CPPP Presents Comments on Medicaid Estate Recovery

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The Center for Public Policy Priorities has submitted comments on HHSC proposed rules for a Medicaid Estate Recovery program. **HHSC held a set of informal public hearings BEFORE proposed rules were published in April, and a formal public hearing on the rules will be held on May 27, 2004.**

Proposed rules were published on April 30, 2004, and comments are due by May 30, 2004. Written comments should be addressed to Frank Genco, Health and Human Services Commission, P. O. Box 13247, Austin, Texas 78711-3247; or via e-mail to Frank.Genco@hhsc.state.tx.us. Comments also may be faxed to (512) 424-6665.

Four Key CPPP recommendations for changes and additions to the proposed rules include: 1) Use Texas' statewide average homestead value (about $96,000 in 2002) for the undue hardship exemption, rather than the $50,000 that HHSC has proposed.

Other states have gained CMS approval for using the statewide average standard (South Carolina, Vermont). This exemption could be limited to low-income heirs (e.g., CMS approved Vermont exempting up to $125,000 of homestead values for heirs under 300% of poverty).

Using Texas' statewide average (as opposed to 50% of that as proposed by HHSC) is critical to reducing the inevitable urban-rural inequity that results from the dramatic variation in homestead values across the state. In 44 counties, the average value is less than $25,000, the average value is less than $25,000, and in another 128 counties the average falls between $25,000-$50,000, while in 17 counties (which are home to 66% of Texas homesteads) the average value is more than $100,000. With this degree of variation, it is virtually impossible to devise a statewide standard that is truly fair to similarly-situated families. **Even with the undue hardship exemption raised to the $96,000 statewide average, the exemption will still be set at less than 50% of the average homestead value in the highest-value county.**

Counties with 2002 average values above $96,000 include: Burnet, Collin, Comal, Dallas, Denton, Fort Bend, Gillespie, Harris, Hays, Kendall, Llano, Montgomery, Randall, Rockwall, Tarrant, Travis, and Williamson.

2) Extend full exemption from estate recovery to a broader range of relatives living in the home, including : married children, grandchildren, parents, and grandparents, to recognize the many extended family structures which low-income households may take. A number of other states do this. (The proposed rule as drafted would exempt only spouses, minor children, disabled children and unmarried adult children.) We believe, for example, that it makes no sense to exempt an unmarried adult child living in the family home, but to deny that exemption to adult child living in the home who is married.

3) **Undue hardship exemption for family-owned businesses should be equivalent to exemption for family farms.**

HHSC's proposal would only exempt a family-owned business from recovery if it is the ONLY income-producing asset of heirs (and has been for at least 12 months prior to the death of the nursing home resident), and produces more than 50% of their livelihood. In other words, if the heirs have any additional income-producing assets — no matter how trivial the income — then no exemption would be available.

In contrast, the proposed rule allows exemption of a family farm or ranch if recovery would result in the heirs' loss of their "primary" (undefined) source of income.

We can see no justification for treating a family farm or ranch differently from a family shoe repair shop, landscaping service, restaurant, dry cleaners, or barber shop. CPPP recommends that the proposed rule be revised to create parity for family-owned businesses.

4) The rules should clearly grant HHSC authority to negotiate both the amount of the recovery and the time frame for payment.

Background HB 2292 (Section 2.17) requires Texas HHSC to implement a program of "estate recovery" from Medicaid clients using long-term care services. In some cases, the state will seek reimbursement from the estate of a deceased recipient for the costs of Medicaid nursing home care. Estate Recovery has been mandatory under federal law for a decade, but never implemented in Texas for political reasons.

The HHSC proposal includes many very positive provisions, including making the recovery policy apply only to future nursing home residents, and exempting ICF-MR and Community Care clients. Still, CPPP is concerned that additional changes are needed to ensure that the policy balances the goal of asking some higher income families to contribute more to the cost of their Medicaid long-term care, with the goal of helping families work their way out of poverty and into the middle class through the accumulation of assets.

Only 1 in 10 Texans overall is on Medicaid, yet 7 out of 10 Texans in a nursing home is on Medicaid. Clearly, Texas' nursing home programs (and to some extent other long-term care programs) serve many middle-income Texans. Higher-income families are more likely to know about and be able to afford estate planning services, which can show them how to transfer assets long enough before nursing home care is used to avoid estate recovery. Lower-income families are more likely to have multiple generations living under the same roof, and without adequate protections the new estate recovery program could cause families to lose assets they have worked hard to accumulate.