

Memorandum in Opposition

ELDER LAW AND SPECIAL NEEDS SECTION

ELDER #17

February 17, 2016

S. 6407 – Part B, Sec. 4
A. 9007 – Part B, Sec. 4

By: BUDGET
By: BUDGET

Senate Committee: Finance
Assembly Committee: Ways and Means

THE ELDER LAW AND SPECIAL NEEDS SECTION OPPOSES THE REDUCTION OF THE MINIMUM COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA)

INTRODUCTION: 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. The Affordable Care Act [ACA] extended those protections to protect couples where one spouse is enrolled in a Managed Long Term Care plan, which was incorporated by New York State into its Section 1115 waiver program. Presumably, the application of these provisions was intended to keep individuals at home and to prevent unnecessary institutionalization. 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.

This proposal found in § 4 of Part B of this legislation reduces the minimum amount that a spouse who is not applying for Medicaid coverage can 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. Because the federal maximum is still in effect and will allow a spouse to keep up to \$119,220 in resources, as illustrated below, 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.

ANALYSIS: States have an option of setting the resource level for a “well spouse”, the Community Spouse Resource Allowance (CSRA), between a minimum floor of \$23,844 and a ceiling of \$119,220, based upon the couple’s combined assets. The ceiling was originally \$60,000 when the federal law was enacted in 1988, and has gradually increased by a statutory consumer price index adjustment to the current \$119,220.

New York elected the highest federally allowed CSRA twenty years ago in 1995, when it was set at \$74,820 based upon the consumer price index adjustment (§ 366-c (2)(d)(i)(A)). However, New York has not increased the minimum CSRA by the federal cost-of-living index since 1995, while over that same period, the federal maximum CSRA has increased from \$60,000 to \$119,220.

The formula currently used by New York provides that a spouse can keep the **greater** of:

1. \$74,820 OR
2. one-half of the couple’s combined assets, up to \$119,220.

To reach the maximum CSRA, a married couple would have to have \$238,440 in combined assets and the applying spouse would then be required to incur and pay medical expenses (“spend down”) until the spouse reached the Medicaid limit, which is currently \$14,850. The non-applying spouse could then keep the remaining amount of \$119,220 to maintain herself.

This proposal would turn back the clock more than twenty years by lowering the minimum CSRA from \$74,820 to \$23,844, disproportionately affecting married couples with the least assets – between \$23,500 and \$150,000, while not affecting those with combined assets over \$150,000. An illustration of the disparate impact that this proposal would have on married couples of more modest means is provided below:

Couple’s combined assets	Amount of Assets Community Spouse May Keep		
	If allowance raised to federal maximum	Under Current NY Law	Under Gov’s PROPOSED CHANGE
\$30,000	\$30,000	\$30,000	<i>\$23,844</i>
\$47,000	\$47,000	\$47,000	<i>\$23,844</i>
\$75,000	\$75,000	\$74,820	<i>\$37,500</i>
\$119,220	\$119,220	\$74,820	<i>\$59,610</i>
\$150,000	\$119,220	\$75,000	<i>\$75,000</i>
\$238,000	\$119,220	\$119,000	\$119,000
\$350,000	\$119,220	\$119,220	\$119,220

The New York City metropolitan area has one of the highest costs of living in the nation, which is why the legislature 20 years ago opted for the highest resource allowance permitted by federal law. Unfortunately, no adjustments were made after 1995 to increase the allowance to reflect the increased a cost of living. The Elder Law and Special Needs Section urges the Legislature to join Alaska, California, Colorado, Florida, Georgia, Hawaii, Illinois, Louisiana, Maine, Massachusetts, Mississippi, Vermont, and Wyoming, who, as of 2012, have all opted for the *highest* permitted allowance of \$119,220. Instead the Executive is looking to have the Legislature adopt a proposal which unfairly targets the frail, the elderly and the people least able to afford it. It is also noted that these states using the maximum CSRA are not spending more on long-term care than New York, so we would question whether there are real cost savings associated with this proposal.

The inevitable result will be couples unable to meet their high living costs facing potential eviction or homelessness, and spouses who might otherwise have been able to privately pay for their care now forced to resort to Medicaid because of depleted savings.

When combined with the proposed elimination of spousal refusal for home care coverage, the consequences of this proposal are especially devastating. In some cases, 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. In other cases, the ill spouse is more likely to end up in a nursing home so that the well spouse can exercise the right of spousal refusal under federal law. This seems contrary to the entire concept of New York's Medicaid Redesign, which seeks to keep people out of nursing homes.

Based on the foregoing, the Elder Law and Special Needs Section OPPOSES this legislation.

Memorandum prepared by: Valerie Bogart, Esq. and Deepankar Mukerji, Esq.
Section Chair: JulieAnn Calareso, Esq.