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To: Honorable Senator Mae Flexer, Co-Chairperson,  
Honorable Representative Joseph C. Serra, Co-Chairperson and  
Members of the Aging Committee

Aging Committee Public Hearing  
February 5, 2015

***Please Support***  
**SENATE BILL 705**

***AN ACT CONCERNING A COMMUNITY SPOUSE'S ALLOWABLE ASSETS***

Federal Medicaid law prescribes the rules that states use when determining Medicaid eligibility. In the spousal impoverishment provisions of the law, Congress sought to prevent the impoverishment of the spouse of an individual who required long term care by prescribing the amount of assets that the well spouse, known as the "Community Spouse," is entitled to retain when his or her ill spouse enters a nursing home and applies for Medicaid. Currently, Connecticut has adopted the most restrictive option for states, and only permits the Community Spouse to keep **the lesser** of one half of the couple's assets or \$119,220.00, but no less than \$23,844.00 (as of January 1, 2015).

Senate Bill 705 raises the minimum amount of assets the Community Spouse can keep from \$23,844.00 to all of the couple's total assets up to the current federal maximum amount of \$119,220.00 (as of January 1, 2015). By allowing the Community Spouse to retain all of the couple's assets up to the current federal maximum amount of \$119,220.00, a Community Spouse is afforded more flexibility (as recognized by the Federal law) to stay in the community than the current law provides.

Example: A 74 year old husband enters a nursing home. His 68 year old wife has a certificate of deposit in the amount of \$50,000.00. Pursuant to Connecticut's current restrictive rules, the wife is only entitled to keep \$25,000.00 of the certificate of deposit and the husband may keep \$1,600.00. The remaining \$23,400.00 must be spent before the husband would be Medicaid eligible. The wife's share of the couple's assets of \$25,000.00 must last her for her life expectancy (projected to be in excess of 15 years). Pursuant to Senate Bill 705, the wife could retain the entire certificate of deposit in the amount of \$50,000.00 thereby preventing her impoverishment and enabling her to remain in the community longer, while saving the state the cost of her institutionalization in a nursing home or payment of home care services under the Connecticut Home Care Program for Elders.

The Department of Social Services ("DSS") asserts that the spend-down of the \$23,400.00 in the example above, is achieved by paying it to the nursing home, thereby delaying eligibility for Medicaid. However, it is critical to understand that the spend-down of the \$23,400.00 is almost never accomplished by paying the nursing home; rather, the Community Spouse will purchase prepaid funeral contracts, make home repairs, and purchase such other personal property in order to spend down the money. Under current law, the Community Spouse is

then left with only \$25,000.00 (in this example) in assets (other than the home and one car) and most often only a small social security amount each month with which to maintain and repair the home, pay real estate taxes and assessments and try to survive in the community. **If S.B. 705 became law, the Community spouse would be allowed to keep all of the couple's \$50,000.00 in this example, thereby allowing him/her to continue to live independently in the community for a longer period of time.**

On May 27, 2010, P.A. 10-73 was signed into law (which was codified as Connecticut General Statutes Section 17b-261k). P.A. 10-73 was identical to S.B. 705 in that it allowed a Community Spouse to keep the maximum amount of assets under federal law when the other spouse required long term care.

P.A. 10-73 was repealed on July 1, 2011 based on claims by DSS that the law had cost the State in excess of \$30 million dollars during the ten months it had been the law. During this Committee's public hearing on March 15, 2011, when questioned by Senator Joseph Markley as to how the purported \$30 million/year cost to the State had been derived, then Acting Commissioner Starkowski testified that in fact, he did not have any data to support DSS' assertion that P.A. 10-73 had cost the State in excess of \$30 million or that it would result in such a cost to the State in each year going forward. Then Acting Commissioner Starkowski testified that the numbers were 1) "intuitive," 2) based on "worker experience," 3) "a difficult number to quantify," and 4) that "the Eligibility Unit doesn't track the numbers." After P.A. 10-73 had been in effect for less than one year, neither the Office of Policy and Management nor DSS had been able to substantiate that the State had sustained any losses during the time the law was in effect. Conversely, neither OPM nor D.S.S. has been able to document the savings to the State that they claimed would be realized from July 1, 2011, the date P.A. 10-73 was repealed, to date.

During the public hearing of House Bill 5806 (a bill which would allow a Community Spouse to keep a minimum of \$50,000.00) before the Human Services Committee on January 29, 2015, Deputy Commissioner Brennan testified again that D.S.S. does not track statistics and that data has to be manually collected by D.S.S. In other words, Deputy Commissioner Brennan confirmed once again that D.S.S.' claims that allowing a Community Spouse to keep more assets costs the State millions of dollars is not based on facts or data, but is mere conjecture.

### **COST SAVINGS:**

1. Senate Bill 705 provides the Community Spouse with the assets and the income from those assets that will permit her/him to remain in the community, and therefore will be less likely to look for public assistance. These cost savings are "invisible" but significant.
2. The "Spend-down" of the excess assets will most likely not be on nursing home costs, but instead will be spent for other items as permitted by federal Medicaid law and therefore will not delay Medicaid eligibility nor produce cost savings for the state.
3. There would be an administrative cost savings to D.S.S. in not having to determine the assets that can be retained by a Community Spouse when it receives a Medicaid application, and in not having to monitor the spend-down, and the number of Administrative Fair Hearings would be reduced, all resulting in savings to the State.
4. If a Community Spouse is entitled to keep \$119,220.00 in assets, he/she will not be eligible for or need to apply for the state funded portion of the Connecticut Home Care Program (paid for completely by taxpayer dollars) which currently has an asset limit of \$35,766.00 for an individual and \$47,688.00 for a couple, which is a savings of taxpayers' money. In the example above, if the Community Spouse can

only keep \$25,000.00, she is eligible for services under the state funded Connecticut Home Care Program, at a cost to the State; if she is allowed to keep all of the couple's assets of \$50,000.00 in the example above, she is not eligible for services under the Connecticut Home Care, a cost savings to the State. Program.

## **PUBLIC POLICY CONSIDERATIONS:**

- **Senate Bill 705 promotes the good public policy of enabling individuals to “age in place” and remain in the community, which is better for individuals AND for the State in the reduction of spending on institutional care for those individuals who were able to remain in the community rather than in nursing homes and a reduction of spending on home care services.**
- The cost of living in Connecticut is one of the highest in the country.
- The 2009 report “Elders Living on the Edge: Toward Economic Security for Connecticut’s Older Adults,” by the Permanent Commission on the Status of Women and the Commission on Aging found that single older women and men in Connecticut who predominantly rely on Social Security *fall short of economic security regardless of housing status*.
- This Report found that “In high-cost Connecticut, where Social Security payments approximate the national average, Social Security payments **fail** to provide older adults economic security” and that “This problem is most severe for single elderly women.”
- Other states including Massachusetts, Vermont, Maine, California, Colorado, Arkansas, Hawaii, Illinois, Louisiana, and Mississippi all provide the maximum community spouse protected amount permitted by federal law (i.e., Community Spouses can keep assets up to \$119,220.00 as of January, 2015).
- AARP has expressed strong concerns that the current restrictive rules will have an adverse impact on those with moderate and low assets, especially women, and that the current restrictive rules will increase the likelihood that a Community Spouse will end up in a nursing facility.

The Connecticut Bar Association respectfully urges the Aging Committee to act favorably on Senate Bill 705.

