly subsidized nursing home care, consumers have ignored private long-term care insurance options and swelled the Medicaid ranks. Why pay for insurance protection that the government is giving away? Two-thirds of all residents in America's nursing homes receive Medicaid although only 12 percent of the elderly are poor. Recent research shows a very low incidence of catastrophic spend-down and substantial evidence of artificial impoverishment. At the same time, unsurprisingly, only four percent of seniors have purchased private long-term care insurance.

This is what we believe has happened. As controls on price and supply of nursing home care drove demand up, costs had to be subsidized by charging private-payers more. High nursing home

rates created a strong incentive for private payers to transfer to Medicaid. Concurrently, the high cost of private nursing home care placed tremendous pressure on Congress and state governments to lower the barriers to assistance from Medicaid. Over time, a kind of eligibility bracket creep made Medicaid nursing home eligibility criteria extremely generous.

Today, the median elderly person in terms of income and assets can qualify for Medicaid nursing home benefits even without sophisticated legal advice. Anyone else can qualify easily, regardless of income or assets, within thirty days, by obtaining expert professional counsel. Attorneys and financial planners have specialized in the use of transfers, trusts, annuities, shelters and many other sophisticated legal planning tools to qualify even the affluent for Medicaid nursing home benefits.

This situation exacerbated the financing, access and quality problems faced by Medicaid beyond forbearance. In the Omnibus Budget Reconciliation Act of 1993 (OBRA '93; enacted August 10, 1993; but effective October 1, 1993), Congress and President Clinton changed Medicaid coverage of nursing home care radically. By closing most eligibility loopholes used by the well-to-do and requiring recovery from recipients' estates, the federal government has empowered states to give Medicaid back to the poor people and to encourage all others to pay their own way either

from savings or by purchasing insurance. If states take advantage of these new federal authorities, they can empower home and community-based care options with greater private financing, minimize the need to cut Medicaid eligibility and services to save revenues, and increase access to quality care for rich and poor alike.

The remainder of this report explains (1) how Montana fits into this scenario and (2) what the state needs to do to achieve these benefits.

MONTANA'S SITUATION

Montana is an excellent example of the Medicaid malaise. Total program costs leaped 73 percent between 1988 and 1992. If nothing is done, Medicaid costs will increase $86 million in the next biennium leaving a $66 million shortfall in the general fund.

Nursing home care is a major contributor to the problem. It accounts for $84.6 million of the roughly $300 million Medicaid budget for Fiscal Year 1994. That is 28 percent of program resources to pay for just one service to approximately eight percent of Medicaid recipients. Predictably, resources for home and community-based services for the frail elderly are relatively tiny at around $5 million.

With the threat of a taxpayers' revolt, Montana Medicaid managers have had to look for ways to control costs in the nursing home program. Governor Racicot's recent budget reduction proposal contemplates two approaches. One is to save $1.6 million by delaying nursing home rate increases (which risks a Boren suit). The other cuts $.8 million by capping the amount of income a Medicaid recipient can receive and still qualify for nursing home care (which risks a senior citizens' revolt).

Montana may have no choice but to cut nursing home reimbursement and severely restrict eligibility in order to lower costs. Before doing so, however, it behooves all concerned

parties to examine why costs are so high in the first place and to explore other, less drastic, measures to control expenditures.

Medicaid Nursing Home Eligibility

Montana has very generous Medicaid nursing home eligibility rules. Like approximately 30 other states, Montana has a "medically needy" program. This means that anyone can qualify for Medicaid nursing home benefits whose medical costs, including nursing home care, nearly approximate his or her income. Additionally, a Medicaid applicant can retain a house and contiguous property of any value, a business including the cash flow and assets, personal property including an automobile, and many other exempt resources. If a Medicaid applicant is married, the rules are even more generous allowing the well spouse to retain up to $1769 per month of income and half of the couple's joint assets up to $70,740.

Under these circumstances, there is little wonder that most seniors, who are "cash poor and house rich" as a group, qualify easily for expensive Medicaid nursing home benefits. The budget impact of easy nursing home eligibility is further multiplied by the fact that long-term care recipients also receive the full, and very generous range of primary care benefits offered by Montana's Medicaid program.[2] A seductively simple solution to excessively generous eligibility would be to cut costs by

[2] Montana covers 27 of Medicaid's 31 optional services.

reducing income and asset exemptions. Two obstacles obstruct this approach, however. First, federal law sets minimum eligibility standards and prohibits tampering with "spousal impoverishment" protections. Second, tightening eligibility can cause new and different, but equally serious problems. For example, setting draconian eligibility limits can exacerbate a state's uncompensated care problem, lead to services being provided in a less appropriate setting, and end up with less savings than expected in the long run as financially sophisticated seniors turn to elaborate legal techniques to shelter their income.[3]

Clearly, getting tough does not necessarily achieve the desired results. Before we can propose a less disruptive approach to cost savings, however, we need to explore the many ways in which Montana's already generous nursing home program is being stretched by Medicaid planners beyond its financial limits.

Medicaid Estate Planning

Many authors have written at great length about Medicaid estate planning: the practice of sheltering or transferring income and assets to qualify for Medicaid nursing home benefits. Interested readers may consult the Bibliography for numerous

[3] Such a scenario is not inevitable. It may not even be probable. Given the ingenuity, resourcefulness and aggressive experimentation of a growing number of elder law attorneys, however, it is a contingency that the state should consider.

sources that explain Medicaid planning techniques in detail. My objective here is only to give a sense of which techniques are used in Montana and how widespread the practice has become.

To begin, one caveat is necessary. Despite the dramatic quotations that follow, Medicaid estate planning is not as common in Montana as in other, more densely populated states. A recent General Accounting Office study found that over half of nursing home eligibility cases studied in Massachusetts involved transfers or shelters of income or assets to qualify for Medicaid benefits.[4] There is no such hemorrhage in Montana yet (although Montanans contribute as federal taxpayers to the greater liberality of other states.) I would characterize Medicaid estate planning in Montana as commonplace, although not universal, but growing very rapidly. For example, many study respondents reported the swift spread of continuing legal education seminars on Medicaid planning sponsored by groups like the State Bar Association. Another problem is the time-bomb effect. Medicaid planning done in the past year or two may not swell Montana's Medicaid nursing home eligibility roles for another year or two as transfer-of-assets look-back periods

[4] General Accounting Office, Medicaid Estate Planning, GAO/HRD-93-29R, Washington, D.C., July 20, 1993. See also Stephen A. Moses, Medicaid Estate Planning: Analysis of GAO's Massachusetts Report and Senate/House Conference Language, LTC, Incorporated, Kirkland, Washington, 1993.

expire. Thus, Medicaid nursing home utilization has remained fairly steady at 62 percent, but may increase in the future if Medicaid planning trends continue.

Quotations from Study Participants

> Medicaid has been a free for all. The lawyers call us to find out how to shelter assets for their clients. This puts us in a very difficult situation. Do we tell them all the loopholes, or do we try to encourage them to do something else such as look it up for themselves? (Eligibility policy manager)

> Divestiture has increased so much since MCCA (the Medicare Catastrophic Coverage Act of 1988) that it is unbelievable. Affluent people who can afford an attorney put their money into trusts [especially]. (Eligibility policy expert)

> The whole spectrum of who we serve has changed. Now people are checking Medicaid eligibility out years in advance. The amount of time we spend on the phone with attorneys is out of hand. They call first to the county offices, and then get referred to central eligibility. (Eligibility policy manager)

> A foxy person who has the knowledge gets away with [Medicaid planning]. (Medicaid quality control staff member)

> I have seen a district judge, dentists, doctors and other professionals who have had their parents in nursing homes on Medicaid. (County Welfare Director)

> We spend the equivalent of one full day a month helping people qualify for Medicaid [while protecting their income and assets]. (Consensus of county directors on the average)

> Our staff say: "We are eligibility workers; not ineligibility workers." (County Welfare Director)

> We see a lot of cases where a lawyer has told the applicants to transfer assets. It is a small percentage. Nevertheless, "Lawyers are your worst enemy." (Eligibility worker)

> Nursing homes, medical facilities, and hospitals are constantly referring people to Medicaid. Families say "we were told we had to come in to apply" even if they can afford to pay privately. Nursing homes are afraid they will not be able to collect from private payers. They want the assurance of the guaranteed Medicaid payment. (Eligibility worker)
>
> I get about one call a week from an attorney asking how to get people on Medicaid. We send them materials and review trusts for them....In Lewiston, all of the private attorneys are talking about Medicaid planning. (Medicaid staff attorney)
>
> We see a lot of people just giving away assets. This becomes more of a problem for us in protective services. That's where we get involved. [When are self-impoverishing gifts legitimate and when do they constitute financial abuse of the elderly?] (Adult protective services representative)
>
> The bandits tell people they do not need to buy long-term care insurance. They say all you have to do is put your money in an annuity or a living trust to qualify for Medicaid. (Long-term care insurance agent)

Medicaid Planning Techniques Used in Montana

The following is not an exhaustive list:

1. Irrevocable Burial Trusts. This is probably the single most common Medicaid planning practice in Montana. Technically, there is no limit on the amount of assets that can be sheltered in this manner. Although burial trusts average only $3,000 or $4,000 per nursing home recipient, they can go as high as $10,000 or more. A study respondent reported that people frequently inquire about who checks up on such assets after the funeral. The answer is that the state has no system to assure that trust funds in excess of actual burial costs are used to reimburse Medicaid for

benefits paid. Rather, such funds commonly revert to heirs as a publicly financed indemnity against the cost of burying their parents.

2. Other Irrevocable Trusts. In Montana, money placed into an irrevocable trust is a transfer of assets subject to an eligibility penalty. This has only been true since July 1993, however, when the state changed its policy. Before then, properly drafted irrevocable trusts were effective tools to shelter very significant assets and they were rapidly becoming the Medicaid planning device of preference, according to study respondents.

3. Intent to Return. A home of any value including all contiguous property is exempt indefinitely if the Medicaid recipient (or the recipient's personal representative) expresses an intent to return to the residence. Montana requires a semi-annual recertification of this intent in order to retain Medicaid eligibility. Nevertheless, federal law does not permit states to deny eligibility based on home ownership even when the residence is empty or occupied by non-exempt relatives or others. Recipients and their families routinely place homes (and ranches) into joint tenancy with right of survivorship so that the property does not pass through a formally probated estate and thus avoids estate recovery.

4. Purchase of Exempt Assets. An easy way to shelter relatively

small amounts of disqualifying assets is to use them to buy assets that are exempt from Medicaid eligibility limits. For example, one can buy a car (of any value if one is married), build a new room on the house, or just stock up on personal property like televisions, stereos, furniture, etc. Sometimes, eligibility workers openly advise Medicaid applicants to use this technique if small sums are involved: "Spend it on goods and services or Christmas presents," they suggest. If larger sums are involved, they may recommend that the family consult an attorney for advice on spending, divesting or sheltering the money.

5. Half-a-Loaf Strategy. Montana does not allow the multiple divestment strategy which is commonplace in other states. Under multiple divestment, people give away gradually descending amounts of assets month after month and claim that the penalties triggered by each of the transfers should run concurrently. One can divest more than one million dollars without activating the maximum transfer of assets penalty by using this device. A less powerful, but similar, technique that is used in Montana is the half-a-loaf strategy. For example, instead of giving away $100,000 all at once, one gives away $50,000 and uses the remaining $50,000 to pay privately for care while the period of ineligibility--thus reduced by half--transpires. An eligibility worker reported having been baffled by an applicant's inquiry

concerning "half a loaf" until we discussed the issue in the interview for this study.

6. Transfer of Assets. Anyone can give away any amount of assets at least three years prior to applying for Medicaid and avoid transfer of assets penalties altogether. We lack hard evidence on how widespread this practice is in Montana, but numerous study respondents indicated that it is common and growing. The public is aware that a look-back period applies for transfer of assets. Eligibility workers and legal staff report that people frequently inquire about the length of the look-back period and the duration of the penalty period. Large farms and ranches are often involved and people want to transfer the assets as late as possible without triggering transfer of assets penalties, according to a County Welfare Director. "It's the kids and their attorneys who are coming in more than the seniors," according to another respondent.

7. Joint Accounts. Several Medicaid jurisdictions, such as Wisconsin and Florida, have routinely allowed third parties such as adult children or friends to add their names to an applicant/recipient's bank account and remove the funds without triggering a transfer of assets penalty. Montana has not allowed this practice, but has found an increase in a similar technique. Families sometimes claim that (1) they actually contributed funds to their parent's joint accounts, or (2) they provided

services to their parents which helped the parents to delay nursing home care and that, therefore, they deserve compensation for such services. Since the state tightened restrictions on the use of trusts to qualify for Medicaid, eligibility workers report a greater incidence of adult children placing their names on parents' accounts, automobiles, and other property and then filing "account rebuttals" to claim the property as their own.

8. Annuities. Medicaid eligibility, especially in medically needy states, is much more lenient toward income than assets. One common technique in Montana is to annuitize disqualifying assets to generate a cash stream which is not disqualifying. If the annuity is placed in a spouse's name, the income (up to the community spouse income allowance) does not even have to be used for the recipient's care. One respondent who sells private long-term care insurance was livid about fellow insurance agents and attorneys who promote annuities and living trusts as Medicaid shelters to replace the need for private insurance policies.

9. Unsalable or Undivided Property. Inaccessible assets do not count toward Medicaid eligibility limits. Study respondents reported numerous instances of people who claimed an asset was unavailable because it was unsalable. Examples include gold mines, farm and ranch partnerships, oil and gas leases, contracts for deeds, shares in co-operatives, collectibles, assets in bankruptcy proceedings, etc. Such items are difficult to

evaluate or sell. Nevertheless, they sometimes have very significant values. A related situation is when a co-owner of a property or business refuses either to sell his interest or buy the applicant/recipient's interest. The property is thus inaccessible for purposes of determining Medicaid nursing home eligibility. One study respondent told about a son who is "getting rich" running the family business while his parents are receiving nursing home care on Medicaid.

10. Automatic Community Spouse Resource Allowance Increases. If the well spouse in the community has less income than the minimum monthly maintenance needs allowance (up to $1769 per month), the family can request an automatic increase in the amount of joint assets that the community spouse is permitted to retain. The amount of this increase is limited to the amount of additional resources sufficient to generate enough interest income to bring the community spouse up to the income limit. Hearings officers have no discretion to deny such increases. They have resulted in excess exempt resources exceeding $200,000 in some states; a case involving $110,000 occurred recently in Montana. The trick here for families and their attorneys is to exempt the maximum amount of resources by claiming access to the minimum amount of interest. For example, one can shelter much more wealth with this technique in a three percent certificate of deposit than in a six percent annuity.

11. Divorces. An easy way to qualify quickly for Medicaid nursing home care is to persuade a judge to impoverish an ill spouse by giving all the couple's resources to the well spouse. This practice has not been very common in Montana previously, because of generous nursing home eligibility rules and the availability of other, less objectionable, planning options. State eligibility policy staff are afraid, however, that divorces to qualify for Medicaid may become more common again because of provisions in OBRA '93 (see below) which close many eligibility loopholes and require recovery of untransferred assets from recipients' estates.

12. Evasion of Contribution to Cost of Care. Family members sometimes misappropriate Social Security, pension, and other checks or income which they handle as protective payees for their parents on Medicaid. Such funds are supposed to go to the nursing home to offset its cost of caring for the patient. This is not a legitimate Medicaid planning technique; it is tantamount to theft. According to nursing home owners, the practice is so common and detrimental, however, that we mention it here as a practice that, if stopped, could supplement nursing home revenues without the necessity of increasing Medicaid reimbursements. A related practice occurs when friends, relatives, neighbors or hucksters steal or defraud seniors of their assets. National studies indicate that this practice is much more common than

previously thought. Often, the financially abused elder ends up in a nursing home on Medicaid by default.

Coordination and Control

Most of the problems discussed above can be addressed by changes in state law, regulations, and policies and/or with federal waivers. Study respondents repeatedly raised another, related issue, however, which may necessitate review and reform of state management practices. Medicaid nursing home eligibility rules are not only very generous and fraught with loopholes, they are extremely complex and often unclear. Currently, decentralized interpretation and enforcement of these rules leads to inefficiency, inconsistency, and unfairness. These are some of the observations I heard:

Medicaid nursing home eligibility rules, especially those governing income and resources, are highly complicated. The Code of Federal Regulations and state policy manuals are often vague and unclear. Every county eligibility worker has to know all the rules for all kinds of cases even though the complex long-term care cases are by far the fewest in number. One county director estimated that, because of the complexity, confusion and time pressure, eight of 13 county workers give different advice to clients on the same issues. Among the 56 counties, local offices frequently interpret policies differently. Sometimes, Medicaid eligibility in Montana depends more on who examines the

application or where the applicant applies than on the objective facts, laws, and regulations that pertain.

Trusts are a good example. The rules are often misunderstood. Federal guidance concerning Medicaid Qualifying Trusts (MQT's) has been extremely confusing. Even "the state policy manual appears to indicate that revocable trusts can be used to qualify for Medicaid [which they cannot]," according to a state Medicaid attorney. By default and out of frustration, eligibility workers permit eligibility if the applicant cannot personally pull the money out of a trust. "They take the easy way out."

Other related problems are that workers do not routinely check for property ownership or transfers. They do not have time to visit the County Assessor's and Recorder's offices locally, much less in the county of last residence of new recipients. Thus, unreported, disqualifying, real property goes undetected routinely. With regard to income and personal property, workers report that even when they know there is unreported property in a case, they lack the time and resources to do the research to verify it. Data from the Income Eligibility Verification System (IEVS) comes too late to help.

Another similar constellation of issues revolves around staff perceptions that the system is hopelessly unfair. It is hard to get eligibility staff interested in being tough and

enforcing rules, when they know that the savvy people who hire attorneys qualify easily for Medicaid whereas poorer people who rely on eligibility workers are excluded by technical obstacles. They feel "frustrated and degraded" by the inequity that they feel compelled to perpetuate. They also express fear and nervousness about being "financial planners" to their clients. Families demand information on how to qualify for Medicaid nursing home benefits without spending down income and assets. "Can we be sued if we give the wrong advice?," the workers wonder. Further exacerbating the problem is the perception among eligibility staff (both field and headquarters) that Medicaid legal staff are not tough enough. "The frustrating part for us is that we try to follow the rules to the letter, but if it goes to a hearing, the recipients win." (Eligibility worker)
On the other hand, legal staff correctly observe, and eligibility staff readily acknowledge, that the underlying problem is that income and resource policies are too complex and difficult to interpret to be handled effectively by sparsely trained and over-worked field staff.

Liens

One of the strongest tools states have to assure that large, undivested, sheltered assets (such as real estate) remain in

recipients' estates for later recovery is the lien. Montana does not utilize the federal statutory authority granted in the Tax Equity and Fiscal Responsibility Act of 1982 to place liens on the property of living recipients. Without the ability to track assets by this means, Montana loses an indeterminate amount of assets that might otherwise be recovered at the point of sale of liened property or from estates. Other states, such as Maryland and Wisconsin, operate highly cost-effective lien programs.

Estate Recovery

Montana has a very small, but cost-effective estate recovery program. One-half FTE recovers approximately $200,000 per year from approximately 100 estates for a total cost of between $12,000 and $15,000 per year. This represents a cost-effectiveness ratio of roughly $15 to $1, not far from the national average among estate recovery programs of $14.42 to $1.

Montana's approach to estate recovery is very simple. The state subscribes to a newspaper clipping service. The clipping service provides copies statewide of the notice to creditors required by the uniform probate code whenever an estate is probated. State staff then compare this list of probated estates with a registry of people who have received Medicaid benefits since 1985. When a match occurs, the state files a claim on the estate and waits for payment. Probates in Montana must be closed within two years of filing.

Although Montana's estate recovery program is cost-effective given the limited resources dedicated to it, the state is losing most of the revenue that could be generated by a fully staffed operation. For example, the state of Oregon recovers approximately 5.2 percent of its Medicaid nursing home budget from the estates of deceased recipients. If Montana achieved at the same level, its estate recovery program would generate approximately $4.4 million for the 1994 fiscal year with a staff of five FTE's instead of one-half FTE. Inasmuch as Oregon's eligibility rules are stricter than Montana's and therefore exclude more property on the front end, all other things being equal, Montana should be able to recover even more from estates than Oregon. All other things are not equal, however: Oregon has a strong body of state law supporting estate recovery and a 40-year record of effective recovery.

Why are Montana's recoveries so far below potential? Staffing is one-tenth of the optimal level. Only formal probated estates in excess of $7500 are captured. Small estates and bank accounts, which generate most recoveries in the more successful recovery programs, are largely missed. Montana lacks a law to require nursing homes and financial institutions to remit such small accounts to the Medicaid program automatically upon the death of a recipient. Relying on a clipping service is inadequate as a means to identify recoverable estates, because it

misses cases that avoid or evade probate. State law does not require attorneys or personal representatives of Medicaid recipients to inform the state when a recipient dies. Montana does not aggressively seek to reverse illegal asset transfers, relitigate abusive divorce decrees, partition undivided property, or invade trusts as Oregon does.

One could continue indefinitely with examples of why Montana loses most of the potential revenue from Medicaid estate recoveries. The recommendations section of this report addresses the highest priority corrective actions that the state should take immediately.

The state is not only losing revenue, however, by failing to pursue estate recoveries aggressively and by failing to educate the public about the program. If people know that there is a price to pay for receiving Medicaid nursing home benefits, they will try to avoid dependency on public assistance by purchasing private long-term care insurance, caring for family members at home, or paying privately for home and community-based care. The potential cost-avoidance resulting from families planning ahead to avoid Medicaid dwarfs even estate recovery revenues. In time, one hopes the need for liens and estate recoveries will disappear as most people pay privately or purchase private long-term care insurance as the preferred financial planning alternatives.

Long-Term Care Insurance

If the state of Montana reduces long-term care expenditures by controlling Medicaid estate planning and collecting more aggressively from estates, it behooves the state to assure that citizens have a viable alternative to relying on public assistance. Most people cannot save enough to cover the catastrophic costs of long-term nursing home care. Research shows that home and community-based care, although preferred by most seniors, does not replace institutionalization and increases the overall social cost of long-term care rather than reducing it as many believe.[5] Continuing care retirement communities are too expensive for most seniors. The Social Health Maintenance Organization (SHMO) model never developed beyond the experimental phase. Bottom line, the only remaining viable private

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[5] "An increasingly large number of studies, including the results of a national channeling demonstration program, have shown that noninstitutional services typically do not substitute for nursing home care, but, rather, represent additional services most often to new populations." (Holahan and Cohen, 1986, p. 106)

"Evaluations of community care programs...tend to show not only that expansion of community care has little effect on nursing home use, but that it raises, rather than lowers, total expenditures." (Rivlin and Wiener, 1988, p. 190)

"Expanding home care services raises total long-term care costs because most home care is provided to people who would not otherwise enter nursing homes." (Rivlin and Wiener, 1988, p. 166)

"Expanded home care generally raises, rather than lowers, expenditures because large increases in such care more than offset small decreases in nursing home care." (Wiener and Hanley, 1991, p. 71)

"Although community-based LTC programs proved beneficial to both clients and informal caregivers in the LTC demonstrations, they did not prove budget neutral or cost effective." (Manton, 1991, p. 322.)

"Informal care costs are almost three times the cost of formal care for persons with Alzheimer's disease in the community. Although these costs represent an imputed value rather than a dollar expenditure, if unpaid caregivers were not available, caregiving services would probably be purchased from paid providers, or else demented persons now cared for in the community would be placed in institutions. The changing nature of family composition and the increasing labor-force participation of women will result in fewer available caregivers for elderly persons in the future. Therefore, more of these imputed costs may become actual expenditures." (Rice, et al., 1993, pps. 172-3)

"A man's home is his castle. But if the man or woman is an elderly Californian who needs assistance with the activities of daily living, that home may well turn into a trap of indignity, abuse and neglect. The Little Hoover Commission [in a study of the State's In-Home Supportive Services Program] is dismayed to report that the State's efforts to help this vulnerable population may instead leave the frail elderly at the mercy of untrained, unreliable and even abusive care givers who are largely unmonitored by either the State or the counties." (Little Hoover Commission, 1991)

"Residents in board and care homes are at risk of being harmed by medication errors because the staff may not be properly trained or do not follow state regulations." (GAO, 1992, p. 2)

alternative to public financing is long-term care insurance.

I interviewed representatives of the Montana Insurance Department and the long-term care insurance industry at length. The results were encouraging. Montana has adopted the model long-term care insurance regulatory statute developed by the National Association of Insurance Commissioners. High quality, private, long-term care insurance policies that cover home care, assisted living, and nursing home care without excessively restrictive benefit triggers or "gatekeepers" are readily available in Montana at premiums affordable by many. These policies are excellent alternatives for people who prefer not to rely on Medicaid nursing home benefits.

There are some serious problems with the long-term care insurance marketplace in Montana, however. Very few people purchase these policies. Very few agents sell them. If anything, interest in private insurance is declining. A representative of the Insurance Commissioner's office said that since Medicaid nursing home eligibility rules were relaxed by the Medicare Catastrophic Coverage Act of 1988, inquiries about private long-term care insurance have dropped precipitously. Negative publicity from Consumer's Union and Families USA, some of which was wrong originally and more of which is outdated today, has also reduced interest and demand. Furthermore, there are inevitably some bad apples: carriers that low-ball premiums

to attract customers and then raise rates to inflate profits; companies that wiggle around vague "insuring clauses" to avoid paying claims; or agents who misrepresent risks and benefits. According to the insurance regulators, however, the biggest problem in Montana is not related to long-term care insurance, but rather involves agents who represent themselves as experts on living trusts which they sell for $1300 to $2200 per client as a means of avoiding probate and, erroneously, qualifying for Medicaid benefits.

Long-term care insurance agents share the Insurance Department's frustration with agents who sell annuities and living trusts as bridges to Medicaid and thereby deflate the market for legitimate private coverage. Because Medicaid is giving long-term care away to people who could have afforded private insurance, the product is very hard to sell. Consequently, only 200 agents in Montana are qualified to sell long-term care insurance and only about six of these agents sell the product more or less full time. Agents agree that if Medicaid gets out of the way by constricting eligibility and/or recovering from recipients' estates, more people will be disposed to buy, and therefore, more people will be willing to sell private long-term care insurance products.

Some regulators and agents disagree on some issues such as (1) whether long-term care insurance should be required to pay

benefits even to people who lapse their policies (nonforfeiture) or (2) whether companies should be required to offer improved products to current insureds covered by earlier, inferior products. But these are technical problems which can be resolved by reasonable people working together in a spirit of mutual respect.

One issue on which the regulators felt very strongly and the agents agreed is that the public must be advised when Medicaid eligibility rules are tightened and estate recoveries enforced. Otherwise, the consequences could be very serious for Montana citizens. The public needs to know that private long-term care insurance is available as a financial planning option. The Insurance Department has an Insurance Counselling and Assistance Program that advises seniors all around the state about insurance issues. This organization could be the conduit to get the word out if the risks regarding Medicaid eligibility change and the need to consider private long-term care insurance increases.

OMNIBUS BUDGET RECONCILIATION ACT OF 1993

Before the enactment of President Clinton's first budget (OBRA '93, enacted August 10, 1993), the purview of state Medicaid programs to control Medicaid estate planning was severely limited. OBRA '93 closes many of the more egregious loopholes in previous federal law and gives states the authority they need to tighten nursing home eligibility programs substantially.

The text of the new law is readily available from sources like the Commerce Clearing House (CCH). Appendix A contains an unofficial, draft document obtained from the Health Care Financing Administration which is much easier to read than the law itself. This document includes those portions of the old statute which are unchanged plus all of the provisions eliminated by the new statute (crossed out) and all provisions added by the new statute (shaded).[6] This allows the reader to comprehend what was, what went, and what will be, in one easy reading.

In summary, this is what OBRA '93 did:

- The transfer of assets "look-back" is now 3 years instead of 30 months as before; 5 years for trusts. This is an improvement, but still not sufficient. The average period of time from onset to death in Alzheimer's Disease is eight

[6] Be sure to verify this document against an official printed version of the law before acting based on its contents.

years. Medicaid estate planners will continue to promote asset transfers aggressively and with impunity 36 months in advance.

- The maximum length of the penalty period is no longer limited to 30 months. It is unlimited based on the total amount of assets transferred for less than fair market value divided by the average monthly cost of a private nursing home in the state.
- Multiple (or pyramid) divestment, whereby penalty periods ran simultaneously for sequential monthly transfers thereby reducing the total penalty duration considerably, has been eliminated.
- The transfer of assets penalty, which previously applied only to institutionalized individuals (mainly nursing home care), now also applies to non-institutionalized individuals (home and community-based care).
- The transfer of assets penalty has been extended to include transfers of income (money received and disposed of in a single month) as well as assets.
- Assets held in joint tenancy, which could previously be removed by the non-Medicaid tenant without penalty, will now be treated as asset transfers to the extent that they reduce or eliminate the Medicaid tenant's ownership.
- OBRA '93 contains extensive new language constricting the

use of trusts to qualify for Medicaid nursing home benefits. This language is ambiguous, however, and time will have to tell how effective the new controls are.

- Similarly, states will have to determine, under guidelines to be issued by the Health Care Financing Administration, how they will handle the use of annuities to qualify for Medicaid. It is likely, however, that controls on annuities will be much more restrictive under the new authorities.
- The law requires states to design and promulgate procedures for waiving the trust rules and the transfer penalty if they work an undue hardship.
- Exceptions: OBRA '93 does not apply to trusts established to protect the assets of disabled persons under the age of 65, to "Miller trusts" established to shelter income for people in "income cap" states, or to "pooled trusts" that are managed by nonprofit organizations and are established for the benefit disabled individuals.
- The new law requires recovery from recipients' estates and empowers states to define "estate" more broadly than before in order to encompass assets such as life estates, joint tenancies, etc. that previously evaded recovery.
- The new transfer rules apply as of October 1, 1993 to all transfers made after August 10, 1993.
- It will take time for the private elder law attorneys to

sort out exactly how to interpret (and circumvent) this new legislation. Then, there will be further clarification from hearings, lawsuits, and appeals.

A conference of the National Academy of Elder Law Attorneys (NAELA) is scheduled for St. Louis in November and will be dedicated specifically to the interpretation of OBRA '93 (and looking for any remaining loopholes). NAELA will also focus on combatting a new interpretation of the common law of fraudulent conveyances which applies the principle to Medicaid estate planning done in contemplation of avoiding future possible creditors (i.e. nursing homes and/or the Medicaid program). All Medicaid state agencies would be wise to send a representative from their legal staffs to this conference in self-defense. Appendix B contains a copy of the program announcement.

THE SENIOR FINANCIAL SECURITY PROGRAM[7]

The politics of aging is changing in America (and in Montana). Today, we are in the latter stage of "third rail" politics. To criticize a senior benefit can still bring instantaneous political death--like touching the middle rail on the subway. But things are beginning to change. The 1989 repeal of the Medicare Catastrophic Coverage Act was the watershed that brought us into the first phase of "greedy geezer" politics. One can already foresee the time when (no matter how inaccurate, unfair, and over-simplified the charge) some politician will lose an election for lavishing one more benefit on "wealthy" seniors at the expense of the long-suffering middle class. The latest furor over Generational Accounting[8] is only an early skirmish in the on-coming intergenerational war. The only way to avoid the inevitable carnage in our public benefits programs is to bring

[7] This section is borrowed in principal part from an earlier report on Wisconsin by the author. It effectively articulates the goals to be achieved by the recommendations in the following section.

[8] Laurence J. Kotlikoff, Generational Accounting, The Free Press, New York, 1992. According to Kotlikoff: "...the baby boom generation has inherited tremendous fiscal liabilities. Yet the fiscal obligations confronting the boomers' children and grandchildren are even larger. Unless generational policy is adjusted and adjusted soon, future Americans will pay at least 21 percent more, even after adjusting for real income growth, than those who have just been born. This 21 percent figure is based on an optimistic scenario concerning prospective government health care expenditures. Ten more years of excessive growth in health care spending could, by itself, more than double the extra payments required of future Americans." (P. 218)

all the interested parties to the bargaining table now and begin the diplomacy and negotiation. We have to give something to everybody without undercutting anybody.

Who are the main parties to the long-term care financing debate and what do they want? **Seniors** want access and quality in home or institutional care without impoverishment or welfare. **Taxpayers**, and their stewards in government, want limits on Medicaid's explosive growth. **Nursing homes and home care providers** want more private patients at full-pay, non-Medicaid rates. **Long-term care insurers** want a level playing field without the competition of free public benefits for the upper middle class. **Younger and future generations** want to inherit more than a huge public debt. Today, these constituencies are pulling in opposite directions, drawing and quartering the broader public interest. What could harness their energies in a common purpose?

First, we must establish in principle a moral high ground on which everyone can stand with pride and agreement. This is the common philosophy that I found in Montana:

> **We have very limited dollars available for public assistance; we must take care of the truly poor and disadvantaged first; the middle class and well-to-do should pay privately for long-term care to the extent they are able without suffering financial devastation; prosperous people who rely on Medicaid for long-term care should reimburse the taxpayers before giving away their wealth to heirs; seniors and their heirs who wish to avoid such recovery from the estate should plan ahead and purchase private long-term care insurance.**

Next, we must imagine a program structure that achieves everyone's goals without violating these principles. Such a program would have to do six things:

(1) Maximize income and asset protections for single and married seniors who need long-term care.

(2) Eliminate divestiture and estate recovery avoidance.

(3) Secure property in a beneficiary's possession as a condition of eligibility for publicly financed care.

(4) Recover publicly financed benefits from estates when dependents no longer need the assets.

(5) Encourage the sale of long-term care insurance as an alternative to public benefits and estate recovery.

(6) Educate the public on the advantages of avoiding Medicaid dependency and paying privately for care.

Finally, we must show how this program delivers the key values that each constituency wants to achieve. By maximizing income and asset protections, the program eliminates catastrophic spend-down for **seniors**. By requiring a pay-back from estates, it removes the stigma of welfare. By making people pay their own way (pay me now or pay me later), the program creates an incentive (now nonexistent) for people to purchase **private insurance**. By empowering people to pay privately for care with insurance, it diverts families from dependency on **Medicaid**. By sending the **home care and nursing facilities** more full-pay

private patients, the program enhances the providers' commercial viability and reduces their reliance on public financing. By infusing new money into long-term care, it enhances the industry's ability to provide good access to quality care for all patients, private-pay and Medicaid alike. By making people spend their own money, i.e. their insurance benefits, on care, the program encourages a wide continuum of cost-effective home, community-based, and institutional options. By stimulating **heirs** to plan ahead for their own long-term care needs and to protect their parent's estates (i.e. their own inheritances), the program ameliorates the biggest danger we face as a nation from the aging of the baby boom generation.

RECOMMENDATIONS

The following recommendations are presented in approximate priority order within each section. Any mention of proposed federal waivers refers to new "section 1115" streamlined waivers as announced by USDHHS Secretary Donna Shalala on August 18, 1993 (see Appendix C). Statutes or regulations proposed here to be waived could be grouped appropriately into one or more formal waiver proposals under the combined title "Montana Senior Financial Security Waiver Program."

The objective of these recommendations is to reduce Medicaid nursing home utilization from 62 percent of all bed days to 52 percent over a period of three to five years. This is a conservatively achievable goal and could save the state of Montana $13.4 million per year or 16 percent of the Medicaid nursing home budget. Given immediate, aggressive implementation of these recommendations, savings within the first year of between $1 and $5 million are practicable from a combination of enhanced estate recoveries ($1 to $3 million) and cost avoidance ($1 to $3 million). If the state does nothing and Medicaid utilization creeps up to 72 percent[9], Montana will need to spend an extra $13.4 million per year for nursing home care not counting inflation adjustments. These numbers were provided by

[9] Medicaid nursing home utilization is already 82 percent in the state of Maine.

the Medicaid Services Division of the Department of Social and Rehabilitation Services. See Appendix D.

Most of the following recommendations can be achieved without additional state appropriations or FTE's by improving management coordination and control and through the use of private contractors hired on contingency. Such contractors include private attorneys, real estate agencies and title companies as explained in the specific recommendations below. The principal and coordinating contractor, however, would be the one that collects estate recoveries. It would be in the best interest of an estate recovery contractor (1) to help the state revise laws, regulations and policies to discourage divestiture in order to maximize assets available for recovery, (2) to assist the state in drafting, promoting and passing a strong lien law, and (3) to educate the media, the public, the private bar, state judges, eligibility workers, hearings officers, and others on the importance of strongly enforced anti-divestiture rules and carefully monitored income and resource controls.

Recommendations

Caveat: These recommendations do not stand alone. They must be read in the context of the entire report. Neither are these recommendations comprehensive. They only suggest the magnitude, range, and general direction of the task at hand.

I. Medicaid Nursing Home Eligibility

A. As quickly as possible, operationalize, implement, and train field staff on the new OBRA '93 authorities concerning the extension of the eligibility look-back period, the elimination of the 30-month limit on the penalty period, the addition of a "transfer of income" penalty, etc.

B. Establish a "Team Taurus"-style task force of headquarters and field eligibility and legal staff to build on the findings of this study, identify any additional loopholes or unclarities in Medicaid eligibility regulations and policies, and recommend corrective actions.

C. Verify and track real property and transfers on all Medicaid applicants and recipients through county assessor's and recorder's offices.

1. Utilize field staff to do these verifications using time saved by the recommendations below.
2. Or contract with title companies or the county offices themselves to conduct the verifications on contingency (i.e., in exchange for a percentage of the savings.)

D. Seek a waiver of federal eligibility rules to permit full implementation of the Senior Financial Security

Program described in the previous section.

1. Five to seven year look-back period.
2. Liens as a condition of eligibility.
3. For additional provisions, see Stephen A. Moses, Medicaid Estate Planning: Analysis of GAO's Massachusetts Report and Senate/House Conference Language, LTC, Incorporated, Kirkland, Washington, 1993. Also, consult the references in the Bibliography.

E. Track the new OBRA '93 trust and annuity rules closely as they are interpreted by private Medicaid planners and implemented by HCFA; review Montana law, regulations, and policy in this new context; and ensure that the new authorities are reflected as quickly as possible in state policy.

1. Special efforts should be made to investigate and control the reportedly widespread sale of annuities and "living trusts" for the expressed purpose of qualifying people for Medicaid nursing home benefits.

F. Cap burial trusts at the minimal cost of a decent burial and monitor larger existing trusts for recovery of excess funds. Obtain a waiver if necessary.

G. Drop the time-consuming paperwork requirement that

"intent to return" be recertified every six months. If the state wants to compel people who are permanently institutionalized to sell their homes, request a waiver to do so.

H. Discourage excessive "purchase of exempt assets" to qualify for Medicaid nursing home eligibility by advising eligibility workers not to encourage this practice; by identifying, tracking, and recovering high-value personal property; and by capping personal property values with a waiver if necessary.

I. Eliminate the "half-a-loaf" strategy by requiring that the transfer of assets penalty begin when an applicant would have been eligible if the transfer had not occurred. This requirement was in an early draft of OBRA '93 but dropped. It will require a waiver.

J. Take full advantage of the new OBRA '93 authorities to control withdrawal of assets from joint accounts and to rein in abuse of "account rebuttals."

K. Direct hearings officers to use reason when approving excess "Community Spouse Resource Allowances" to supplement a well spouse's interest income. Obtain a waiver if necessary.

II. Medicaid Estate Planning

A. Draft an executive proclamation for Governor Racicot to

deliver at a press conference declaring that Medicaid in Montana is for the genuinely needy, that measures are being taken to discourage Medicaid estate planning, that restrictions on divestiture of assets are being tightened, that a much stronger estate recovery program is on the drawing board, and that seniors and heirs should carefully examine private long-term care insurance options.

B. Draft a similar statement as a "Sense of the Legislature Resolution" for introduction in the state House and Senate.

C. Mount a campaign to educate the media, the public, attorneys, judges, eligibility workers, hearings officers, seniors and their advocates, nursing homes, home health agencies, insurance agents and any other long-term care interest groups concerning the issues explained in and the public policy changes recommended by this report.

D. If possible, use the measures announced in these proclamations and educational programs to produce the savings necessary to preserve Montana's generous optional Medicaid services and medically needy eligibility system.

E. Recognize that Medicaid estate planning often shades

into financial abuse of the elderly. When appropriate, Montana should petition the court to appoint conservators in cases of suspected financial abuse. Oregon uses conservators in this way to:

1. relitigate expropriative divorce decrees,
2. reverse illegal transfers,
3. invade trusts,
4. partition undivided property,
5. maintain and sell properties, etc.

This same method could be used to stop the theft of recipients' income by "protective payees" which is such a problem for nursing homes because it deprives them of the patient's contribution to cost of care.

By using private attorneys on contingency, these initiatives can be taken at no cost to the state while generating considerable revenue.

F. Send at least one Medicaid legal expert to the National Academy of Elder Law Attorneys' Institute described in Appendix B. This conference will be invaluable to the state in controlling old and new eligibility loopholes and in interpreting OBRA '93.

III. Coordination and Control

A. To reduce staff time, errors, and inconsistencies drastically and to restore confidence in the system's

fairness: refer all complicated long-term care income and resource cases to a new, headquarters unit highly trained and specialized to enforce uniform statewide eligibility verification rules stringently.

1. Field staff should continue to handle all routine cases and to implement all eligibility decisions reached by the new "expert" unit.
2. This unit will pay for itself by preventing cases of "eligibility by default," reported by many study respondents, which occur because field workers lack the time or expertise to enforce complicated rules.

B. Establish a toll free "800" number to which all inquiries statewide concerning ways to shelter income and assets to qualify for Medicaid nursing home benefits can be referred.

1. This toll free number will assure consistent answers regarding state law and policy on trusts, transfers, and other tricks of Medicaid estate planning.
2. It will also relieve eligibility workers, County Directors, and Departmental legal staff of an enormous burden they currently bear for providing financial planning advice to Medicaid applicants

and their attorneys.

IV. Liens

A. Prepare, propose and pass a strong Medicaid lien law as authorized by Section 1917(a) of the Social Security Act. See Appendix A. Maryland and Wisconsin have excellent models.

V. Estate Recovery

A. Retain a contractor on contingency to design and implement a state-of-the-art asset control, lien and estate recovery system. (See Appendix E for guidance on best practices and mistakes to avoid.)

B. Seek state statutory authority to require nursing homes and financial institutions to remit small "personal needs" and other accounts to the Medicaid program automatically upon the death of a recipient. See Oregon's program for example.

C. Require field eligibility staff to notify the Medicaid estate recovery unit immediately upon the death of a recipient. Authorize the estate recovery unit to request and obtain timely income and resource data on deceased recipients from the field.

D. Seek state statutory authority to require attorneys or personal representatives of Medicaid recipients and nursing homes to inform the state when a recipient

dies. This information source supplements reports from field staff or clipping services and impresses the importance of the lien and estate recovery program on attorneys and personal representatives. See Wisconsin's and Massachusetts' programs.

E. Use graphs and charts to measure and display recoveries. Encourage competition among collectors.

F. Give incentive awards to outstanding recovery specialists. After all, they are saving jobs, helping the poor, and diverting the well-to-do toward preferred private options.

G. Prioritize all cases. Work the biggest, most promising cases first.

H. Track real estate on the Medicaid computer system even when it is exempt for eligibility purposes. The home is 69 percent of the net worth of the median elderly household and supplies most of the recoverable value in estates.

I. Allow people who receive lump sums to pay back past assistance or put money in escrow against future assistance.

J. Use accounts receivable so recipients or their heirs can pay back the state over time. Expand the use of "open-ended" mortgages as a way to help people keep the

family home by paying back Medicaid benefits with interest over extended periods.

K. Collect personal property as well as real estate and have a fiduciary maintain and auction the proceeds, e.g. jewelry, paintings, Persian rugs, cars, etc.

L. Extend recovery to benefits received before age 65 to the expanded extent allowed by OBRA '93.

M. Add spousal recoveries, i.e. recovery from the estates of spouses and other exempt dependents who are predeceased by Medicaid recipients. Federal law prohibits recovery from recipients' estates while a spouse remains alive.

N. Close the joint tenancy with right of survivorship loophole as authorized by OBRA '93. It allows anyone with an attorney to avoid estate recovery.

O. Close the loophole that treats lump sums as income in the month of receipt thereby exempting them from the transfer of assets restrictions. (Authorized by OBRA '93.)

P. Apply proceeds from reverse annuity mortgages toward the contribution to cost of care in a nursing home.

Q. Require the ill spouse's share of the "snapshot" split to go toward cost of care as intended by Congress.

VI. Long-Term Care Insurance

A. Further impress upon the Insurance Department the enormous expense to the state of Montana of Medicaid nursing home expenditures, the imminent need to curtail such costs, and the urgency of offering citizens a viable private insurance alternative.

B. Work with the Insurance Department to resolve regulatory issues (such as the question of whether or not to mandate nonforfeiture benefits) in such a way as to assure access to quality products without driving up premium costs beyond the average Montanan's ability to pay.

C. Coordinate with the Insurance Department to enlist the Insurance Counselling and Assistance Program to advise seniors statewide about Medicaid nursing home eligibility changes, liens, estate recoveries and related private long-term care insurance issues.

D. Explore ways to enhance the affordability of private long-term care insurance by (1) encouraging seniors to use home equity conversion (i.e. reverse annuity mortgages) to help finance premiums, and (2) advising adult children to purchase policies for their parents to protect the heirs' inheritances from private nursing home costs and/or Medicaid estate recoveries.

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