

Memorandum in support of the Legislature's rejection of proposals to eliminate Spousal Refusal and reduce the CSRA

ELDER LAW AND SPECIAL NEEDS SECTION

ELDER #21

March 24, 2016

S. 6407 – PART B, Sec. 3 & 4

By: BUDGET

A. 9007 – PART B, Sec. 3 & 4

By: BUDGET

Senate Committee: Finance

Assembly Committee: Ways and Means

The Elder Law and Special Needs section OPPOSES the elimination of medicaid “spousal refusal” and the reduction of the community spouse resource allowance, and SUPPORTS THE LEGISLATURE’S REJECTION of these proposals

The section commends the Legislature for rejecting these proposals. At this critical stage of the 2016-2017 state budget process, the New York State Bar Association Elder Law and Special Needs Section **REAFFIRMS ITS STRONG OPPOSITION TO BOTH** the elimination of Medicaid spousal refusal and the reduction of the Medicaid community spouse resource allowance (CSRA) as detailed in our February 17, 2016, memoranda on these issues.

I. REJECT the Elimination of SPOUSAL REFUSAL

1. Elimination of Spousal Refusal Will Encourage Separation and Divorce: The inability to meet living expenses will have the effect of terminating married relationships in order to avoid the loss of their home and total impoverishment of the well spouse. It will also remove an important care-giver from the home.

2. Elimination of Spousal Refusal Will Force the Elderly to Enter Nursing Homes: In order to prevent financial ruin and maintain some dignity, the ill spouse will end up in a nursing home so that the well spouse can exercise the right of spousal refusal under the federal law.

Note: Given the likely consequences outlined in points 1 and 2 above, it is very likely that eliminating spousal refusal would result in a **significant negative fiscal impact to the state.**

3. The Potential For Abuse Of Spousal Refusal Can Be Remedied Using Existing Laws: Just as is accomplished in nursing home based Medicaid, the State has the ability to bring support and contribution proceedings against refusing spouses who have sufficient resources and income to pay toward the ill-spouse's care, as many local districts are already doing. This approach protects the truly needy and provides the Medicaid agency with flexibility while requiring contribution from those able to pay; moreover, unlike this proposal, it does not contribute to the destruction of the marriage.

4. **The application of “spousal impoverishment” rules to the spouses of people who receive community Medicaid under the managed long term care waiver does not adequately ameliorate the problem:** Prior to enrolling in a Managed Long Term Care (“MLTC”) program, where more generous spousal impoverishment rules are in place, couples will have to establish their initial eligibility for the Medical Assistance program. In addition, there are a number of categories of Medicaid recipients that are not protected by the expanded Spousal Impoverishment coverage.

II. REJECT the reduction in the CSRA.

This proposal reduces the minimum amount that a spouse who is not applying for Medicaid coverage may keep to maintain herself in the community from \$74,820 to \$23,844, the lowest level allowed by federal law.

1. **The reduction of the CSRA disproportionately affects couples with modest assets.** A couple with \$70,000 may keep those entire savings under current law, but may keep only \$35,000 under the Executive proposal. Because the federal maximum is still in effect and will allow a spouse to keep half of the couple’s combined resources up to \$119,220 those with the least money are unfairly disadvantaged by this change.

2. **New York, with its areas where the cost of living is high, should be adopting a higher resource standard, as traditionally has been the case, rather than a lower one.** While the State, under federal law, could set the minimum CSRA anywhere between \$23,844 and \$119,220, the Executive now proposes to turn back the clock more than twenty years by lowering the minimum CSRA from \$74,820 to \$23,844.

3. **By setting the minimum dangerously low, couples will be at risk of homelessness and premature institutionalization.**

4. **Married couples will divorce, rather than face the risk of financial ruin.**

Based on the foregoing, the Elder Law and Special Needs Section OPPOSES these proposals.

Memorandum prepared by: Val Bogart, Esq. and David Goldfarb, Esq.
Section Chair: JulieAnn Calareso, Esq.