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FAMILY & RELATIONSHIPS: GRAY MATTERS

THE ANNOUNCEMENT last January seemed welcome news for beleaguered spouses, most of them elderly women who had suffered the nightmare of placing their sick and aged husbands in nursing homes, under Medicaid, only to be dunned or sued by the city for thousands of dollars to help pay for their care.

A written statement from Debra Sproles, the spokeswoman for New York City's Human Resources Administration, said that the agency had established an "ombudsman" to consider the complaints of spouses that the suits filed against them would subject them to economic hardship if they were forced to spend part of their savings to repay Medicaid for the care of their institutionalized mates. But this "ombudsman" is like no other.

Under federal law, the community spouse—the one who remains at home—cannot be forced to become impoverished to help pay the bills of an institutionalized spouse who qualifies for Medicaid. And in New York, a community spouse with savings greater than the \$87,000 the law allows may formally refuse to make those excess assets available to help pay Medicaid bills.

But the jurisdictions that administer Medicaid for the state may sue a refusing spouse to recover some of those excess assets. And as we reported more than two years ago, New York City has been especially aggressive in dunning and filing suits against refusing spouses, targeting not only the most affluent spouses—as in the past—but all refusing spouses, including many of modest means who are trying to hang on to their savings for their old age.

As a City Council investigation found last fall, many of the spouses threatened with dunning letters or suits could not afford to pay what the city claimed they owed, but were frightened into paying because they didn't have a lawyer and had nowhere to turn. Thus, in January, the Human Resources Administration announced the appointment of a "spousal refusal ombudsman." And Sproles said in her statement that the ombudsman would begin work Feb. 1.

An ombudsman must be accessible to prospective complainants, but the identity and telephone number of the HRA ombudsman seems to be a mystery. For when I called Sproles repeatedly to ask how I could contact the ombudsman so that I might publish the information, she declined to call back. Her assistant twice told me she didn't know what I was talking about. She asked, "How do you spell his name?" Bernard Krooks, a Manhattan attorney who heads the state bar's elder law section and is president-elect of the National Academy of Elder Law Attorneys, hailed the appointment of an ombudsman as a positive step for spouses who feel they've been wrongly sued. But Krooks said he has been unable to learn the ombudsman's name or phone number. Responding to my faxed appeal for information, Sproles said through an aide that complaints could go by letter or fax to Al Giove, HRA's deputy commissioner for revenue and investigations. But her office and Giove gave only his fax number and wouldn't divulge his voice phone number. And he replied via fax to my inquiry that complaints from spouses must be sent in writing, by mail or fax, only after they are dunned or sued. He didn't name the ombudsman.

Why the mystery? Ciara O'Halloran, a case worker for Friends and Relatives of the Institutionalized Aged, an advocacy group for the elderly, was able to get through to Giove and learned that his office is responsible not only for sending the dunning letters and filing the suits, but it also supervises the ombudsman. An ombudsman is supposed to be independent, but as O'Halloran said, Giove's office "is not an ombudsman in the usual sense." Krooks said, "If I have

such difficulty getting information about the ombudsman, imagine what it would be like for a frightened and worried elderly person who wants to make a complaint." If Giove's office is to be the ombudsman, Krooks said, "it cannot be the judge, jury and prosecutor." Still, Krooks and other elder lawyers say that the appointment of an ombudsman is one indication that the city is backing away from its hard-line policy of filing suits against spouses whose assets are higher than the \$87,000 allowance, but have reason to fear the specter of poverty in their last years. The law gives HRA discretion in filing suits.

In her ombudsman announcement, Sproles said HRA would no longer send dunning letters with threats to sue and demands for dollar amounts, but would seek meetings with a spouse to work out a settlement, taking his or her circumstances into account.

Sproles noted that a community spouse's home is not counted as part of his or her available assets and is exempt from any claim. And the costs of maintaining home ownership or renting an apartment are taken into consideration when figuring what a spouse can comfortably pay toward the institutionalized spouse's bills.

It's doubtful HRA got many bucks for its blunderbuss bang. Last year, Sproles said, HRA collected no money in 143 of the 196 cases it settled where assets exceeded the limits. No one knows how much the city spent pursuing refusing spouses, but it's likely the costs outweighed the benefits, for New York loses federal matching funds for every dollar it collects. Even if the city collected all of the estimated \$3.7 million it was owed, it would have amounted to about \$1.40 for every \$1,000 spent on the \$2.6-billion Medicaid program.

Perhaps these lessons were not lost on Nassau and Suffolk counties, which sent out some dunning letters to refusing spouses. So far, elder lawyers say Nassau has not followed up on threats to sue. Suffolk has settled with spouses for amounts they could afford.