March 15, 2011

To: The Chairpersons and Honorable Members of the Human Services Committee

From: David Craig Slepian, Esq., Board of Directors, Connecticut Chapter of the National Academy of Elder Law Attorneys, Inc.

Re: Governor's Proposed Budget-- Repeal of P.A. 10-73

Dear Chairpersons and Honorable Members of the Human Services Committee:

I am writing to you on behalf of the Connecticut Chapter of the National Academy of Elder Law Attorneys, Inc., a chapter of the National Academy of Elder Law Attorneys, Inc. ("NAELA"). NAELA is a non-profit association whose mission is to provide legal advocacy, information and education to attorneys, bar associations and others who deal with the many specialized issues involving the elderly and individuals with special needs. The Connecticut chapter of NAELA presents this written testimony in opposition to the proposed repeal of P.A. 10-73 in the Governor's Proposed Budget for FY 2011-2012.

1. Background

In Connecticut, when a married couple applies for nursing home benefits under Medicaid, the community spouse is allowed to keep up to $109,560 of the couple's countable assets. This amount the community spouse can keep is called the "Community Spouse Protected Amount" ("CSPA"). The term countable assets includes essentially anything other than the house, a car, clothing and basic necessities. It even includes retirement accounts like IRAs, 401(k)s and the like. In other words, the community spouse is expected to be able to survive for the rest of their life on nothing more than up to $109,560 and any income they may receive.

Prior to the passage of P.A. 10-73 last year, the community spouse was required to become even more impoverished before their ill spouse could qualify for nursing home benefits. Until last year, they were only allowed to keep the lesser of 50% of the couple's countable assets, up to a limit of $109,560. Last year after careful consideration, the Legislature passed, and the Governor signed, P.A. 10-73 which simply deleted the 50% limitation, and allowed the community spouse to keep their countable assets, up to $109,560.

Prior to passage of P.A. 10-73, the community spouse would be forced to spend the other 50% in a "spend down" which would typically be done shortly before eligibility

determination. This generally resulted in a whirlwind of spending on such things as home improvements, and a new car, whether needed or not, for the sake of qualifying their ill spouse for benefit.

Rarely, if ever, did a community spouse spend the money on nursing home care. This is extremely important to recognize, because the Governor's budget proposal to repeal P.A. 10-73 claims that the State will realize millions of dollars in savings on the presumption that the community spouse would spend the 50% 'spend down' to pay the nursing home.

2. Examples

Please consider these examples. We will assume in both, that the husband is the institutionalized, or ill, spouse and the wife is the community, or well, spouse.

In Example #1, assume that a couple's countable assets on the date of institutionalization are $50,000.00. Under P.A. 10-73, the community spouse is quite simply allowed to keep the $50,000.00. If we reverted to the old law as the Governor's Budget proposes, the community spouse would only be allowed to keep the lesser of 50% or $109,560, meaning she would keep only $25,000 to live on for the rest of her life in this example. The wife will spend the excess on home improvement, new car etc. whether needed now or not.

In Example #2, assume that a couple's countable assets on the date of institutionalization are $125,000.00. Under P.A. 10-73, the community spouse is quite simply allowed to keep $109,560.00 which is the maximum CSPA. If we reverted to the old law as the Budget proposes, the community spouse would only be allowed to keep the lesser of 50% or $109,560, meaning she would keep only $62,500 to live on for the rest of her life in this example. Again, the wife will spend the excess on home improvement, new car etc. whether needed now or not.

Whether the "spend down" amount is $25,000 or $62,500, none of it will, in reality, be spent at the nursing home so why force the community spouse, who has meager savings to begin with, to spend down unnecessarily and imperil their long term welfare?

3. P.A. 10-73 Benefits

P.A. 10-73 allows the community spouse to retain a small amount of additional resources to live on, instead of having to go on a whirlwind spending spree for things they may or may not really need. P.A. 10-73 quite simply allows the community spouse to be more fiscally responsible. It also affords them greater dignity and peace of mind.

4. Repeal Will Not Save Money and Will Add Administrative Expense

Under the old rule the Governor's Budget seeks to re-invoke, the community spouse would simply spend the 50% in short order, just before the eligibility determination. As soon as the spend down was accomplished, the ill spouse would qualify for nursing home

benefit. Therefore, the old rule did not delay the effective date of eligibility. Also, the community spouse would not spend the money on the nursing home, so the spend down did not save the State money.

Under the old rule, a considerable amount of the Department of Social Services intake worker's time was devoted to calculating the 50% formula and monitoring submissions by the applicant proving the spend down. The new law is simpler and allows the intake worker to use their time more efficiently.

Moreover, under the old law there were many instances where a community spouse was entitled by law to keep more than the CSPA amount derived from the 50% formula. However, the Department of Social Services intake worker had no authority to make this decision, and the Community Spouse had no alternative but to request a Fair Hearing to demonstrate why he/she would be entitled to retain the additional assets. A Fair Hearing absorbs the time of the intake worker and Hearing Officer. The streamlined process whereby the Community Spouse is allowed to keep the maximum CSPA of up to $109,560 results in fewer administrative Fair Hearings and greater department efficiency.

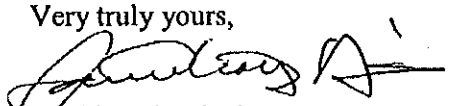
These efficiencies should allow fewer intake workers to handle more applications or be reassigned to other duties within DSS, and reduce costs of Fair Hearings, saving the State money.

5. Conclusion

The Legislature considered these issues carefully last year. In a bipartisan vote, it passed P.A. 10-73. We ask you to preserve P.A. 10-73. It is a waste of precious resources to go over this old ground again when the decision was already thoughtfully made. We ask you to reject the proposed repeal of P.A. 10-73.

Thank you all for your service to our State and for your time and attention to meeting the pressing needs of our senior citizens.

Very truly yours,



David Craig Slepian
CT-NAELA
SLEPIANLAW@aol.com
203-255-3483