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## States Rejecting Demand to Pay for Medicare Cost

By [ROBERT PEAR](#)

WASHINGTON, July 3 - States are openly resisting a provision of the Medicare law that requires them to pay billions of dollars a year to the federal government to help finance the cost of the new Medicare drug benefit.

Texas is leading the charge against the requirement, which states see as more onerous than the mandates imposed on them by the 2002 education law, the No Child Left Behind Act.

Gov. Rick Perry, a Republican, has vetoed a \$444 million appropriation covering the Texas contribution for the next two years.

In his veto message and in a letter to other governors, Mr. Perry said he objected to the federal requirement in principle and to the way it was being interpreted by the federal Medicare agency.

"For the first time," Mr. Perry said, "state governments would be expected to directly finance federal Medicare benefits with state tax dollars. In effect, states will be billed on a monthly basis for the cost of federal services."

Bush administration officials say the federal Medicare law clearly requires states to make the payments, starting in January. One purpose of the 2003 Medicare law was to relieve states of prescription drug costs for low-income elderly people. But as states do the arithmetic, many have concluded that they will lose money because they must give back most of the savings and will incur new administrative costs.

The confrontation comes as governors, state legislators, Congress and the Bush administration search for ways to rein in Medicaid costs, which have been growing 10 percent a year since 1999 - much faster than federal or state revenues. The tussle with state officials is potentially awkward for the Bush administration, which often points to the states as models for federal policy makers.

The Congressional Budget Office estimates that required state contributions to the Medicare trust fund, also known as clawback payments, will total \$124 billion from 2006 to 2015.

In New Hampshire, the state budget enacted last week stipulates that "no payments shall be made to the federal Medicare program, unless a court has determined that the provisions" of the federal law, "popularly known as the clawback, are constitutional."

In an interview, the majority leader of the New Hampshire Senate, Robert E. Clegg Jr., a Republican, said: "We are not going to pay. We are not sending the feds any money. We don't think it's constitutional for the federal government to commandeer our revenue. The federal government can print its own money. We can't."

The money owed to Medicare - \$13.5 million in the fiscal year that began Friday and \$30 million in the next year - will be deposited in New Hampshire's rainy day fund.

Barbara Coulter Edwards, the Ohio Medicaid director, praised Governor Perry's letter and said it "captures my views on the conversation we need to have with the federal government."

About seven million people are simultaneously eligible for Medicaid, the federal-state program for low-income people, and Medicare, the federally financed program for the elderly and disabled. Medicaid now covers drug costs for such "dual eligibles." On Jan. 1, Medicare will take over the responsibility.

But under the Medicare law, states must make monthly payments to the federal Treasury to help defray the cost. If a state fails to comply, the federal government can simply deduct the amount owed, plus interest, from its regular payments to the state's Medicaid program.

The legislation was pushed through Congress by President Bush and Republican leaders. But at the state level, Republicans and Democrats alike express qualms about the costs and the precedent.

In Connecticut, Lt. Gov. Kevin B. Sullivan, a Democrat, has asked the state attorney general to review the constitutionality of the clawback requirement, which he describes as "a hidden tax," a kind of "reverse revenue sharing." Mr. Sullivan said it would cost Connecticut \$160 million in the next two years.

When Medicaid recipients fill prescriptions, the federal government and the states share the costs, just as they do for other Medicaid benefits like doctors' services and hospital care. The Bush administration says states should save money under the 2003 law because the federal government will pay almost all drug costs for Medicaid recipients and most drug costs for retired state employees.

"Texas is going to come out ahead by many millions of dollars," said Gary R. Karr, a spokesman for the federal Centers for Medicare and Medicaid Services. "That's the intent of the law, to save states money as Medicare picks up the cost of prescription drugs for those on Medicare and Medicaid. States cannot withhold their payments simply because they'd like a larger windfall."

But the National Governors Association says the clawback requirement will cause many states to spend more on Medicaid than they would under prior law. In addition, state officials said, they will have new costs. Under the 2003 law, they must establish procedures to determine whether low-income people qualify for extra help with their drug expenses.

Governor Perry said the clawback formula "does not allow states to gain any immediate benefit from Medicare's assumption of prescription drug coverage for dual eligibles."

Mr. Bush was governor of Texas from 1995 to 2000. Dr. Mark B. McClellan, administrator of the Centers for Medicare and Medicaid Services, the federal agency that runs the two programs, is from Texas. His mother, Carole Keeton Strayhorn, is the comptroller of public accounts in Texas. A frequent critic of Governor Perry, she announced on June 18 that she would run against him in next year's Republican primary.

Another one of Ms. Strayhorn's sons, Scott McClellan, the White House press secretary, said, "The president will not be getting involved in the primary" because "he considers both friends."

Governor Perry said the formula for calculating clawback payments was "inherently unfair" because it was based on per capita drug spending for people eligible for both Medicaid and Medicare in 2003. Since then, Texas, Ohio and many other states have taken aggressive action to control drug spending.

For example, Mr. Perry said, Texas has established a list of preferred drugs, required prior authorization for some drugs and negotiated additional discounts with drug manufacturers.

Ms. Edwards, the Ohio Medicaid director, said the clawback costs were "a real blow to our ability to provide benefits to other people." To come up with the money in a tight budget, she said, Ohio is eliminating Medicaid coverage for 25,000 low-income parents and has reduced dental benefits for 800,000 adults.