This study was part of a multiphase project examining the perceptions of elder law attorneys, certified financial planners, and Medicaid eligibility workers regarding Medicaid estate planning (MEP) for nursing home care. Focus group methodology (5 groups, $N = 32$ participants) was used to explore the perspectives and experiences of Medicaid eligibility workers, who are responsible for interpreting, administering, and enforcing federal and state regulations. Findings describe factors influencing MEP, enforcement of regulations, and potential policy responses to MEP. Participants identified numerous impediments to effective implementation of current regulations. Recommendations for improved policy include redefinition of spousal assessment policies, other valuable consideration determinations, and penalty period formulas.

Key Words: Asset transfer, Long-term care financing

Medicaid Eligibility Workers Discuss Medicaid Estate Planning for Nursing Home Care

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 Debates regarding allocation of societal resources for the provision of health care for older citizens have intensified in recent years. During the 1980s, public discourse focused on the potentially high cost of an aging population (through programs such as Social Security and Medicare) and issues of resource distribution (Callahan, 1987; Daniels, 1988; Longman, 1987). Policy related to public expenditures for older age groups continues to receive substantial attention from researchers, policy makers, analysts, and advocates alike (Binstock, 1994; Hudson, 1997; Walker, Bradley, & Wetle, 1998). Although consideration of the principle of equity is an essential aspect of policy making, its operationalization is complicated by the fact that perceptions of distributive justice are heavily influenced by social, cultural, and political factors (Stone, 1996). The financing of long-term care poses challenges to the development of policy that is both responsive to resource concerns and consonant with societal values regarding the care of frail populations.

Financing Nursing Home Care

The total national expenditure for long-term care in 1996 was $125.5 billion; 69.7% was spent on nursing home care and 30.3% on home and community-based care (Levit et al., 1997). Sixty-two percent of disbursements for nursing home care were made by federal, state, and local governments. Medicaid spent $37.5 billion for nursing home services in 1996, which was 47.8% of the total (Levit et al., 1997). Aggregate expenditures for long-term care are sizable, and they are projected to nearly double by 2010 and more than triple by 2030 (Congressional Budget Office, 1991). Although the government’s role in financing care is significant, evidence clearly demonstrates that informal caregivers (spouses, children, broader kin networks) provide substantial amounts of community-based long-term care (Hanley, Alexchi, Wiener, & Kennel, 1990; Stone, Cafferta, & Sangl, 1987). Nearly three quarters of dependent, community-based older persons receive all their care from family members or other unpaid sources (Liu, Manton, & Liu, 1985).

Spousal Impoverishment

The costs of nursing home care for an individual are potentially catastrophic for a spouse residing in the community. Reduction of Medicare beneficiaries’ risk for illness-related catastrophic financial losses was a primary goal of the Medicare Catastrophic Coverage Act of 1988 (MCCA). Although public opposition resulted in the repeal of MCCA within one year of its enactment, specific provisions related to spousal impoverishment remained in effect. The legislation explicitly stated that spouses and disabled dependents should not be impoverished by the costs of long-term care and that compensation for family-based caregiving is legitimate. Under MCCA, the community-dwelling spouse of a Medicaid-covered individual living in a nursing home is permitted to retain one half of the...
Medicaid Spend-down

Individuals who do not qualify for Medicare benefits upon admission to a nursing home begin their stays as private-pay patients. Depending on the length of stay and available financial resources, an individual may exhaust both income and assets, eventually becoming eligible for Medicaid. This process is known as "spending down" to Medicaid. A number of studies directed at quantifying rates of spend-down have been published over the past 10 years (for an excellent synthesis of the empirical work to date, see Wiener, Sullivan, & Skaggs, 1996). National studies have produced estimates of individuals shifting from paying privately to Medicaid ranging from 25.8% (Short, Kemper, Cornelius, & Walden, 1992) to 16.3% and 10.2% (Spence & Wiener, 1990). Data suggest that individuals either spend-down very quickly after admission (over 40% exhaust assets within one year) or after a very long stay (estimates range from 9%-27%; Arling, Buhaug, Hagan, & Zimmerman, 1991; Bice & Patee, 1990; Short et al., 1992; Temkin-Greener, Meiners, Petty, & Szydlowski, 1993). Federal and state policy makers have considerable interest in estimating rates of spend-down as Medicaid financing for long-term care continues to increase exponentially. The length of time to spend-down is a critical consideration in understanding the impact of spend-down on Medicaid budgets and its relationship to Medicaid estate planning.

Medicaid Estate Planning

Persons applying for Medicaid benefits must satisfy state-specific program criteria, including strict tests on income and assets. Medicaid estate planning (MEP) employs a range of legal and financial approaches for the purpose of establishing eligibility for Medicaid coverage for nursing home care (see Walker, Robison, & Gruman, 1998, for a more detailed description of MEP). There is great diversity in the level and nature of MEP activities across states; one of the most significant contributors is the variability of state-specific Medicaid regulations, policies, and enforcement procedures (Burwell, 1991).

Despite the vigorous debate and keen interest in understanding MEP and its impact on Medicaid expenditures, few empirical studies have been conducted to quantify its magnitude. The majority of work has been supported by the General Accounting Office (GAO) and the Office of the Inspector General (OIG). A 1988 study conducted by the OIG surveyed all 50 state Medicaid programs regarding policies, practices on transfer of assets, liens, and estate recovery. The study found very weak enforcement of asset transfer restrictions and that an estimated $589 million annually passed on to heirs of Medicaid recipients (OIG, 1988). A 1989 study by the OIG indicated that persons denied and subsequently approved for Medicaid over a one-year period in Washington state had $27.5 million in assets at the time of denial (OIG, 1989).

In 1989, the GAO published a study on estate recovery programs among 200 randomly selected nursing home cases in Oregon and seven other states. Findings indicated that Oregon recovered approximately $10 for every $1 spent administering its recovery program. The report estimated that $85 million passed on to heirs in six states (GAO, 1989). Perhaps the most widely cited GAO study was published in 1993. A review of 403 Medicaid applications in Massachusetts was conducted to determine whether assets had been converted from countable to exempt or transferred. The study found that 54% of applicants had converted assets (typically into a burial account) and 13% had transferred assets within 30 months of filing the application, with an average asset amount of approximately $46,000 (GAO, 1993).

Qualitative approaches have been used by Brian Burwell and his colleagues (Burwell, 1991; Burwell, 1993; Burwell & Crown, 1995). Their most recent study consisted of case studies in four purposefully selected states (Massachusetts, California, New York, and Florida) to assess the magnitude and nature of MEP. Although there was variation across the states, most eligibility workers estimated that 5%-10% of single applicants purposefully diverted assets prior to applying for Medicaid and that 20%-25% of married applicants did so. A series of studies conducted in Connecticut found that Medicaid workers, elder law attorneys, and certified financial planners differed substantially in their perceptions of the nature and magnitude of MEP (Walker, Robison, & Gruman, 1998). Medicaid workers estimated that 47% of applicants who transfer assets have less than $1,000 in monthly income, and that 31% transfer less than $5,000. Elder law attorneys estimated that 28% of those transferring assets have incomes lower than $1,000 per month, and that 15% transfer less than $25,000. Finally, financial planners reported that only 3% of clients transferring assets had monthly incomes below $1,000, and that only 7% transfer less than $25,000.

Methods

Study Design

This study was conducted as part of a multiphase project in Connecticut examining perceptions of elder law attorneys, certified financial planners, and Medicaid eligibility workers concerning the prevalence and magnitude of MEP. This qualitative study of Medicaid workers used exploratory, qualitative research techniques with a series of five focus groups (Morgan, 1997). Three "grand tour" guiding questions were developed to capture the level of detail necessary to better understand actual practices and perceptions of the staff directly involved with asset transfers. The focus group guide was developed by a multidisciplinary team, which included a social scientist, a health lawyer, two state administrators, and two gerontologists. Through standardized probes to open-ended questions, focus group participants were encouraged to give detailed
examples of their experiences related to application reviews, MEP generally, and asset transfers in particular. Participants were asked to respond to the following three “grand tour” questions: (1) What factors do you believe influence asset transfers for the purpose of qualifying for Medicaid? (2) Describe how you enforce asset transfer restrictions/regulations. (3) Discuss any suggestions you may have for how the state might address MEP.

Five focus groups of 5–9 members each (total N = 32) were completed for the qualitative study. It should be noted that the study involved eligibility workers from a single state. Participants were purposefully selected to ensure inclusion of workers with relevant expertise and experience in long-term care application reviews. The state program manager instructed each regional office director to identify staff with varying years of experience and involvement in Medicaid application review. Although data were not collected to allow for a full description of respondents, the regional directors were asked to ensure adequate representation of the type of staff in their regions. The sessions were led by two members of the research team in order to facilitate discussion and improve the reliability of the data collected. Each session was approximately two hours in duration.

Data analysis of the qualitative interviews used a strategy similar to that suggested by McCracken (1988). A scribe recorded the focus group discussion on newsprint (including direct quotations when possible); participants confirmed accuracy of recorded comments at the close of discussion for each issue. An audiotape was made of each session to allow for clarification of points from newsprint as needed. Recorded data were integrated into a single transcript of the session, which was analyzed line by line in order to identify and interpret discussion content. Major concepts supported by direct quotations were then organized into several common themes for each of the three issues under study. Findings specific to the internal administrative processes in Connecticut are not reported here.

Findings

Issue One: What factors do you believe influence asset transfers for the purpose of qualifying for Medicaid?

Eight themes emerged around the issue of factors that influence asset transfer behaviors: (1) desire to protect assets; (2) evolution of elder law practices; (3) increased public awareness; (4) perception of Medicaid long-term care coverage as an entitlement; (5) declining health and anticipation of service use; (6) ease of access to the Medicaid program; (7) sociodemographic predisposing characteristics; and (8) cost of nursing home care. Each theme is discussed here, with selected illustrative supporting quotes.

Desire to Protect Assets.—The single factor identified unanimously as the primary motivation for asset transfers was a desire to protect material wealth. This was described in a variety of ways, with connotations both positive and negative. Some respondents expressed the individual’s fear of losing his or her estate or financial legacy: “This is their life savings, they don’t want the money to go to long-term care, they wish to pass it on to their children.” Others were more negative, stating “money” or “greed” as the issue, often driven by children: “children are the primary initiators.” Relatives who become involved vary from those who have been close to the applicant in the past to those who “come out of the woodwork.” One respondent stated that “often the parents are incompetent, and exploitation happens.”

Evolution of Elder Law Practices.—The second most frequently reported factor encouraging asset transfers was related to the evolution of elder law practices. Several respondents simply stated, “Lawyers!” One described estate planning as “big business,” noting a particular growth since the enactment of the Medicare Catastrophic Coverage Act of 1988. Respondents reported that the majority of elder law attorneys are highly experienced and understand relevant statutes and regulations, including “loopholes.” Estimates of the degree to which elder law attorneys are involved in asset transfers associated with Medicaid applications ranged from 50%–95%. Others noted the increase in estate planning seminars that employ “scare tactics.”

Increase in Public Awareness.—A closely related factor was the general increase in public awareness of long-term care financing and Medicaid (“over the last 10 years”). Respondents in each focus group discussed the growth in popular media coverage regarding costs of long-term care, as well as attention paid to the issue in national policy debates. Others commented on more informal information sharing among relatives, neighbors, and friends (“rumor mill”), through which people hear “tales that everyone will lose their house.”

Perception of Medicaid Long-Term Care Coverage as an Entitlement.—An interesting theme that emerged in each focus group addressed the perception of Medicaid long-term care coverage as an entitlement. Participants suggested that “family members who have provided help feel entitled to compensation,” and that the public believes the program “is an entitlement, similar to Social Security.” Several indicated that applicants and their families feel that Medicaid financing for long-term care is “not welfare, [that] people paid their taxes and deserve it.” Others noted there is “less stigma” to Medicaid for long-term care, that society has “more sympathy for those with physical or cognitive problems as compared to AFDC [Aid to Families with Dependent Children] mothers.”

Declining Health.—The notion that declining health, or anticipation of nursing home use, serves as an impetus for asset transfers was mentioned less frequently. In two focus groups, respondents mentioned age and health factors, observing that a “negative health event often precipitates the process.” One participant stated that individuals fear losing control of their finances with the onset of illness and want to plan ahead to ensure their wishes are followed.
Ease of Access to Medicaid Benefits.—Several participants remarked on the ease of access to Medicaid benefits. This idea was articulated in various ways: “people do it because they feel they can” or “because the policy allows it.” Integrating the issues of access and awareness, one respondent stated, “We’re easy, plus people know it’s legal, so it’s fine.” One participant felt there had been a liberalization of regulations recently, in addition to the loopholes in federal statutes, which encouraged asset transfers.

Sociodemographic Profiling.—When asked to describe a typical applicant involved in asset transfers, there was strong concordance among respondents in all focus groups. Specific sociodemographic characteristics were identified consistently: high educational attainment; middle/upper income asset level; “politically conservative views”; having children or grandchildren; and access to family attorneys or financial planners. Several participants agreed that there was geographic variation, with higher MEP activity present in certain regions of the state with higher per capita income.

Role of Nursing Homes.—The role of nursing homes was mentioned both in terms of the high cost of care as well as the involvement of staff in advising residents and families. One respondent stated that cost of care is a critical factor; although people are generally aware of costs, they “consistently underestimate” the expense of nursing home care. Discussion of the influence of nursing homes was mixed, with participants disagreeing as to whether nursing home staff encourage or discourage asset transfer behaviors. One observer noted that some staff are becoming more sophisticated about Medicaid and encourage asset transfers among applicants or encourage them to “liquidate assets.” Another noted that nursing facilities want to be assured of initial private payments as well as subsequent Medicaid payments and are hiring consultants to “guarantee eligibility.”

Issue Two: Describe how you enforce asset transfer restrictions/regulations.

The discussion about how asset transfer regulations are enforced was the most vigorous, resulting in the identification of a number of administrative, procedural, and resource issues that challenge eligibility workers in reviewing asset transfer cases. Four general areas of comment emerged in the content analysis of focus group transcripts: (1) application review/documentation procedures; (2) the nature of the information gathered; (3) staff expertise; and (4) resource issues. Four additional themes were particularly state-specific (relating to internal agency policies and procedures, the agency hearings office, the Attorney General’s office, and the Central Office of the Department of Social Services); these are not discussed here.

Application Review and Documentation Strategies.—The vast majority of discussion in each of the focus groups involved detailed descriptions of application review and documentation strategies used in enforcing asset transfer regulations. Although some successful approaches were described, the comments quickly turned to challenges and frustrations that impede uniform enforcement. Effective application review systems include careful examination of any large transactions, with particular attention to the frequency of account variation. One participant reported that using tax returns is very helpful. Several workers described a somewhat more intuitive approach in which they “try to understand the individual’s lifestyle and patterns of spending, considering such issues as whether the applicant was independent, living alone or with family.” Others mentioned “assessing the applicant’s cognitive and functional status” as well as his or her use of formal assistance (no details were offered as to how cognitive or functional status is assessed). There were mixed opinions about the willingness of applicants to provide complete and accurate information as part of the application: “people usually comply with my requests” and “most people do keep their bank statements—they come in with shopping bags full” versus “we are at the mercy of the client’s honesty.” Several comments were offered regarding unintentional gaps in applications made by children or community spouses who were not previously involved in the applicant’s financial affairs.

Obstacles to enforcement were of essentially three types: the number and structure of bank accounts, difficulty accessing information (due to bank consolidation and mergers, obstructive or unaware families), and property located out of state. There was unanimous agreement that many applications contain multiple bank accounts and can be extremely difficult to organize and verify. The typical application contains an average of 5–15 bank accounts (savings and checking) and 5–6 insurance policies, as well as a number of credit cards, CDs, annuities, and stocks. Several respondents remarked that applications have become increasingly complex in recent years, with multiple family members using joint accounts.

Access to complete financial information is also frequently problematic. Many respondents stated that obtaining account records from banks is “difficult or impossible” and “the research process is expensive.” The issue of payment of research fees to banks prompted several comments about who should be responsible for the bank record requests (“families refuse to pay the money” or “banks encourage us to fact find”). Several observed that the constant wave of bank mergers causes problems because policies regarding record releases change, and tracking a variety of account numbers through new systems is likely to be extremely time consuming. One respondent indicated that insurance companies are also “often difficult to deal with.” There was general agreement with a statement that extending the look-back period beyond 24 months has made these challenges even greater.

Nature of the Information Required.—The nature of the information required was also identified as an impediment to application reviews. The fact that the vast majority of information is furnished by the client,
spouse, or legal representative was identified as potentially problematic. There were conflicting perceptions of the honesty of applicants, with some notable variation by regional office. For example, several respondents stated that “people, in general, are honest.” Yet representatives of certain offices felt clients “have big money,” are “deceptive,” and “intentionally move money around.” In terms of verifying client information, one worker indicated that “it’s difficult to determine who the money really belongs to,” while another added, “the presumption is that the money is the client’s—the individual applying must prove the money does not belong to them.” One worker with a substantial number of years of experience expressed frustration: “It is possible [to verify data], but why bother [since it doesn’t ultimately affect eligibility]?” Finally, respondents discussed challenges posed by out-of-state accounts. Frustration was also expressed in each focus group that “the federal matching system is outdated—it’s 3 years behind.” Obtaining information from other states, such as assessments of real estate, is “nearly impossible.”

Staff Expertise.—The next general area of discussion dealt with staff expertise in enforcing asset transfer regulations and policies effectively. Many respondents expressed a lack of comfort in handling legal aspects of applications, indicating that they “do not understand some of the difficult loopholes” and “need legal guidance or support.” Most comments arose in the context of fair hearing procedures, which are “an intimidating process.” As there are no attorneys present at the hearings to assist the eligibility workers, they feel “lost.” These comments are consistent with remarks made regarding the need for further training on MEP.

Resource Issues.—There were a number of resource issues identified in each focus group, most regarding inadequate time for application reviews, which often may take “days” or “hundreds of hours.” Spousal assessment preparation can require two days of dedicated time. In terms of investigations, some felt staff resources were sufficient, whereas others indicated there was inadequate staff to perform complete investigations. When asked to describe an average caseload, respondents estimated carrying 30–60 cases at one time. In addition to pressures to perform timely application reviews, several respondents mentioned there was not enough time to study relevant regulations, or to handle competing program demands. Finally, there were several comments related to the assistance and support offered by supervisory staff. Some respondents felt their supervisors were very supportive, whereas others indicated the support was inadequate.

Issue Three: Discuss any suggestions you may have for how the state might address Medicaid estate planning.

The final topic addressed in the focus groups was the issue of how the state might reduce asset transfer practices. Policy-based recommendations included the following: (1) change spousal assessment policies; (2) change the definition of other valuable considerations; (3) change the penalty period divisor; (4) revise out-of-state policies; (5) reform the long-term care system; and (6) provide more resources and training for eligibility workers.

Spousal Assessments.—There was extensive discussion about the spousal assessment policies and practices, with frustration expressed by many respondents. Pragmatic suggestions were offered amidst cynical remarks such as “changing spousal rules is a dream.” Essentially, participants stated that there should be limits imposed on spousal retention, for example, a “second step cap” based on a reasonable standard that takes regional standards of living into account. “Tightening the loophole on spousal spend-down of assets” and defining “extraordinary” in the computation rules is critical according to several respondents, because the “current policy is very flexible and liberal,” and “we have to work to impoverish the nursing home spouse.” Specific suggestions included placing the community spouse’s funds in a state-administered annuity that would be recovered upon the institutionalized spouse’s death, or requiring the community spouse to invade the principal. One respondent indicated that the share of money for the institutionalized spouse should be spent on nursing home care, and “shouldn’t be spent on a new roof for the house.”

Other Valuable Consideration.—The second major area of discussion consistently identified in each session was the issue of “other valuable consideration,” in which informal caregivers seek compensation for care provided in the community in order to avoid or delay a nursing home placement. A series of specific recommendations were offered to address what eligibility workers perceived to be unreasonable claims for compensation made by children who have “access to a lawyer” and are “more aware of the laws.” Documenting the amount of care actually provided is particularly problematic, with children “often claiming they were providing more care than was really the case.” Documentation standards are ineffectual, because knowledgeable attorneys simply prepare the necessary verification in accordance with the policy. Respondents stated that caregivers should be required to “prove the amount of care and the nature of care,” to “document the type and frequency of services,” or to go “through a medical review.”

A second general area of comments pertained to the question of how services are valued, with several respondents stating that the valuation is often excessive (e.g., “an $800,000 house does not equal the cost of care”). One participant suggested eliminating the policy of “giving the caregiving child a house in return for providing care for 2 years.” Two suggestions were made in terms of valuing services: using existing service-specific Medicaid home health care rates, or proposing a uniform but generous standard. Changing the time frame of providing care to 3 years in return for the house was recommended. Finally, with regard to policies, there were several observa-
tions of inconsistency between federal regulations and state interpretations, in that federal dollar-for-dollar rules are inconsistent with the state’s.

Penalty Periods.—The third general domain identified how the state might address MEP policies pertaining to the calculation of penalties for improper transfers. Participants suggested changes in such policies, either through revisions to the penalty period initiation date or changes to the divisor figure. Currently, the penalty begins when the asset is transferred; there was strong agreement that the penalty initiation should be based upon the date of eligibility for Medicaid or entry into the nursing home. There was some recognition that such a radical change may not be feasible (“a dream”), but would certainly have a major impact on asset transfer behaviors (perhaps the greatest of any potential policy changes). With respect to the divisor figure, a number of respondents commented that the current figure ($5,260) is not at all reflective of monthly costs of care in the community, and that it should be reduced to more accurately represent costs associated with community care (figures of $500 to $1,000 were suggested). There was agreement in several sessions that any alterations in the look back period would have “no effect” without changes to the penalty structure. Extensions of a look-back in the absence of these other changes would be “useless,” impossible to enforce, and would also increase administrative costs.

Out of State Applications.—Policies pertaining to the review and processing of Medicaid applications from persons residing in or holding property in other states were raised in each of the five sessions. There was a general consensus that investigating assets held out of state is extremely difficult (“we can’t pursue investigation of out of state assets”). Several respondents indicated a high prevalence of applications received from contiguous-state residents (one office estimated approximately 36 per year), and others remarked that reviewing out-of-state applications is very time consuming. One participant observed that there are certain incentives that encourage applications to the state’s Medicaid program, such as “easy regulations and efficient processing.” Suggestions made as an outgrowth of these discussions include establishment of residency laws (6 months to 1 year) to qualify for Medicaid long-term care benefits, which “would need to be at the federal level.” Another suggested creating cross-state programs to place liens on property.

Long-Term Care Reform.—In a more philosophical vein, two respondents indicated that long-term care reform initiatives are essential to any successful efforts to reduce asset transfers for purposes of qualifying for Medicaid. When asked specifically about the potential role of long-term care insurance, one participant stated, “Long-term care insurance is not viable or successful when you have inducements to access Medicaid.” Another observed, “There’s no need for it—Medicaid is long-term care insurance.”

Resource Issues.—The need for additional support in the form of resources and training was a theme common to all three discussion questions. In a general comment, one respondent observed that “pushing cases means we can’t do the job we are supposed to do . . . if you don’t stop the demand, you need to provide more resources to process the applications.” There was an expressed need for additional supports to assist in application verification, such as public information specialists to “fact find, like with home visits.” The majority of the discussion revolved around the need for training eligibility workers in various legal instruments (trusts) and financial matters (how to read stocks, bonds, and securities). One respondent suggested that the State Attorney General’s office could train workers to identify “red flag” cases involving trusts, while another remarked, “Trusts give us an ulcer; often they are very complex.” One eligibility worker indicated resources specialists should receive “college training,” while another argued rather forcefully that eligibility workers should attend legal seminars to become aware of changes taking place.

There were a number of statements regarding the importance of “specialists.” When probed to discuss the strengths and weaknesses of generalists versus specialists, there were mixed opinions. Most participants felt it was important to have specialists who have protected time, training, and expertise, noting that these application reviews “require special knowledge,” and that “each office should have a special division devoted to nursing home issues.” Several participants indicated that the use of generalists provides flexibility and prevents “burnout” on long-term care issues. There were a number of observations regarding adequacy of the legal expertise available to eligibility staff, with most participants agreeing that additional support was needed (e.g., “each region should have an elder law expert—currently they are centralized”). One participant expressed mixed feelings about enhanced legal advice, because it might make the applications “more difficult to process.”

Discussion

Federal and state governments have struggled for nearly two decades in an arguably unsuccessful attempt to develop cohesive, effective policy in the area of long-term care financing. Instead, policy has emerged as fragmented and inconsistent in design. Medicaid estate planning increasingly occupies the attention of policy makers, advocates, and the general public. A deeper understanding of current regulatory policies and practices is necessary to inform public discussion. As legislatures struggle with policy responses to the questions of organization and financing of long-term care, the efficacy of current statutes and regulations must be assessed carefully.

In the absence of direct access to primary financial data of applicants, frontline eligibility workers are among the most knowledgeable key informers about MEP practices; their participation is a strength of this study (Burwell, 1993). A second strength is the fact that it was conducted in a state generally perceived
as a “hotbed” of MEP activity, due to Connecticut’s wealthy population and comparatively generous Medicaid-covered nursing home services. An important limitation of the study is the degree to which participants are representative of all eligibility workers within the state. Although this is difficult to assess, respondents were purposefully selected to ensure inclusion of workers with relevant expertise and experience in long-term care application reviews. Senior state personnel understood the need for adequate representation of all staff, and they were enlisted to ensure that each regional office director identified staff with varying years of experience and involvement in Medicaid application review. Although not as important as the representativeness of workers within Connecticut, it should be noted that the generalizability of this study to other states is constrained by the fact that it was conducted in a single state. The nature of the subject dictates that the research must take into account state-specific regulatory, socioeconomic, and service delivery factors (Burwell & Crown, 1995). Finally, the data are perceptions and experiences of Medicaid workers, and qualitative “triangulation” methods were not employed to independently verify findings reported in focus groups.

The Medicaid workers identified numerous impediments to enforcement of current regulations and policies. Participants pointed to a number of specific challenges to efficient and thorough processing of long-term care applications, including the complexity of bank accounts and difficulty accessing information. Requirements to investigate a “look-back” period for transfers may be either ineffectual or impossible to implement. Research assessing the cost effectiveness of federal and state policy in this arena is limited (Wiener, 1996). Administrative costs of implementing and enforcing regulations are an important factor to consider, particularly with regard to the actual impact on MEP.

MEP also has policy implications for the private arena, because the ability to access Medicaid coverage while retaining assets may have a negative impact on the demand for private long-term care insurance. In addition, penalty rules for asset transfers may influence the type of coverage chosen if a long-term care insurance policy is purchased. If the penalty period is 36 months, for example, there is no incentive to purchase more than 36 months of coverage because the policy holder can transfer all assets with the assurance of accessing Medicaid when the 36-month policy is exhausted. One of the goals of the Partnership for Long Term Care insurance programs (such as that operating in Connecticut) is to reduce incentives for asset transfer through encouraging the purchase of long-term care insurance that protects assets from Medicaid spend-down.

Regardless of laws, regulations, and rules, the reality is that states must rely primarily on the ability of individual Medicaid eligibility workers to process long-term care applications and investigate Medicaid planning activities accurately and thoroughly. As measuring need for public assistance with long-term care costs has become increasingly complex, the expertise of the people who are doing the “measuring” must grow more sophisticated. How will adequate training and support be provided by already overburdened Medicaid programs to ensure that program requirements have the intended effect?

Beyond the more technical questions surrounding the efficient development and administration of an appropriate regulatory system, these findings raise several more fundamental policy issues. Study participants have identified explicitly potential policy options that, in their view, may be both feasible and effective in reducing MEP activity. As reported here, such recommendations include the examination and redefinition of spousal assessment policies, other valuable consideration determinations, and penalty period formulas.

The issue of public protection against spousal impoverishment for nursing home care is illustrative of the complex policy dilemma as to appropriate allocation of individual and societal responsibilities in paying for long-term care. Debate surrounding the creation and repeal of MCCA reflected commitment to the principle that individuals residing in the community ought not to be forced into poverty by paying for nursing home care for an ill spouse. Provisions of MCCA that remain in effect permit Medicaid-qualifying asset transfers, and even require such transfers in some cases. Yet Medicaid workers describe excessive or inappropriate use of such benefits, as well as frustration with current policies for assessing need. Providing a clearer definition of the nature of spousal protections remains a pressing policy issue.

Policies regarding other valuable consideration for informal caregivers also pose challenges. Given the societal value placed on recognizing contributions of family caregivers, what form of regulation will allow for adequate compensation of informal caregivers and yet protect against abuse by unscrupulous family members? How should such services be “valued”? How might equitable access to such caregiver compensation be ensured?

The severity of the penalty plays an important role in Medicaid planning activity. The Kassebaum-Kennedy health reform bill enacted in 1996 criminalized asset transfers as a misdemeanor punishable by a fine of up to $10,000 and up to a year of imprisonment. Although the individual transferring assets is no longer subject to criminal penalties, professionals such as attorneys and certified financial planners who advise such transfers may be subject to penalties or fines. The intent of the legislation was not so much to prosecute frail older people for improper asset transfers, but to create a stronger deterrent to individuals who are contemplating MEP. However, the law is also illustrative of what some argue is an overly extreme public policy effort to influence MEP.

Conclusions

Formal public policy and actual practices regarding Medicaid financing of long-term care are inconsistent. Although the current Medicaid program uses a means-tested approach to resource distribution, regulations
have facilitated broader access to Medicaid benefits for long-term care coverage. The interplay between individual behaviors and public policy in the context of Medicaid estate planning reflects divergent perceptions regarding societal and individual obligations to provide long-term care. Attempts to develop public policy that shapes behaviors and attitudes toward such obligations have been fraught with challenges and unanticipated consequences. Is asset transfer for Medicaid qualification a significant contributor to Medicaid expenditures for long-term care? If so, policy makers, researchers, and advocates must determine whether policy responses are consistent with societal values around providing care for frail citizens. If not, a critical evaluation of current legislation and practices is necessary.

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