Another ObamaCare Surprise: Estate Recovery

Sofia Prins and Gary Balhorn were about to sign applications for free coverage under Washington State's Medicaid program — recently expanded under ObamaCare — when Sofia began reading the fine print: If you're over age 55, the state of Washington will bill your estate for your health expenses when you die.

So much for "free."

Prior to ObamaCare, state Medicaid programs (enacted in 1965 and expanded in 1993) offered help to poor people who couldn't afford health coverage but required states to recover their health costs from their estates when they died. However, state exemptions for personal goods and residences meant that such "estate recovery" efforts were modest as most people either had no other assets or had "spent down" those that they had to a minimal level.

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But with the expansion under ObamaCare, more and more people will qualify for Medicaid without realizing that the coverage is really not free, but instead a hidden secured loan whose terms aren't explicit. As Carol Ostrom, the *Seattle Times* health reporter, explained:

> The way Prins saw it, that meant health insurance via Medicaid is hardly "free" for Washington residents 55 or older. It's a loan, one whose payback requirements aren't well advertised. And it penalizes people who, despite having a low income, have managed to keep a home or some savings they hope to pass to heirs, Prins said.

Sofia and Gary lived together, she as an artist and he as a tango instructor, and when they saw that they would see their assets evaporate under estate recovery rules if they signed up for Medicaid, they decided to get married. That way, their combined incomes qualified them for ObamaCare coverage on the state exchange, helped along with some federal subsidies. Said Sofia:

> We're happy to be getting married. Unfortunately not everyone has such an elegant solution to the problem.

No, they don't. Barry Blake lived with his mother who owned her own home and was covered under Medicaid. When she died, the state of Kentucky "took the house … to be sold and pay those expenses" according to a suit Blake filed to recover it in 2009. The state also took the washer and dryer, their lawn mower, gardening tools, kitchen appliances and other personal items. Blake hadn't read the fine print. The lawsuit was dismissed.

And then there's John and Mary, clients of Jeffrey Marshall, an elder law attorney practicing in Pennsylvania. Wrote Marshall:

> When John came back from Korea he took over working the family farm. Eventually, John and his wife Mary inherited the farm from John's parents. John and Mary were always "dirt poor."
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> In 2000 Mary's health began to decline due to Parkinson's disease and dementia. Everyone in the family pitched in to care for Mary and keep her home. In 2003, after 3 years of struggle, the family needed some outside help. They applied for home care that was paid for in part by Medicaid. This extra help, combined with the ongoing care by John and the boys and their wives, allowed Mary to stay at home for another full year.
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> In 2006 John died of a heart attack. Without John's support in caring for Mary, the family was no longer able to care for Mary at home. She moved to a local nursing facility. The family didn't have the cash to fully afford the nearly $8,000 a month cost and Medicaid benefits were needed.
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> Mary died in January 2009. She was 84. Three weeks later her sons received a letter in the mail from the Government. The letter said Pennsylvania was owed $171,386 for the Medicaid that was provided for Mary's care, both at home and in the nursing facility.
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> The boys are going to have to find some way to pay off this state lien. But they don't have this kind of money. Most likely, the farm will have to be sold.

There are an estimated 15 million people who are expected to sign up for Medicaid under the new rules which are very explicit:

> States must pursue recovering costs for medical assistance consisting of nursing home or other long-term institutional services, home- and community-based services, hospital and prescription drug services … and any other items covered by the Medicaid State Plan.
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> At a minimum, states must recover from assets that pass through probate … at a maximum, states may recover any assets of the deceased recipient.

Paul Craig Roberts, who served under President Ronald Reagan as his assistant Secretary of the Treasury, forwarded an article written by "a knowledgeable person who wishes to remain anonymous" entitled "Obamacare: A Deception" earlier this year which stated clearly:

> Your estate is what you own when you die — your home and what's in it, other real estate you may own, your bank account, annuities and so on.
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> [Under estate recovery] even if you have a will, your heirs are chopped liver.
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> Low-income people often have only one major asset — the home in which they live and, in some cases, this has been the family home through several generations.
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> What this boils down to is this: if you are put into Medicaid — congratulations! — you just got a mandated collateral loan if you use Medicaid benefits.

When Republican Party candidate for president Herman Cain broached the subject of "estate recovery" on his radio show, he got so many responses that he decided to put his comments into writing:

> The problem here is that the ACA is taking away insurance plans that people could afford and simultaneously offering replacements that are more expensive. At the same time, it's expanding the definition of "low income" by removing asset tests.

> If you can't afford the new, high price … you are forced into Medicaid since, because of the individual mandate, you MUST be covered.
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> So, the feds have created a situation where you can lose the coverage you could afford, can't afford the replacement plans, and are forced into Medicaid which will allow the state to come after your assets when you die.

With the expanded definitions under Medicare, millions are going to be invited into the trap of free Medicaid coverage instead of the expensive exchange coverages only to find that they, and their heirs, will be forced to learn once again the rule about "free": There's no such thing as a free lunch.

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