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## **Proposed Medicaid Changes That Could Rock Your World**

REMSEN STREET - Think you can give your daughter some money to buy her first house, without getting penalized by Medicaid four years from now?

Think again.

Significant changes may be afoot for Medicaid eligibility, two seasoned elder law attorneys cautioned at a recent legal seminar sponsored by the Brooklyn Bar Association and the Volunteer Lawyers Project.

Howard and Bernard Krooks, of Littman Krooks, LLP, talked about the proposed changes and why the New York State Bar Association has taken the unusual step of hiring a lobbyist to block the bill.

"We're under attack," Howard Krooks, chair-elect of the New York State Bar Association Elder Law Section, told elder law attorneys last Tuesday night.

Middle- and lower-income people already jeopardizing their Medicaid eligibility because they don't know the law may soon face even greater confusion when trying to figure out how to manage their money for retirement and beyond.

State Senator Meier has proposed five new bills, Krooks said, the most comprehensive being S.4627, which would change Medicaid eligibility rules affecting the transfer of assets and spousal refusal.

A person becomes eligible for Medicaid by showing that he or she does not have enough resources to pay for necessary medical care.

Howard Krooks explained four significant changes that, if adopted, could limit the eligibility of otherwise needy people.

First, he said, the bill increases the "look-back" period to 60 months from 36 months, for outright gifts. This means that Medicaid can consider any gifts or donations made in the five years prior to the Medicaid application, when determining an applicant's income and assets. Applicants with too many resources must wait out a penalty period.

It is common for parents to give their children money for major purchases, Krooks said. The proposed change would penalize a woman who gives her daughter money for a first home, and then four years later, suffers a stroke and goes straight from hospital to nursing home.

"Imagine what it's like for someone with disabilities, or dementia, to go back five years," Krooks said, citing a point made by the NYSBA Elder Law Section's February report on the new Medicaid initiatives. "How many clients come in with a shopping bag full of documents and ask for help?" he asked rhetorically, highlighting how difficult it can be for ordinary people to keep organized files.

Charitable organizations could lose funds due to the extended look-back period, and hospitals and nursing homes would have to do longer background checks, Krooks noted.

While the current law applies a penalty period only to people who seek Medicaid for institutional care, the proposed bill would also penalize someone who wishes to qualify for home care services.

The Elder Law Section's report argues that the proposed change would "seriously undermine the impact of the Supreme Court decision in *Olmstead v. L.C.*, which found it a violation of the Americans with Disabilities Act to institutionalize the qualified disabled rather than provide them with services in the community."

The report suggests that the change could have devastating effects on a caregiver spouse and other family members.

The proposed law would also change the date when the penalty period starts. Under the current law, the penalty period starts on the first day of the month following the month in which the transfer was made. Under the proposed change, the penalty period starts on the first day of the month during or after which a Medicaid application has been filed, Krooks explained.

"You carry around the transfer, and only when you apply does the penalty period start to run," Krooks said. The logic of the current law allows people to transfer assets, as long as they hold on to enough assets to care for themselves. Under the proposed law, any gift at all would be subject to a law that only starts to run after the giver asks for services.

The Elder Law Section's report argues that this proposed change conflicts with federal law and requires an administrative waiver.

The last proposed change, eliminating spousal refusal, also conflicts with federal law, according to the Elder Law Section's report.

Under the current state law, a spouse with assets must provide resources for an ill spouse unless he or she executes a formal, written "spousal refusal" to support the needy spouse. Currently, the community spouse (the one with assets) can keep up to about \$92,000 in assets and about \$2300 a month in income.

The proposed elimination of the spousal refusal (except in very rare cases) would leave the community spouse with less income and assets by requiring him or her to provide support. "This is not the intent under the legislation," Krooks said. "We don't want to pauperize community assets."

"Spousal refusal is not a loophole," Krooks maintained, echoing the Elder Law Section's report. Without it, healthy spouses might be forced to file for divorce rather than impoverish themselves, he said.

The report states that this change, too, "could run afoul of the United States Supreme Court *Olmstead* case which requires that care be provided in the "most integrated setting" possible."

Under *Olmstead*, it is illegal to hospitalize disabled persons rather than provide community care, if community care is possible. Community care, or home care, is also more desirable because it costs less than hospitals or nursing home care.

"Meet with your legislators!" Krooks urged, calling on elder law attorneys to oppose the proposed changes to Medicaid.

Bernard Krooks, immediate past president of the National Academy of Elder Law Attorneys, spoke about proposed changes to Article 81, powers of attorney, and other rules affecting elder law. See an upcoming edition of the *Brooklyn Daily Eagle*.

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