Death and Taxes ... and Medicaid Costs

Holocaust survivors living in New Jersey can rest easy that their reparation payments from the German government won't be touched by the state when they pass away.

New Jersey Gov. Chris Christie signed a bill earlier this month that stops the state from seizing Holocaust survivor compensation from people who had received Medicaid benefits for long-term medical care. Under a 1993 federal law, states must recover such expenses from the estates of beneficiaries ages 55 and older when they die.

While there are an estimated 1,600 Holocaust survivors living in the Garden State, the law is the first in the country that shies away from tapping their survivor funds for Medicaid asset recovery. New Jersey Assemblyman Gary S. Schaer, a Democrat, says he'd been trying to get the bill passed since January 2008.

"We hope it will give them less to be concerned about as they're in the twilight of their years," Schaer says. "Hopefully it will give them a reaffirmed conviction that government can be a force of positive change, especially after their own personal experience with the Nazis and fascists."

New Jersey's law is an example of the ways states in recent years have been attempting to dial back how they do Medicaid estate recovery.

States can go after all kinds of assets to recoup Medicaid expenses. Ten states recover for costs beyond long-term care such as doctor or specialist visits, according to a Families USA report. But the recovery process is alarming news for millions of new beneficiaries who signed up for the joint federal-state insurance program for the poor through the 2010 health care law's Medicaid expansion.

Rich Pedroncelli/AP

BUDGET CONSCIOUS: Brown is wary of losing state revenue if California's estate recovery program is overhauled.

There are some protections though. States can't recover costs for a deceased beneficiary from a surviving spouse, from children under 21 or from a child who is blind or has a disability regardless of age. State legislatures define what costs can be recouped, make exceptions for specific populations and define what assets can be recovered.

While waivers prevent beneficiary survivors from losing their homes right away, the process penalizes low-income residents simply for being poor, says Patricia McGinnis, executive director for California Advocates for Nursing Home Reform.

"It's a really screwedup system," McGinnis says.

State officials don't necessarily find home or asset recovery a pleasant process either, says Matt Salo, executive director for the National Association of Medicaid Directors. While states like California and New Jersey have been criticized for their aggressive approaches, hard decisions must be made about how else they would fill that budget hole, he says.

Salo says it comes down to states following federal law and keeping Medicaid solvent. "States are trying to find a balance of meeting the needs of the program ... while trying not to scare people away with the idea 'we're going to nickel and dime you once you're gone,'" he says.

But some states have been successful in pulling back on estate recovery. Oregon and Washington, for example, scrapped collecting on services beyond long-term care costs.

"An outdated policy was producing significant concern from families newly eligible for Medicaid," Dorothy Teeter, Washington Health Care Authority director, said in 2013 after Medicaid was expanded in the state. "Changing this old policy was simply the right the thing to do after hearing from many in our community who were questioning whether to sign up for coverage at all."

California lawmakers will head into their 2016 legislative session considering a bill to limit the state's Medicaid estate recovery to only what's required under federal law; limit home recoveries to properties worth a certain amount; end estate recovery from surviving spouses of deceased beneficiaries; cap interest rates on voluntary home liens; and allow beneficiaries to see the total Medi-Cal expenses that can be recovered when they die. A state Senate committee estimates California will lose $50 million in annual revenue if the bill becomes law.

It's not the first time California lawmakers have considered overhauling the Medi-Cal estate recovery program. A similar measure in 2014 was vetoed by Democratic Gov. Jerry Brown.

"Allowing more estate protection for the next generation may be a reasonable policy goal," Brown said in his veto statement. "The cost of this change, however, needs to be considered alongside other worthwhile policy changes in the budget process next year."

— Marissa Evans