# Oregon's Experience with Asset Transfers and Estate Recovery: Successes and Impediments

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# What Does Current Federal Law Mandate?

Under current federal law states **must** recover, at a minimum, the cost of Medicaid long-term care (nursing home) services.

Each state **may** elect to recover additional Medicaid costs such as:

- Community-based waivered services (services to maintain a client in a less restrictive setting, including their own home).
- Medicaid prescription costs for community-based waivered clients.

# What are the Current Medicaid Eligibility Criteria?

Federal guidelines for eligibility include

- Setting a Medicaid resource limit of $2,000
- Treating the client’s home as an exempt resource
- Specifying how to treat assets transferred at less than fair market value.

Each state implements the Medicaid program somewhat differently.

## Asset Transfer and Estate Recovery are Two Sides of the Same Coin

What is determined by federal or state law to be an acceptable transfer of an asset for eligibility purposes directly impacts the ability of the state to recover against the asset when a Medicaid recipient dies.

## What are Some of the Most Common Asset Transfers Between Spouses?

1. **Home**. In Oregon, a Medicaid recipient may transfer to a spouse their ownership interest in the family home. Because they will not have an ownership interest in the home at the time of their death, there will be no estate recovery claim.

2. **Court Ordered Transfers**. A court order is often used to transfer $180,000 or more to a spouse, without penalty. The Medicaid recipient will not have an ownership interest in these assets at the time of death, so no claim will be made against these assets.

# What are Some of the Most Common Asset Transfers Between Spouses?

3. **Annuities**. The Medicaid applicant can transfer most of their assets to their spouse, and the spouse can then purchase annuities that are not counted in determining Medicaid eligibility
4. **Penalty or "Look Back" Period**. One common Medicaid planning device is to transfer half of one's assets immediately after starting long-term care. By the time the remaining half are spent, the Medicaid disqualification penalty period of 36 months is over. The person can continue to receive Medicaid coverage without penalty. The real resource limit is not $2,000, but half of what you own in countable assets.

# What is the Track Record of Oregon's and Wisconsin's Program?

- **Oregon** recovered $20 million in FY 2003, which was 2.2% of its Medicaid long-term care expenditures.

- **Wisconsin** collected $17.6 million in FY 2003, which was 0.8% of its Medicaid long-term care expenditures.

Oregon recovers approximately $14 for every $1 spent on staff salaries and benefits.

# What Best Practices Have Both Oregon and Wisconsin Implemented in their Estate Recovery Programs?

- Ongoing statewide training on estate recovery
- Training of new Medicaid eligibility workers
- A review of all probates filed in the state
- State's claim is given priority creditor status
- Mandatory notification to the estate recovery unit of a filed probate or transfer by affidavit
- The authority of the estate recovery unit to nominate a personal representative for the estate in certain circumstances
- Estate recovery detailed in a brochure given to all new Medicaid applicants, including a toll free number.

# What Additional Best Practices has Oregon Implemented?

- Definition of estate was “expanded” to include client survivorship interests, life estate interests, living trusts, and remainder interests in client-created annuities– accounts for 20% to 25% of all recoveries
- The estates of certain surviving spouses are pursued for assistance provided to the spouse who died first– results in 10% to 15% of recoveries

# What Additional Best Practices has Oregon Implemented?

- If the family wants to retain a home, farm, or other real property, Oregon will consider taking a mortgage on the property that allows the family to pay back the public assistance debt in installments over time. We think this is good public policy and family members support this option.
- The estate recovery unit must be notified of a client's death within 10 working days by the field unit. In this way, bank accounts and personal incidental funds are secured before they are liquidated by others. **In estate recovery, time is money!**

# What Additional Best Practices has Oregon Implemented?

- State has statutory authority to file a “Request for Notice” with the county clerk asking for notification whenever a piece of client-owned property is transferred or encumbered; this
  - Identifies property the local field unit may not be aware has been sold, affecting eligibility.
  - Identifies situations where it appears a client has been financially exploited by someone using a power of attorney
- When there is evidence of fraud, the State has statutory authority to subpoena a deceased client’s bank records or legal documents regarding asset disposal.

# What is Good Estate Recovery Policy?

- There is no “one size fits all” that applies to every state.
- States have a variety of options to enforce Medicaid estate recovery.
- Good public policy must be fair, equitable, and responsive to the sensibilities of the citizens. Medicaid estate recovery should balance those interests with the public trust to recover public monies, to the extent possible.