

Memorandum in Opposition

Elder Law Section

Elder #1

February 7, 2013

S. 2606, Part-A

By: BUDGET

A. 3006, Part-A

By: BUDGET

Senate Committee: Finance

Assembly Committee: Ways and Means

THE ELDER LAW SECTION OPPOSES THIS LEGISLATION

PART A OF THE HEALTH AND MENTAL HYGIENE BUDGET BILL SHOULD BE AMENDED TO ELIMINATE SECTION 34 IN ORDER TO PRESERVE THE RIGHT OF MEDICAID RECIPIENTS WHO HAVE "IMMEDIATE" NEEDS. I.E. WHOSE HEALTH AND SAFETY ARE IN DANGER, TO OBTAIN MEDICAID PENDING THE FINAL DETERMINATION OF THEIR APPLICATIONS

Social Services Law Section 133 currently requires that if a person is in "immediate need," Medicaid must be granted to that person pending the completion of an investigation to determine whether or not the Medicaid applicant is in fact Medicaid eligible. In Konstantinov v. Daines, 101 A.D.3d 520 (1st Dept. 2012) the Appellate Division affirmed a trial court determination that the procedures of the Department of Social Services "are inadequate to meet the requirements of Social Services Law Section 133 to provide temporary personal care services for those in immediate need of those services and to notify applicants of the availability of those services." See also Coleman v. Daines, N.Y.3d, N.Y. Slip Op. 07222 (October 30, 2012).

Section 34 of Part A of S.2606/A.3006 would amend Social Services Law Section 364-i to provide that Social Services Law Section 133 would never apply to the Medicaid program. This would mean that regardless of a person's "immediate need," no Medicaid services necessary to preserve the person's health and safety would have to be granted to that person unless the limited rules concerning presumptive eligibility under Social Services Law Section 364-i applied.

Thus, most outpatients with an "immediate need" for medical services such as homecare would not be able to obtain those services on an expedited basis regardless of their level of need.

The passage of this proposed amendment to Social Services Law Section 364-i would put the health of New Yorkers at risk. The bill should be amended to eliminate this provision. Departments of Social Services should be required to comply with the mandate of the court in Konstantinov v. Daines, supra. They should be required to establish regulations so that New Yorkers who are truly in need can get expedited Medicaid in appropriate cases. They should be required to notify Medicaid applicants of the availability of this benefit.

For the foregoing reasons, the Elder Law Section **OPPOSES** this legislation.

Section Chair: Anthony J. Enea, Esq.