

## Memorandum in Opposition

### ELDER LAW AND SPECIAL NEEDS SECTION

Elder #16

February 20, 2018

S. 7507-A, PART B, §7  
A. 9507-A, PART B, §7

By: BUDGET  
By: BUDGET

Senate Committee: Finance  
Assembly Committee: Ways and Means

### **THE ELDER LAW AND SPECIAL NEEDS SECTION OPPOSES THE REDUCTION OF THE SPOUSAL IMPOVERISHMENT RESOURCE ALLOWANCE FROM \$74,820 TO \$24,180**

**INTRODUCTION:** The proposed amendment to reduce the resource minimum for the “well spouse” of a nursing home resident or MLTC member was rejected in 2016 and should be rejected again. Under the new proposal, the spouse would be permitted to keep only \$24,180 in assets. This would lower the allowance from the current NYS limit of \$74,820 to the federal minimum.

Congress enacted the federal “spousal impoverishment” protections in 1988 to prevent one spouse from becoming impoverished when the other spouse needs Medicaid to pay for nursing home care. Federal law expanded those protections to protect couples where one spouse is enrolled in a Managed Long Term Care plan. The spousal protections provide a “well spouse” with some financial security and can prevent her from needing to rely on Medicaid for her own medical or long term care.

#### **1. NEW YORK STATE HAS NOT INCREASED THE SPOUSAL ALLOWANCE IN ACCORDANCE WITH THE FEDERAL COST OF LIVING INDEX.**

The federal law has always set a ceiling for a maximum resource allowance, originally \$60,000 in 1988, which has gradually increased by a statutory cost-of-living adjustment to the current \$123,600. When New York set the resource allowance in 1995, New York elected the highest federally allowed resource allowance of \$74,820 but never increased it by the federal cost-of-living index. In the last 22 years, while the federal ceiling has increased to \$123,600, New York’s allowance has stayed flat at \$74,820.

The formula under federal law provides that a spouse can keep the greater of:

Option 1. the resource allowance as set by the state (between \$24,180 and \$123,600)

**OR**

Option 2. one-half of the couple's combined assets, now up to \$123,600.

States have an option of setting the resource allowance between a minimum floor of \$24,180 and up to \$123,600 of the couple's combined assets. For example, Massachusetts and California set the resource allowance at \$123,600, the highest level permitted, and built in a cost of living increase. In those states, Option 1 is always greater -- the spouse may always keep up to \$123,600 of the couple's combined resources.

**2. COUPLES WITH LOWER RESOURCES ARE MOST NEGATIVELY IMPACTED.**

New York's resource levels already have a disparate impact on couples with lower resources. The budget proposal will only widen this disparity, deriving savings from lower resourced couples. Community spouses who rely on their resources to pay their expenses will find themselves with insufficient resources to stave off impoverishment and their own need to turn to Medicaid for help with health and long term care costs.

As illustrated in the table below, the proposal will hurt couples with more moderate resources (marked in **red**). It will not affect those with higher resources.

Couple	Spouse's assets (aside from applicant's \$15,150)	Amount Community Spouse May Keep			
		In CA, MASS etc.	Under Current NY Law	<b>Under PROPOSED CHANGE</b>	IF raised to federal maximum
A	\$30,000	\$30,000	\$30,000	<b>\$24,180</b>	\$30,000
B	\$47,000	\$47,000	\$47,000	<b>\$24,180</b>	\$47,000
C	\$75,000	\$75,000	\$74,820	<b>\$37,500</b>	\$75,000
D	\$100,000	\$100,000	\$74,820	<b>\$50,000</b>	\$100,00
E	\$123,600	\$123,600	\$74,820	<b>\$61,800</b>	\$123,600
F	\$150,000	\$123,600	\$75,000	\$75,000	\$123,600
G	\$248,000	\$123,600	\$123,600	\$123,600	\$123,600
E	\$350,000	\$123,600	\$123,600	\$123,600	\$123,600

New York obviously has one of the highest costs of living in the nation, which is why the legislature has wisely historically opted for a resource allowance above the minimum required by federal law. Reducing the resource allowance will cause impoverishment of spouses on fixed incomes. Moreover, the community spouse is not a Medicaid recipient and often needs to keep assets in order to pay his or her own medical expenses, and to prevent the need for Medicaid. New York State residents represented by Couples A through E above are already worse off than a couple of equal means in other states. This proposal would put them in an even worse financial position.

Rather than hasten the impoverishment of people with a spouse who is sick or disabled, the State should acknowledge the tremendously increased cost of living and medical costs in New York since 1995 and, like Massachusetts and California, *increase* the spousal impoverishment allowance to the federal maximum, allowing that amount to adjust for inflation.

**Based on the foregoing, the Elder Law and Special Needs Section OPPOSES this proposal to reduce the spousal impoverishment resource allowance to the federal minimum.**