# MEDICAID ESTATE RECOVERIES IN MAINE:

## Planning to Increase Non-Tax Revenue and Program Fairness

Submitted

by

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Last December, the Department of Human Services and the Maine Health Care Association retained LTC, Incorporated in the person of Stephen A. Moses to conduct a three-day series of briefings on Medicaid estate planning, liens, estate recoveries, and private long-term care insurance. Groups and individuals addressed during these sessions included Governor McKernan, Commissioner Sheehan, key state legislators and staff, Bureau of Income Maintenance staff and Assistant Attorneys General, representatives of the Bureau of Elder and Adult Services, the Maine Association of Area Agencies on Aging, AARP, the Superintendent of Insurance, Pine Tree Legal Services, Legal Services for the Elderly, the Nursing Home Ombudsman, elder law and Medicaid estate planning attorneys, and radio and print media reporters. The following is a reformatted version of Mr. Moses' letter to the Director of the Bureau of Medical Services (dated December 22, 1992) reporting on these briefings.

Staff of the Department of Human Services are to be commended for having foreseen the gravity of the problem with Medicaid estate planning and the potential solution well in advance of the crisis. But the crisis has finally arrived and, as we all agreed last week, the time to act is now! So I thought I would briefly summarize my assessment of the situation based on our meetings with all of the interested parties. This may help to distinguish between what we know already and what you need to find out before a comprehensive public policy initiative (including new state law, regulation and policy plus a federal waiver request) can be thoughtfully crafted.

Here is what I learned last week: Maine is about $1 billion short of revenue. Cuts in the nursing home budget are expected to fill about $20 million of this gap. The state's whole Medicaid budget for nursing homes, however, is only $81 million. So, the cuts being considered are truly draconian--almost 25 percent. But this isn't even the half of it: when the federal match is added, cuts in projected nursing home expenditures total $55 million out of a combined state and federal budget of $218 million.

Bottom line: if reductions of this magnitude are achieved through lowering provider reimbursements, Maine will plummet from one of the better public payors in the country to one of the worse; reimbursement rates will drop below levels essential to provide quality care; and nursing homes will be compelled to shift costs to private payors, drop out of Medicaid altogether, sue under the Boren Amendment, and/or slash access and quality of care for Medicaid residents. We know this is true, because it is already happening in many states all across America.

Ironically, however, in spite of this foreboding fiscal situation, Maine has one of the most generous medical welfare programs in the country. The state not only covers most optional Medicaid services, but eligibility for people who need nursing home care is extremely easy. Eighty percent of all residents in Maine's nursing homes are already covered by the Medicaid program. The remaining 20 percent could be on Medicaid within 30 days (days, not months!) if they chose to hire one of the attorneys we interviewed or to buy one of the self-help guides we discussed. In fact, stunned and frustrated state Medicaid eligibility workers told us that people are actually immigrating from New Hampshire (where Medicaid rules are much tougher) to take advantage of Maine's easy access to high quality publicly-financed care. They said: "We used to see $40,000 shelters. Now they are $500,000." Middle class Medicaid in Maine is hemorrhaging red ink for nursing home care at the same time that state revenues preclude full financing of medical care for poor women and children, education and infrastructure.

Under the circumstances, it should come as no surprise that few people bother to pay privately for long-term care and that even fewer plan ahead to purchase private long-term care insurance. Our meetings with the Governor and the Insurance Commissioner demonstrated a strong interest on their part to eliminate perverse incentives in public policy that discourage long-term care planning and lure people onto public assistance by default. Therefore, the question has become: "What can Maine do to encourage people to pay their own long-term care costs through private savings or insurance instead of relying on welfare?"

Answers to this question as proposed by the Inspector General of the U.S. Department of Health and Human Services were very well-received by nearly everyone when I summarized them. The I.G. says we need to remove the degrading barriers to care such as hiring an attorney, getting a divorce or spending down catastrophically, but we must also make government more financially responsible by requiring (1) longer and stronger transfer of assets restrictions, (2) liens as a condition of eligibility, and (3) mandatory estate recoveries. Such a program would bring Maine a reliable new non-tax revenue source while providing seniors and their heirs a very strong incentive to plan ahead, buy insurance, and stay off welfare in the first place. A few people objected to these proposals, but they failed to offer alternative solutions or to acknowledge the gravity of the fiscal crisis facing the state.

Since most of us agreed in principle that the solution to Maine's long-term care financing woes must lie in persuading people (who are able) to pay privately, the next key question became: how much can the state save? That is a tough number to pin down. We can only surmise. For example, if Medicaid census in Maine's nursing homes dropped from its current level of 80 percent to the national average of 67 percent, the annual savings in state and federal funds would be $35.5 million from cost avoidance alone. These savings occur as families work together to avoid Medicaid placement by taking care of their elders longer at home, taking advantage of lower levels of care such as assisted living facilities, paying privately in nursing homes longer, and purchasing private long-term care insurance. Families will seek such private alternatives when they know Medicaid benefits must be paid back.

Furthermore, estate recoveries will provide additional savings in the form of hard-dollar receipts. Oregon recovers over five percent of its Medicaid nursing home budget from estates. That would be $4 million in state funds and over $10 million in combined state and federal funds ceteris paribus in Maine. On the other hand, Maine cannot expect to reach maximum savings from such a program in the first year. A gradual phase- in must occur. We agreed, therefore, that a realistic expectation for the first full year of implementation in Maine might be estate recoveries of $1 or $2 million plus additional savings of several million from cost avoidance. This assumes an aggressive program with strong new law and policy and a statewide educational campaign to reach citizens, lawyers, judges, hearings officers, eligibility workers, and the media.

Before such a program can be designed, legislated, and implemented, however, Maine has a thousand and one questions to answer. For example, you need hard evidence from case records and interviews with eligibility workers that Medicaid planning is commonplace and that it is costing the state a fortune. You need to avoid reinventing the wheel, by compiling the best ideas for statutory authorizing language, program design, and lien/recovery technique from other states. You need to assure that high quality, affordable long-term care insurance products are widely marketed and readily available throughout the state. You need to educate the public and the long-term care interest groups on the moral high ground of the new initiative in order to get everyone pulling together for the benefit of all. Most importantly, you need to do all of this very quickly in order to make a difference in the next state fiscal year.

To answer these questions and achieve these objectives, I suggest that you consider a study similar to the one LTC, Incorporated conducted for Governor Thompson in Wisconsin last summer: The Senior Financial Security Program: A Plan for Long-Term Care Reform in Wisconsin. Given the enormity of the current fiscal crisis in Maine, however, your study should focus more on immediate implementation priorities, such as: drafting state legislative language to close divestiture loopholes and authorize liens and estate recovery; crafting a federal waiver to do what cannot now be done through state-level initiatives; preparing a request for proposals to select a private contractor to run the lien and recovery program; designing a public education campaign to explain the new program to Mainers throughout the state; writing a training plan to prepare eligibility staff for program changes; etc., etc.

You can easily imagine the level of effort that will be necessary to achieve the kind of savings that Maine requires. Probably, the only way to move widely and quickly enough is to entrust the effort to a private contractor. Our company is prepared to do the necessary planning and implementation either on a fee-for-service or contingency fee basis. The latter option minimizes or eliminates up-front state costs as we would be compensated out of our share of actual estate recoveries.

It seems to me that you have a great group of people in the senior advocacy community, the nursing home industry, the administration, and the state agency. All we have to do is get everyone pulling together toward the common goal: red-carpet access to top-quality care for every Mainer at affordable prices.