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Maintaining Vigilance on Elder Law Issues

One could not read a newspaper over the last several months without coming across an article about how the federal government and states are focusing on the burgeoning costs of the Medicaid program. The Medicaid program is one of the most often-cited reasons by legislators for the current fiscal crisis both at the federal and state levels. Counties also are jumping on the bandwagon in New York State, with some counties separating Medicaid costs on individual property tax bills. No one would argue with the notion that containing costs is a noble and even a necessary goal. We must remember, however, that the state's most vulnerable citizens, the frail elderly and disabled, are the people who will be directly affected by some efforts to cut costs.

Last year, Governor George E. Pataki proposed a number of changes to the Medicaid eligibility rules that would have had a dramatic effect on the continued and future eligibility of many New York Medicaid recipients. None of these changes made it into the final budget bill adopted by the Legislature in August 2004.

Instead, the legislature chose to focus on positive changes, such as doubling the income tax credit (from 10 to 20 percent) for long-term care insurance premiums paid, increasing education about long term care insurance and making information about long-term care insurance more accessible to the public. In addition, so-called partnership policies were made more attractive by allowing a person to purchase less than three years worth of coverage. These changes will certainly reduce Medicaid's share of health care costs in the long run. In attempting to contain the costs of the Medicaid program, we must avoid the temptation to adopt any change that would eliminate the availability of home care services, where care is generally less expensive and where most seniors prefer to receive care, forcing people into nursing homes in order to receive needed care. We must consider the far-reaching economic burden placed on our society by family members of incapacitated persons, many of whom will be forced to leave their jobs in order to become informal caregivers. We must remember that nobody desires to be on a program like Medicaid. Seniors find themselves in a "lose-lose" situation, first losing their health followed by a total loss of assets to meet Medicaid's definition of impoverishment.

The Elder Law Section expressed its view during the legislative process last year and will continue to do so in connection with the 2005-2006 budget discussions. The section is in the process of adopting a report addressing long-term care reform alternative that will be presented to the governor and legislators later this month. We look forward to working with legislators and the governor's office to effectuate sound policies designed to ensure the delivery of needed medical services to New York's most vulnerable citizens and ensuring the dignity of those individuals while striving to keep costs under control.