No Penny Pinching

In a roundtable discussion sponsored by the Elder Law Section, attorneys and social services representatives found themselves united by a desire to “do the right thing” for Medicaid recipients—even if that meant bending the rules. But sharp divides appeared between lawyers and administrators over certain issues involving Medicaid eligibility and budgeting.

In response to questions posed by program chair and moderator Ronald A. Fatoullah of Great Neck (Ronald Fatoullah & Associates), panelists discussed how procedures differ by county on subjects ranging from calculation of periodic IRA payments to the Community Spouse Resource Allowance (CRSA).

Peter Glase of New York City’s Human Resources Administration said his office examines situations on a case-by-case basis. “We try to be fair and equitable in the way we approach the home care cases. There’s a big difference between the community spouse who has $1 million in excess resources and the spouse who has $10,000. Where there are mitigating factors, we do want to know about them. It’s not just a matter of looking at dollars.”

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Richard A. Marchese of Rochester (Monroe County Law Department) agreed, adding “I’m not pursing cases that are one penny over the CRSA. I’m going after cases that really jump off the page. We don’t see millionaires applying for Medicaid, but we do have people with hundreds of thousands of dollars. If they’re over the resource limit and income guidelines, and flat out refuse to pay (spousal support), we’ll go after them.”

Monroe County had successfully settled many spousal refusal cases, he said, by reaching out-of-court settlements with the spouses attorneys. “Rather than sue now and get a lump sum payment, we’ll agree that on the death of the community spouse, a certain amount of money will be set aside for repayment of the DSS spousal support plan.”

“We all violate the same regulations,” said Gary C. Samuels of Pomona (Department of Social Services). “The general rule is if the case work comes in and cries, and has a whole list of (legitimate) expenditures, we’ll factor that in.”

Marchese went a step farther, arguing that the homestead transfer exemption should be extended beyond caregiver children to also include caregiver grandchildren.

“This has come up twice in Monroe County, and the equities cried out to you. These were truly caregiver grandchildren, so I would advocate for modification of the law to expand it to children living at home for two years actually provided the requisite care, which is why the burden is on social services departments to prove otherwise,” said Fatoullah.

Several attorneys, including Howard S. Krooks (Littman Krooks LLP, New York and White Plains) wondered why physicians’ letters were necessary to prove that children provided the requisite level of care. At minimum, the children are keeping seniors out of nursing facilities by providing basic services such as food shopping and meal preparation, he said.
In response, Samuels cautioned against assuming that children would provide any level of home care. “We had a situation where the parent and child lived together, and the parent needed surgery. It was a matter of amputating a leg, but when we tried to get in touch with the son, his response was, ‘Call me when he’s dead.’ There’s so much fraud going on that asking for proof is not an unreasonable request.”

Ultimately, said Glase, most county attorneys and social services administrators try to come to reasonable solutions. “Basically, we’re here to help people within our budgetary constraints. We’re always open to listening to innovative ways to solve problems.”

Other discussion was part of the section’s half-day program and also included: Daniel G. Fish of New York (Friedman & Fish LLP); Kathryn Grant Madigan of Binghamton (Levene Gouldin & Thompson LLP); and Rene H. Reixach, Jr. of Rochester (Woods Oviatt & Gilman LLP).

Joan Lensky Robert of Rockville Centre (Kassoff, Robert, Lerner & Robert, LLP) is chair of the section.