

Estate Recovery Helps Colorado Medicaid

BY COLORADO STATE REP. BOB MCCLUSKEY

Like most states, Colorado in recent years has been weathering a “perfect storm” of challenges to Medicaid, the federal/state health care program for low-income Americans. The combination of rising health care costs, a falloff in tax revenues, and an expanding population of clients has led to repeated increases in Colorado’s Medicaid spending.

In addition, the recent expiration of federal emergency budget relief for states means the fiscal pressure is even greater. It’s no wonder that Medicaid represents one of the fastest growing portions of general fund expenditures for Colorado, as it does in many other Western states.

Fortunately, the agency responsible for Medicaid in Colorado, the Department of Health Care Policy and Financing (HCPF), is employing an innovative cost containment strategy to help navigate these difficult waters. By recovering costs from the estates of deceased Medicaid clients, HCPF has returned millions of dollars to support its mission of caring for Coloradans in need.

THE BENEFITS RECOVERY PROGRAM

The Colorado Medicaid program serves roughly 370,000 clients and operates with an annual budget of more than \$2.3 billion. As in other states, Colorado’s Medicaid spending has increased consistently since the 1990s. In fact, total federal and state Medicaid spending in Colorado grew at an annual rate of 13% from 1991 to 2001, slightly faster than the average Medicaid spending of all U.S. states during that time.

When it comes to financing these costs, states can draw upon a unique feature of Medicaid that is sometimes underutilized. Under federal law, the program is the “payor of last resort”—meaning that other health benefits available to clients, such as private insurance, are obligated to pay their share of medical costs before Medicaid coverage is tapped. When Medicaid pays costs for which third parties, such as the estate of a deceased client, are liable, the program is required to recover expenditures from these parties through the “coordination of benefits” process. A significant portion of Medicaid expenditures can be recovered through coordination of benefits, but most states do not have the capabilities to fully pursue this revenue.

The Colorado Medical Assistance Estate Recovery Program is a

federally mandated program that requires the state to recover Medicaid expenditures paid on behalf of qualified clients. The program offers a way for clients to share in the cost of their own care—costs that have been rising, and reducing the availability of funds for other state programs. Officials generally agree that this is an appropriate measure. Since Medicaid is intended to

protect individuals with no other financial resources for health care, it is only fitting that the estates of these individuals should repay these costs where possible.

In reality, however, estate recovery is often unpopular and emotionally charged, evoking images of grief-stricken relatives forced to sell the family homestead. What’s more, estate recovery is a complex process, involving lengthy probate proceedings, painstaking analysis of Medicaid data, and laborious follow-up. Although federally mandated, many states find estate recovery difficult to implement.

By making a concerted effort to educate the public and professionals, officials have averted most of the political fallout from this sensitive issue.

BENEFITS RECOVERY IN COLORADO

Recognizing these challenges, Colorado took a forward-looking approach to its Medical Assistance Estate Recovery Program. This approach included three major components.

Effective and fair regulation. In 1992, the Colorado legislature passed a statute in compliance with federal law, directing HCPF to recover expenditures from Medicaid clients’ estates and to place liens against the property of clients in nursing homes and other long-term care facilities. At the same time, the probate code was revised to give Medicaid’s claims on property precedence over those of general creditors. Finally, regulations carefully defined “hardship waivers” and other exclusions to estate recovery—ensuring that family members would not be unduly penalized by HCPF’s recovery efforts.

Privatization. With no existing infrastructure for performing estate recovery, HCPF faced a fundamental choice: Develop the necessary capabilities internally or rely upon contractors to supply them. HCPF opted to completely privatize its estate recovery work to a leading benefits coordination vendor, Health Management Systems, Inc. (HMS).

Although privatization is more common for the procurement of commodities and generic technology services, HCPF saw a strong rationale for using this approach in estate recovery. For ex-

Weather a Fiscal Storm

ample, HMS offered capabilities and experience that HCPF did not possess, such as dedicated staffing, advanced technical and legal expertise, and the knowledge gained from performing similar services for Medicaid programs in other states. Privatization offered a simpler, quicker route to reaping these benefits than a traditional vendor relationship would have. And unlike other privatized projects, this one did not run the risk of displacing current state employees.

Privatization also created a useful intermediary between HCPF and the public. In dealing with such a sensitive issue as estate recovery, HCPF realized, the perspective of an "outsider" would be valuable—and even could provide a buffer to help manage any negative misperceptions that might arise. Fortunately, the Estate Recovery Program has been communicated so well that such a buffer has not been necessary.

Public and professional community education. Over the past 12 years, HCPF and HMS have worked to dispel the myths about estate recovery, and to ensure that stakeholders understand the process. For example, individuals applying for benefits in Colorado receive written notice explaining exactly when and how Medicaid may seek recoveries from their estates. The Department of Human Services' enrollment staffs discuss the Estate Recovery Program with the applicants, who then are asked to sign a form signifying their receipt of the notice.

HCPF and HMS also have teamed up to educate social service workers, elder advisors, and attorneys about Colorado's estate recovery process through both training sessions and the distribution of informational brochures. From measures like these to everyday telephone discussions, HCPF and HMS have communicated in advance with professionals and the public to make sure that they understand the obligations and rights of Medicaid clients.

MEASURABLE SUCCESS

Over the past 12 years, the Colorado Estate Recovery Program has returned more than \$33 million to the state's Medicaid program—money that otherwise would have been lost, but that instead has supported the health care of the state's most vulnerable citizens. What's more, HCPF has accomplished these results in a budget-neutral fashion. Because HMS works on a contingency fee basis—charging only a small percentage of the monies actually

recovered—the estate initiative has not resulted in single penny of additional state outlays.

There also has been little "cost" in terms of the public's perception of Colorado Medicaid. By making a concerted effort to educate the public and professionals, HCPF and HMS have averted most of the potential fallout that one might expect around a matter as sensitive as estate recovery. In fact, some attorneys and the family members now voluntarily contact HMS to determine the amount owed to Medicaid and to arrange payment.

Finally, the success of estate recovery has spurred HCPF to step up other forms of Medicaid cost recovery, increasing recoveries from other liable sources such as Medicare and private insurance. Today, the recoveries that HMS has secured for Colorado from all sources stand at a total of more than \$62 million.

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LESSONS LEARNED

The success of estate recovery in Colorado is a testament to collaboration. HCPF, the legislature, the professional community, Medicaid clients and family members, a vendor, and others have worked together to make this initiative efficient and effective. After more than a decade of experience, it is clear that the involvement of each is essential.

The privatization of Colorado's estate recovery, in particular, exemplifies this lesson. Estate recovery is not work to be undertaken lightly. But relying on a seasoned partner like HMS gave HCPF access to the necessary experience and resources without imposing additional costs or risk. As Medicaid agencies continue to search for innovative cost containment solutions, they should consider the value of employing a specialist. In the stormy sea of health care financing, there's no need to voyage alone.

Bob McCluskey, a Republican from Fort Collins, represents District 52 in the Colorado General Assembly's House of Representatives. More information about Rep. McCluskey can be found at www.bobmcccluskey.com. He may be reached at rrmcccluskey@aol.com. Health Management Systems, Inc. is a national leader in cost containment and revenue recovery for government health care programs and serves clients in more than 20 states. More information is available at www.hmsy.com.