

Pataki Budget Adopted: Access to Health Care Preserved

On April 12, 2005, Governor Pataki signed the 2005-2006 budget bill without any of the harmful Medicaid eligibility provisions discussed below. The Elder Law Section of the New York State Bar Association and the New York Chapter of the National Academy of Elder Law Attorneys worked hard to educate state legislators about the consequences of adopting these provisions. The harmful provisions were introduced by Governor Pataki in his budget bill for the upcoming fiscal year. The provisions, if enacted, would have substantially restricted access to quality health care for many New Yorkers who are elderly or disabled. In particular, these provisions would have caused financial hardship for New Yorkers who need Medicaid to pay for long-term care.

Unfortunately, Medicare does not pay for long-term care and many individuals cannot afford the catastrophic costs of a long-term chronic illness, which can exceed \$10,000 to \$15,000 per month in the metropolitan area.

The budget bill proposals as they pertain to access to long-term care were as follows:

- **Increasing the look-back period from 36 to 60 months.** This is the period of time during which the Medicaid applicant must disclose financial transactions in an amount in excess of a certain threshold. Increasing the look-back period from 36 to 60 months would impose a tremendous record-keeping burden on individuals,

especially those who are elderly or disabled. The increased look-back period would apply to both nursing home and community (including home care) Medicaid.

- **Imposing penalty periods for community Medicaid as a result of family gifts.** Under current law, a penalty period is imposed for nursing home Medicaid when assets are gifted to certain family members, but not for community Medicaid. The length of the penalty period for community Medicaid would be computed in a manner similar to the way the penalty period is currently computed for nursing home care. It is anticipated that a likely result of this new provision would be to force more people into nursing homes instead of receiving care at home. Even people who are currently receiving Medicaid home-care could be affected.
- **Eliminating spousal refusal.** In New York, you are legally responsible to pay for the health care costs of your spouse. Fortunately, significant protections are available for individuals whose spouse requires long-term care. In fact, the legislative history of the United States Congress clearly states that spousal refusal and its related provisions were designed to prevent the pauperization of an individual whose spouse is ill. The budget bill would severely curtail these provisions and may conflict with applicable Federal law.

- **Commencing the penalty period for all family gifts on the date of Medicaid application rather than on the date of gift.** This provision will impose a significant financial hardship on individuals since even a small family gift during the look-back period would delay access to government-financed health care. Without a source of payment, it may be impossible for many seniors and people with disabilities to receive much-needed health care.

The partners of Littman Krooks LLP, Howard S. Krooks, a Chair of the Elder Law Section of the New York State Bar Association, and Bernard A. Krooks, a President-Elect of the New York Chapter of the National Academy of Elder Law Attorneys, were integral in the fight against the adoption of these provisions. We met with members of the state assembly and senate on numerous occasions since the bill was proposed on January 18, 2005. We believe our lobbying efforts on behalf of New York's senior and disabled population were integral in achieving a final budget which does not contain any of the provisions discussed above.