



## Memorandum in Support

March 3, 2025

S. 4786  
A. 1907

By: Senator Skoufis  
By: M. of A. Paulin

Senate Committee: Health  
Assembly Committee: Health  
Effective Date: Immediately

The New York State Bar Association's Elder Law and Special Needs Section ("ELSN") supports A1907/S4786, which would eliminate a look-back period for Community Medicaid applicants seeking long term care services provided in their home and asks that this language be included in the Assembly and Senate's one house budget bills. The 30-month look-back, coupled with its implementation delay, is creating significant public confusion, increasing pressure on already overburdened spouses and caregivers.

The imposition of a 30-month look-back for Community Medicaid applicants was passed in the 2019-2020 Legislative session. However, it has not been implemented, at least partially, because of federal COVID protections that are now being lifted, which could allow implementation this year. There are a number of reasons compelling repeal of the 30-month look-back, which include: (1) the large administrative implementation price tag for only modest expected savings; (2) the delay it will cause for qualified New Yorkers to access necessary services; (3) the overloading of hospitals and nursing homes that it will cause; and (3) the violation of *Olmstead*, which enforces the Americans with Disabilities Act, requiring States to offer community-based services for the disabled in the least restrictive setting.

**Significant Cost for Only Modest Savings.** When originally enacted, the State projected only modest Medicaid state savings for the look-back-- \$5.5 million in 2021 and \$11.75 M in 2022. (MRT II Executive Summary Scorecard).<sup>1</sup> According to DOH's 1115 Waiver, a mere 3,800 applicants per year were expected to be subject to a transfer penalty if the 30-month look-back was implemented. With the increased asset limit which took effect in 2023, this number is likely significantly smaller. The asset limit was approximately \$15,000 per person when this look-back was initially passed but has since been doubled to over \$30,000. With a \$10,000 average transfer for which a penalty is expected to be imposed,<sup>2</sup> under the higher asset limit, many of these 3,800

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<sup>1</sup> Comment on transfer of a home at: [https://health.ny.gov/health\\_care/medicaid/redesign/mrt2/proposals/30-month\\_look-back-final.htm#\\_bookmark2](https://health.ny.gov/health_care/medicaid/redesign/mrt2/proposals/30-month_look-back-final.htm#_bookmark2).

<sup>2</sup> New York State Medicaid Redesign Team 1115 Research and Demonstration Waiver – 30 Month Look Back for Community Based Long Term Care Services Amendment Request at: [https://www.health.ny.gov/health\\_care/medicaid/redesign/mrt2/proposals/docs/30-month\\_lookback.pdf](https://www.health.ny.gov/health_care/medicaid/redesign/mrt2/proposals/docs/30-month_lookback.pdf)

people would now qualify for Medicaid without making any transfer of assets. The result of this would be a reduction, if not total elimination, of any expected savings. Moreover, these projections failed to take into account the costs of implementation to the State as well as local districts. The implementation will create a massive burden on the system with extensive paperwork collection and reviews, at a time when they are grossly understaffed.

Any savings are also offset by costs to hospitals and rehabilitation facilities that will be unable to discharge patients safely and expediently with proper home care, thus causing increased costs for Medicaid coverage of hospital stays as detailed below.

**Delays in Access to Services for All Applicants.** Unlike the longstanding look-back for nursing home care, when applied to community-based care, the look-back will cause severe delays in access to services. These delays will harm all applicants, most of whom are poor and have no assets to transfer -- pushing many into a hospital or nursing home.

Since an individual may only apply for nursing home Medicaid after being admitted to a nursing home, delays while DSS reviews financial records in a look-back review do not prevent a nursing home resident from receiving appropriate care. In contrast, a consumer who applies for Medicaid to cover home care services is not eligible to receive any Medicaid services until the application is approved and then not until they are assessed and enroll in an MLTC plan. Services rarely begin until 3-5 months after filing the Medicaid application. The local DSS agencies are already backlogged, taking months longer than the 45-day time limit mandated by federal regulations to act upon a Medicaid application. 42 USC 1396a(a)(8)(requiring assistance to be provided with “reasonable promptness”); 42 C.F.R. Sec. 435.911. The MLTC assessment and enrollment process add on several more months of delay.

A 30-month look-back will inevitably protract the application process to 6 months or more. During that time the applicant receives no Medicaid services at all. While the look-back is intended to block the few who transferred assets from accessing Medicaid services, the resulting delays harm the majority of applicants whose assets are eligible without a transfer of assets. They may have to go without needed services for as much as a year, while the application is pending, pushing many into a hospital or nursing home. The risk of nursing home placement will fall disproportionately on low-income communities and BIPOC communities, who are less likely to have retirement funds or other resources to privately pay for home care while waiting for Medicaid. These are often families who have tried to do the right thing and spend down to the Medicaid asset limit only to now be faced with months of new delays in receiving services.

**Hospital Overload.** The 30-month look-back will also negatively affect and quickly impact already overloaded hospitals, impeding the ability to effectuate safe discharge plans that require

Medicaid home care. Those individuals who are discharged without access to needed care at home may suffer falls or other episodes that result in what could have been an avoidable re-hospitalization. The delays will also contribute to overpopulation in nursing homes and rehabilitation facilities. All these institutions are facing their own workforce pressures to meet current demand for services.

**Violation of *Olmstead*.** The 30-month look-back violates the U.S. Supreme Court's decision in *Olmstead*, which requires States to offer community-based services for the disabled in the least restrictive setting. *Olmstead v. L.C.*, 527 U.S. 581 (1999). Although *Olmstead* does not require a state to have a community-based program without a lookback, it does prohibit a state from altering or modifying its existing program to make it more restrictive, which this law clearly does.

States cannot discriminate against people with disabilities by offering them long-term care services only in institutions when they could be served in the community, given State resources and other citizens' long term care needs. The ADA's implementing regulations contain its community integration mandate, which requires state and local governments to "administer services, programs, and activities in the most integrated setting appropriate" to the needs of people with disabilities. 28 C.F.R. § 35.130(d). The regulations also require state and local governments to make reasonable modifications to policies, practices, and procedures to avoid disability-based discrimination, unless such modifications would fundamentally alter the nature of the service, program, or activity. As described above, the look-back will push people into nursing homes where they can access institutional care while the look-back review is conducted but cannot access home care during the look-back review in an application for community-based care.

For the above reasons, NYSBA's Elder Law and Special Needs Section **SUPPORTS** the repeal of the 30-month look-back and requests that the repeal as stated in A1907/S4786 be included in the Assembly and Senate's one house budget bills.