

State Lawmakers Propose Using a Phony Bed Tax and Provider Tax to Secure More Federal Money

by Roger Stark, MD, FACS
Health Care Policy Analyst

April 2011

Background

One of the ways some lawmakers in Olympia are proposing to increase state revenue is to create a new bed tax on state nursing homes. The move would further game federal entitlements by increasing the federal match for the Washington state Medicaid program. A similar proposal would create an increase in the state tax that care providers for the disabled must pay. This money would be placed in an account which would receive an increased match from the federal government for the disabled. Providers taking care of the disabled would then be reimbursed for the amount the tax increase from the increased federal Medicaid matching dollars.

Medicaid is a safety-net health insurance program for poor children and their families, the disabled and people requiring long-term care. Funding for Medicaid comes from a federal/state taxpayer match. The program is inherently unsustainable and has been chronically underfunded and over budget since its inception in 1965.

Medicaid law allows states to assess a tax on providers that is then added to the state's portion of Medicaid funding. The federal government must then increase the amount of matching money it sends to that individual state. The Medicaid tax is not a real tax in the normal sense of the word. States use various financial mechanisms to return a portion or all of the provider tax back to the providers.

The result is a laundering scheme that shifts state nursing home costs and the cost of care for the disabled to federal taxpayers without imposing a direct tax increase within the state. Of course state residents are also federal taxpayers, so even people in the state that benefit will see an increase in the cost of paying for federal programs. Forty-four states now take advantage of this legal "loophole."

Below is a description of how the nursing home bed tax bill that has been proposed this year would work.¹ It would:

- Make various revisions to nursing home payments.
- Replace the use of general economic trends with an annual inflation adjustment based on the rise of skilled nursing home costs.
- Raise the lid on allowable costs from 100 percent to 105 percent in the operations component.

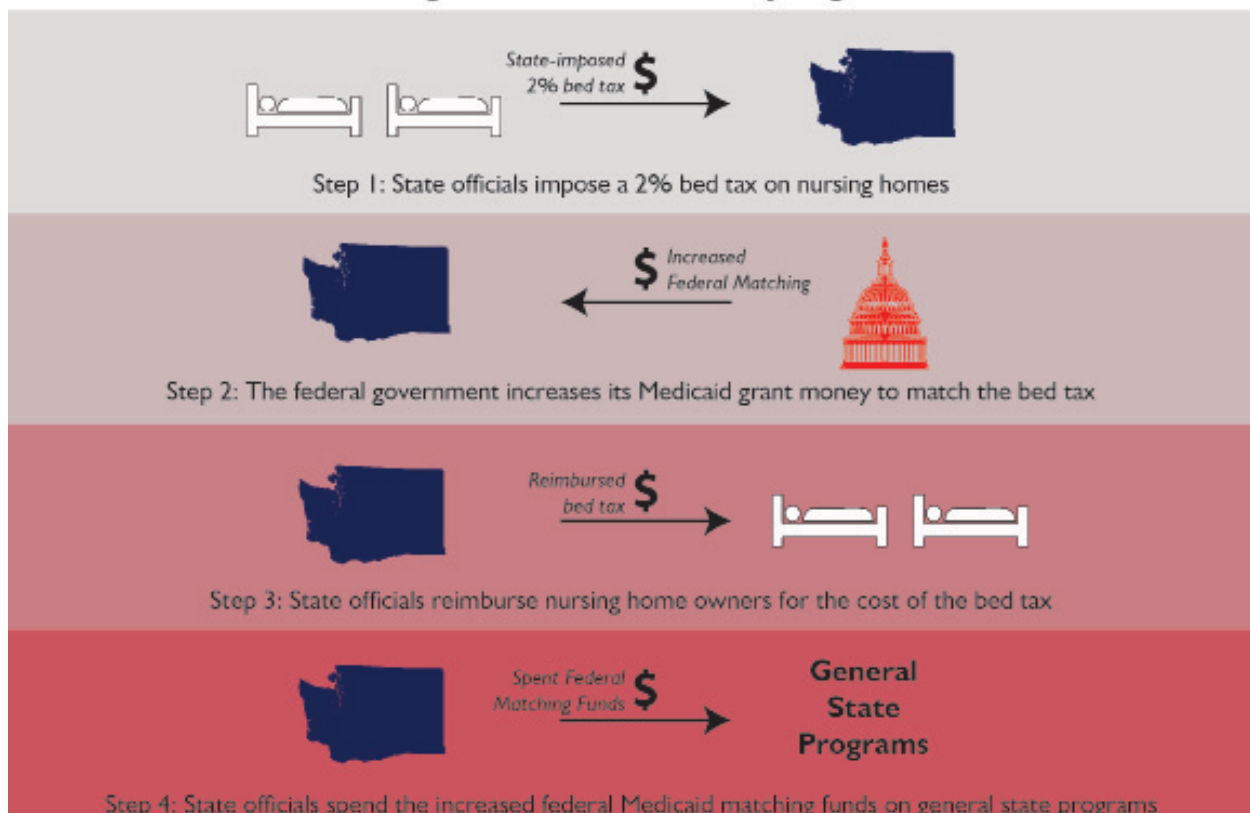
¹ <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1722&year=2011>

- To improve the quality of nursing home care, require the design of a quality incentive payment system that must be submitted to the legislature by December 15, 2011.
- Authorize Department of Social and Health Services (DSHS) to administer and collect a skilled nursing facility safety net tax.
- Require DSHS to seek federal approval of a waiver for a broad-based and uniform provider assessment fee.
- Establish the Skilled Nursing Facility Safety Net Trust Fund in which all revenues from the fee would be deposited for the purpose of reimbursements and Medicaid payments for nursing facility services.
- Prohibit nursing facilities from increasing charges to the patients or third-party payers as a result of the new state fee.

The tax on providers taking care of the disabled would work in a similar fashion. It would:

- Add community residential service businesses to the public utility tax at a rate of 5.029 percent.
- Place revenue into accounts to provide for Developmental Disability Community Residential vendor rates and enhance compensation to staff providing habilitative instruction and support services.
- Require that whenever vendor rates for supported living providers are modified, the rate must be allocated so that the difference in rates paid between King and Snohomish counties remains the same as established in 2010.²

How state officials use phony bed tax to game the Medicaid program



² <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1337&year=2011>

History of Washington State's Bed Tax on Nursing Homes

Despite the partial success of federal restrictions in reducing the manipulation of the Medicaid program by state officials, by 2004 thirty-four states had imposed a Nursing Home Provider Tax, including Washington. As of February 2010, Washington's state deficit had ballooned to over \$2.8 billion. The state analyzed all possibilities to reduce the budget shortfall. The State Health Care Association suggested reintroducing a bed tax on nursing home providers as a way of increasing the federal Medicaid matching funds paid to the state.

This proposal is not a new idea. In 2003, Washington lawmakers imposed a bed tax on nursing facilities of \$6.50 per patient per day. The tax was projected to increase funds by over \$70 million, which would be matched with federal funds to allow the legislature to increase nursing home payments by a total of \$91.7 million. Since Washington's federal matching ratio was around 50% at this time, state officials were able to obtain over \$30 million more from the federal government. This additional funding was stored in a reserve account to ease the budget deficit that year, and then spent on general state programs unrelated to Medicaid.

With the implemented regulation on provider taxes, the state faced heavy federal scrutiny on its new bed tax. Initially the federal government denied the request, but after further review approved the tax. Out of all the nursing homes in Washington, a total of 34 were excluded (because they did not accept public money), but the remaining 266 nursing homes were required to pay the new bed tax.

Certain revenues generated by a provider tax were exempt from the federal limits imposed in 1991. This opened the door for Washington state officials to recycle their Medicaid dollars and increase federal expenditures. They could use these supplemental expenditures to reduce the state's overall budget deficit.

The proposal, however, faced strong opposition. First, the new revenue was not appropriated for nursing homes payment, a move heavily criticized by the nursing home industry (\$25 million of the raised revenue was used instead to offset tax credits for the aerospace industry). At the same time, the federal government imposed strict oversight to make sure the state did not exploit the tax to receive even larger federal Medicaid payments.

Soon state legislators decided to rescind the tax. First the state legislature passed a bill in 2005 that would have phased out the tax until its repeal in 2011. Due to the unpopularity of the tax, the 2006 legislature voted to repeal the tax entirely by 2007.³

Recommendations

Massive government intervention, like that enacted under President Obama's national health care reform plan, will open opportunities for state legislators, including those in Washington state, to shift their Medicaid costs onto federal taxpayers. Instead of imposing futile regulations, federal and state government officials should take the following actions.

First, they should repeal the Medicaid Safety Net Act. This would reintroduce the restrictions and oversight on exploiting financing schemes established earlier by Congress's General Accountability Office. In order for these restrictions to actually limit mistreatment of federal funding, Congress should freeze funding at fiscal 2007, or even fiscal 2005, levels.

³ For more information, see "State Abuse of the Medicaid Program," by Dr. Roger Stark, Policy Brief, Washington Policy Center, February 2010, at www.washingtonpolicy.org/publications/brief/state-abuse-medicaid-program

Second, Congress should restore entitlement eligibility requirements to the original 1965 level. This step would dramatically reduce excessive federal funding and help control costs. Returning to the original intent of Medicaid would target state and federal health care funding to people who need it most: low-income families that lack access to affordable health coverage. Restoring Medicaid's original purpose would place the program on a firmer and more sustainable basis going forward, forestalling the day when Medicaid goes bankrupt, or when program growth consumes the majority of annual state budgets.

Third, state officials should refrain from implementing new provider taxes, such as a nursing bed tax and the disabled provider tax, in an effort to use federal Medicaid matching funds to pay for general state programs. If state officials face budget problems, they should reduce expenditures rather than adding a state tax that is designed to game federal dollars.

Summary of Recommendations

1. Repeal the Medicaid Safety Net Act.
2. Increase oversight and transparency of Intergovernmental Transfers and provider taxes.
3. Freeze Medicaid funding at 2007 levels.
4. Tighten eligibility requirements to help control rising costs.
5. Avoid imposing new provider taxes such as a nursing home bed tax or an additional tax on providers who serve the disabled.

Dr. Roger Stark is a retired surgeon and a Health Care Policy Analyst with Washington Policy Center, a non-partisan independent policy research organization in Washington state. Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body. For more information, visit washingtonpolicy.org.