

By **ROBERT T. GARRETT**  Austin Bureau 

Published June 12, 2003

[Click here](#) to go back to results.

DallasNews.com

The Dallas Morning News

Law lets state take homes of patients

Austin- A little-noticed part of a bill Gov. Rick Perry signed into law this week will allow the state to seize the homes of some nursing home patients after they die rather than allow the houses to stay in the family.

A similar measure allowing home seizures to repay Medicaid for nursing-home care passed the Legislature in the late 1980s. But a political uproar led to the defeat of a veteran state senator and hasty repeal by the Legislature.

The current home-seizure provision was added to a lengthy bill consolidating health and human service agencies in the final weeks of the just-completed legislative session. It was sponsored by two Democrats and had been recommended by a Republican group looking to find money to help close a budget gap.

Medicaid pays for all or part of nursing home costs for 61,000 Texans. State officials said Wednesday they do not know how many of them own homes and could be affected by the new law.

Advocates for the elderly said they didn't see the requirement until it was too late.

"It's a bad idea, because we're talking about taking someone's home, the last thing that any family has to pass on to their heirs," said Rep. Garnet Coleman, D-Houston.

"It takes from the middle-income families who are less knowledgeable

about being able to shelter assets," said Mr. Coleman, a leading Medicaid expert among members of the House.

He said he didn't notice the provision, even though he closely follows legislation affecting Medicaid, the state-federal health program for the poor, elderly and disabled.

The brief, technically worded requirement makes no mention of nursing homes, people's houses or repayment of bills.

Clyde Farrell, an Austin lawyer who specializes in the elderly, said the requirement amounts to a hidden tax for the families of nursing home patients.

"It's highly ironic that in a legislative session where there's supposed to be no new taxes, there's suddenly an estate tax on the estates of people who've gotten old and sick and have to go to a nursing home."

One group actively supported the requirement, the Texas Senior Advocacy Coalition, which represents about 50 individuals and nonprofit groups, according to Austin poverty lawyer Bruce Bower, its chairman.

Mr. Bower said money recovered by the state will go to help pay for other elderly Texans in long-term care.

"It was about time for Texas to do this," said Mr. Bower, director of advocacy and client services at the Texas Legal Services Center, which offers legal help for needy people. "We're very pleased with the way it was done. It will direct all money derived from this to long-term care."

Also, the Texas Conservative Coalition, a group of about 85 legislators, most of them Republicans, supported the general idea of the state recouping the cost of nursing home care in the case of deceased Medicaid recipients.

The coalition touted the proposal in a January report on how to maintain state services without raising taxes.

Distasteful, necessary

According to the group, some affluent families move assets and create trusts to allow a loved one to qualify for Medicaid. But that incentive is reduced if the state can take a home after the death of a Medicaid

recipient, the group said.

"When the authors offered the amendment, we were very supportive of it and were encouraged that it was in the final version of the bill," said John Colyandro, the group's director.

Rep. Carlos Uresti, D-San Antonio, and Sen. Leticia Van de Putte, D-San Antonio, sponsored the home-seizure provisions.

Ms. Van de Putte said the measure is distasteful but necessary because Congress in 1993 passed a law requiring states to try to recover the costs of nursing home care from the estates of deceased Medicaid recipients.

Texas is one of three states that had refused to comply with the federal mandate.

Ms. Van de Putte said Texas could lose hundreds of millions in federal Medicaid matching money if it keeps flouting the law.

"We don't want to do it, but do we really want to put in jeopardy all of the folks we have in long-term care?" she said.

Aides said Mr. Uresti was unavailable for comment.

A spokesman for Mr. Perry said a veto of the big agency-reorganization bill would have cost the state valuable revenue needed for the budget.

Rep. Arlene Wohlgemuth, R-Burleson, sponsor of the bill to which the home-seizure measure was attached, said her budget subcommittee considered Mr. Bower's testimony urging the state to go after some homes.

"We determined ... that there was not enough money involved to make it worth pursuing," she said.

But Mr. Bower said other large states have recovered nearly \$40 million a year from such home seizures, although the money has to be shared with the federal government.

While Ms. Wohlgemuth and the Senate handler of her bill, Sen. Jane Nelson, R-Lewisville, each resisted the home-seizure provision in committee, neither resisted adoption of the amendment during floor

debates, Mr. Bower said.

It's unclear whose home will be seized or when the state will start going to probate court against Medicaid recipients' estates.

New policies

"We assume any new policies in this area would be developed in a process which permits public input," said Mike Jones, a spokesman for the Department of Human Services.

The department now runs the Medicaid nursing home program, but under Ms. Wohlgemuth's bill, it will go out of business and cede that responsibility to a bigger agency Sept. 1.

"It's going to be a minority of people receiving Medicaid for long-term care who will be affected at all," said Mr. Bower, the poverty lawyer. He noted that Congress decreed that surviving spouses, dependent children and, in some cases, adult children and siblings, get to stay in the home - in which case a state recovers no money.

In Texas, a person applying for Medicaid nursing home coverage is allowed to make no more than \$19,872 a year and can have no more than \$2,000 in cash or other liquid assets, plus a house and a car.

That means the homestead is generally the most valuable asset remaining after such people die, said Anne Dunkelberg, senior policy analyst for the Center for Public Policy Priorities, which advocates for low-income Texans.

After the Legislature adopted a similar provision in 1987, a backlash resulted in the defeat of one bill backer, Sen. Grant Jones, D-Temple. The state never enforced the measure, and lawmakers later repealed it.

E-mail rtgarrett@dallasnews.com