

WHAT DID THE PROPOSAL TO ELIMINATE MEDICAID SPOUSAL REFUSAL MEAN TO NEW YORK FAMILIES

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The 2012 - 2013 Executive Budget proposed an amendment to Social Services Law §366(3)(a) to provide that for Medicaid eligibility the income and resources of a legally responsible relative (including a spouse) would be resources for home care services.

In community based Medicaid situations, current law and regulations set forth that the income and resources of a non-applying spouse are not deemed available if the spouse refuses to contribute to medical expenses. Current law states that where there is a spousal refusal, there is an implied contract to pay for care and the Medicaid agency has the right to commence proceedings against the refusing spouse for income support and resource contribution.

Our elderly married clients where one spouse is facing the need for care could be confronted with difficult choices.

One such choice could be to consider separation and divorce. Couples that have survived the vagaries on raising children and the other tribulations of a lengthy marriage may be forced to consider separation or divorce as a matter of survival. The potential cost to Medicaid will likely increase because with a well spouse no longer in the home to offer assistance to the ill spouse, it will likely result in the need for more hours of care. It will place families in the untenable position of choosing divorce so an ill spouse can be assured of needed care while enabling the well spouse to retain sufficient assets in order to live in dignity.

Another possible choice is the placement of the ill spouse into a nursing home. This will most certainly increase cost to Medicaid since it is well documented that the cost of a nursing home is far greater than the cost of home care. Spousal refusal is federally mandated for spouses of nursing home residents 42 USC §1396r-5(c)(3). The ill spouse may seek more expensive nursing home care to prevent the well spouse from becoming impoverished since the income allowance for well spouses (\$2,841.00 per month for 2012) and the well spouse resource allowance (between \$74,820 and \$113,640.00 in assets) permits the well spouse to retain more assets if their spouse is cared for in a nursing home.

This proposal may also be constitutionally suspect since it is to be retroactively applied to 2011. This would create a re-appropriation to recoup the value of previously authorized Medicaid services.

Finally, the rationale that there is abuse in the use of spousal refusal as the reason to end it in home care is a dubious argument. Current New York State law permits the commencement of both support and contribution proceedings against refusing spouses. Medicaid needs to enforce the existing law if it suspects abuse in particular cases where spousal refusal was invoked by the well spouse.

It is unfortunate that elderly married New Yorkers may be forced into the difficult choices outlined herein just because one spouse became ill and needed care.