

The Elder Law Minute TM

The Risks of Spousal Refusals

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On December 10, 2010, the New York Times published an article entitled “Full Wallets, but Using Health Program for Poor.” Since this article was published, our firm has received many calls with concerns and questions about the liability of the well spouse when a spousal refusal is signed.

A well spouse (community spouse) is deemed to be a legally responsible relative for the ill spouse in a nursing home. Refusing to contribute financially towards a spouse’s care by submitting a “spousal refusal” with the application allows the sick spouse to obtain Medicaid benefits irrespective of the well spouse’s income/assets. However, when a spousal refusal is signed, the Medicaid agency has the right to recover from the well spouse all funds spent on the ill spouse’s care. As cited in the *Times* article, there has been an increase in the number of spousal refusal applications and an increase in attempts by the government to recover funds from the well spouse. In fact, a representative from New York City’s Human Resources Administration has stated that almost all Medicaid applications are being reviewed for recovery against spouses, and that action is being taken on an increasing number of cases.

The NY Times article highlights the need to have an experienced elder law attorney prepare and submit Medicaid applications for all applicants, especially before a spousal refusal is signed. The article reviewed the plight of a well spouse who signed a spousal refusal. Thereafter, New York City requested reimbursement in the amount of \$270,000 that was paid for his wife’s care. Although that matter was settled for \$150,000, it is clear that had this individual had planned appropriately, he could have eliminated his liability entirely.

When faced with placement of a husband or wife in a nursing home, we must make sure that the community spouse does not become impoverished. A spousal refusal may no longer be the appropriate plan for the spouse. There are preferred strategies that can reduce or even eliminate the chance of recovery by Medicaid. Most strategies provide a win-win scenario for the spouse, the facility and Medicaid. The spouse will have the comfort of knowing that she/he will not be sued. The facility will have the confidence that Medicaid eligibility will be granted. And, Medicaid will be relieved to know that it will be reimbursed for some of its cost without the need to go after the spouse who is often frail and elderly.

Our firm utilizes a unique Medicaid application planning process that begins with an attorney/paralegal strategy session to ensure that all appropriate planning options are identified and implemented. In order to educate professionals and the public, our firm

provides in-service educational presentations at nursing homes, hospitals, other venues throughout the NYC metropolitan area to explain these issues in greater depth.

Ronald Fatoullah is a leading expert in the field of elder law. He is the founder and managing attorney of Ronald Fatoullah & Associates, a law firm concentrating in elder law, Medicaid eligibility, estate planning, special needs, trusts, guardianships, & probate. He is certified as an elder law attorney by the National Elder Law Foundation, and he is the current Legal Committee Chair of the Long Island Alzheimer's Association. The firm's offices are conveniently located in: Long Island, Queens, Manhattan & Brooklyn and can be reached at: 1-877-Elder Law 1-877-Estates. This article was written with the assistance of Stacey Meshnick, Esq.