HEALTH REFORM

MEDICAID IS GETTING TOUGH WITH GRANNY

Stiffer penalties are in store: Shift your assets, go to jail?

After 79-year-old Mari P. grew ill with Alzheimer's disease, her daughter and two sons hired nurses to care for her at home. To compensate themselves for the expenses, the children took title to their mother's New York City house. Then, after hospitalization for a broken hip, Mari entered a nursing home and, lacking savings, got Medicaid to cover most of the $180-a-day cost.

It's a familiar story: A family struggles to cover overwhelming nursing home bills for an aging parent while preserving financial assets through "Medicaid estate planning." Starting on Jan. 1, though, a little-noticed change in federal law will subject such widely accepted practices to criminal penalties (table). In fact, the law specifies, if Grandma "knowingly and willfully disposes of assets... in order... to become eligible for [Medicaid]," she could spend up to five years in prison and pay a $25,000 fine.

Supporters of the provision, part of the Kassebaum-Kennedy health insurance reform bill passed in August, say it will reduce the runaway cost of Medicaid. Attorneys in the fast-growing field of elder law, though, are outraged, even though the law also encourages the purchase of private long-term-care insurance. "The only conceivable reason to apply criminal penalties is to frighten older people away" from legitimate estate planning, says Manhattan attorney Daniel G. Fish.

BIG TICKET. Middle-class and even wealthy seniors and their families increasingly have turned to Medicaid to pay their nursing home bills, which average around $38,000 a year but can run as high as $100,000. That has helped make Medicaid, a program originally intended for welfare recipients, the second biggest item in state budgets—as well as a drain on the federal treasury.

A 1993 General Accounting Office study in Massachusetts discovered that more than half of Medicaid nursing home applicants had shifted assets shortly before applying for benefits. Current law does allow officials to dock applicants up to three years of nursing home reimbursement if they find that the asset-shifting was designed to impoverish the applicant on paper. But there are many loopholes: Wealthier seniors, for example, can shelter assets in trusts, or buy cars or real estate, and still qualify.

The new law won't completely shut the loopholes, but it will add the chilling prospect of jail. That could ease the expected strain on Medicaid. Already, 69% of the nation's 1.5 million nursing home residents are supported by Medicaid. Meanwhile, the over-85 population is the fastest-growing age bracket, prompting the Census Bureau to project a 22% increase in the number of elderly living in nursing homes by 2000. That's expected to help keep the $165 billion-a-year Medicaid program growing at an annual rate of 10%.

FULL FARE. Nursing homes are feeling the squeeze, too. Operators say Medicaid doesn't fully pay the cost of custodial care needed by stroke victims or by those suffering from Alzheimer's, which can be labor-intensive. Higher-paying private patients help subsidize those on the dole, but as the number of Medicaid patients increases, nursing homes can become strapped for cash and may be forced to scrimp on services. The new law could help homes by increasing the number of patients who pay full fare.

Kassebaum-Kennedy does hold out a solution for families trying to avoid destitution from nursing home costs. Long-term-care insurance finally is afforded tax treatment similar to medical insurance, deductible for both individuals and employers. A basic policy, which costs a healthy 65-year-old $1,058 a year, covers 100% of the cost of the nursing home for four years and 50% of home-health-care expenses after a 20-day deductible, according to the Health Insurance Assn. of America. Now, only 2% of nursing home residents receive such insurance benefits.

Most experts on aging agree that Medicaid's runaway inflation problems won't be solved in the near term by insurance or by slapping criminal penalties on asset-shifting. Some advocates suggest instead that Medicare benefits be extended to seniors' custodial care. "Why should a nursing home stay for kidney disease be covered but not Alzheimer's?" says Stephen McConnell, a lobbyist for the Alzheimer's Assn. That would relieve the burden on states. But with Congress looking to trim government spending, adding new benefits seems least likely.

By Paul Magnusson in Washington

ROY GUMPEL/GAMMA-LIAISON

Navigating the New Terrain

Many older Americans divest assets before long-term medical care is needed, allowing them to qualify for Medicaid benefits. The Kassebaum-Kennedy health insurance reform bill penalizes some strategies.

WHAT STILL FLIES...

- ✔ Prepaying funeral expenses
- ✔ Home renovations and additions
- ✔ Buying a new car
- ✔ Paying off all debts
- ✔ Buying an annuity

...AND WHAT THE NEW LAW MAY PUNISH

- ✘ Giving money to relatives or others
- ✘ Placing money in a trust
- ✘ Moving assets to joint accounts
- ✘ Buying expensive term life insurance
- ✘ Transferring real estate, or adding family members or friends to the deed
- ✘ Paying family members for caregiving services

DATA: NATIONAL ACADEMY OF ELDER LAW ATTORNEYS