

## Memorandum in Opposition

### ELDER LAW AND SPECIAL NEEDS SECTION

ELDER #18

February 17, 2016

S. 6407-A – PART B. Sec. 2

By: BUDGET

A. 9007-A – PART B. Sec. 2

By: BUDGET

Senate Committee: Finance

Assembly Committee: Ways and Means

### **THE ELDER LAW AND SPECIAL NEEDS SECTION OPPOSES THE PROPOSAL TO REQUIRE A NURSING HOME LEVEL OF CARE AS A CONDITION OF MANAGED LONG TERM CARE ELIGIBILITY**

This bill would add a requirement that an individual require nursing home level of care as a condition for Managed Long Term Care ("MLTC") eligibility. If the legislature adopts the proposal to require a nursing home level of care as a condition of MLTC eligibility, the concern is that Local Departments of Social Services ("LDSS") may not have the necessary resources to cover services.

The Elder Law and Special Needs Section OPPOSES this proposal to add a nursing home level of care requirement as a condition of eligibility for MLTC. We understand that this new requirement is estimated to deny MLTC enrollment to about five percent (5%) of prospective members. With nearly 140,000 people enrolled in MLTC plans statewide, this change will affect thousands of people needing home care services.

#### **(1) Ensure Adequate Local Resources If Home Care Administration Shifts from MLTC Plans back to Local Districts**

Among our concerns are how these individuals will access Medicaid home care services. They will still be eligible for Medicaid personal care, consumer-directed personal assistance (CDPAS) or other home care services, which they presumably will need to access at their local Department of Social Services Medicaid program, as they did prior to mandatory MLTC. **However, with the roll out of mandatory MLTC statewide now complete, many local districts have severely reduced resources available in their Medicaid home care programs, with insufficient staff to administer the programs and insufficient home care contracts to assign aides.**<sup>1</sup> At least one county has noted

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<sup>1</sup> LDSSs are still responsible for providing services to (1) dual eligibles who need only Level I personal care, a.k.a., housekeeping; (2) dual eligibles who need less than 120 days of any type of "long term care service," such as personal care, home health aides, or nursing; (3) certain Medicaid waiver participants; (4) those who are exempt from managed care like people with third party health insurance other than Medicare.

that it no longer has nurses to assess people for personal care, in part because MLTC plans have hired all of the nurses at better reimbursement rates. Another county, until recently, erroneously believed it no longer had to provide personal care services other than housekeeping and was therefore unable to fill the 49 hours of personal care needed by a person who was exempt from MLTC and Medicaid Managed Care enrollment.

The proposal should therefore only be adopted if sufficient resources outside of MLTC are available through the counties and New York City to provide services to the people who will newly be excluded from MLTC. Because the already under-resourced local districts would be picking up a higher and more complex homecare caseload under the this proposal, it is essential that resources to serve this new population, as well as existing populations, are provided to the local districts in conjunction with the proposal.

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

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