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Testimony Submitted by Attorney Edward G. Lang
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Before the Joint Committee on Aging
In Support of Senate Bill 818

Comments in support of:

SB 818 AN ACT PERMITTING A COMMUNITY SPOUSE OF AN INSTITUTIONALIZED SPOUSE TO RETAIN THE MAXIMUM AMOUNT OF ALLOWABLE ASSETS.

From: Edward G. Lang, President of the Connecticut Chapter of the National Academy of Elder Law Attorneys and Member of the Executive Committee of the Elder Law Section of the Connecticut Bar Association.

THE CURRENT LAW PLACES AN UNFAIR BURDEN ON OUR LESS AFFLUENT CITIZENS AND OFTEN FORCES A COMMUNITY SPOUSE INTO POVERTY. INCREASING THE COMMUNITY SPOUSE PROTECTED AMOUNT AVOIDS IMPOVERISHING THE COMMUNITY SPOUSE:

Currently, a person is eligible for Medicaid if they have no more than $1,600 in assets plus a prepaid funeral. If there is a spouse living in the community, the residence and an automobile are considered exempt assets. The spouse in the community may also have a prepaid funeral. All countable assets must be added together, regardless of title, for the purpose of calculating how much the spouse in the community may retain. Under the current regulations, the non-institutionalized spouse may retain one-half of the non-exempt assets up to a maximum of $130,380 and not less than $27,328. Therefore, this bill applies only to those couples who have combined assets of less than $260,760.

- If a couple has countable assets of $300,000, the Community Spouse may retain $130,380. The spouse in need of Medicaid may retain $1,600 and the spend down amount is $168,020.
- If a couple has countable assets of $100,000, the Community Spouse may retain $50,000. The spouse in need of Medicaid may retain $1,600 and the spend down amount is $48,400.
- If a couple has countable assets of $30,000, the Community Spouse may retain $27,328. The spouse in need of Medicaid may retain $1,600 and the spend down amount is $1,072.

If one-half of a couple's assets are less than the maximum allowable amount of $130,380, the Community Spouse is not permitted to retain the maximum Community Spouse Protected Amount. The effect of the current law is assaultive to middle class and less affluent families encountering illness and disability. Instead of worrying solely about the health and wellbeing of the ill spouse, couples are forced to contend with a slew of additional fears—losing their lifelong home; making ends meet; and—in this era of early onset illnesses—caring for minor children; and much more.

Significantly, the spouse not currently in need of care must face the potential problem of losing their spouse's Social Security payments upon the death of a spouse. The current statutory scheme does not account for the loss of Social Security income upon the death of the institutionalized spouse. For many middle and lower income married couples, Social Security payments are the sole or primary source of income. When one spouse dies, the surviving spouse receives the larger of the monthly Social Security Payments. In many cases, the loss of the spouse's income forces the spouse to move out of the family home, incur credit card liabilities, or otherwise become financially unable to sustain a reasonable standard of living.

INCREASING THE CSPA AIMS TO PROVIDE *EQUAL* TREATMENT TO MIDDLE CLASS AND LESS AFFLUENT FAMILIES BY ACCORDING THE SAME PROTECTIONS CURRENTLY ENJOYED BY MORE FINANCIALLY STABLE COUPLES WHO ARE ALWAYS PERMITTED TO KEEP THE MAXIMUM ALLOWABLE AMOUNT OF $130,380.

State and Federal laws do not require that the community spouse spend all of their excess assets on long-term care for the ill spouse. The spouse in the community may spend the excess assets on items for which they receive fair value. They may also avail themselves of other legal options such as purchasing a single premium immediate annuity, transferring real estate, including transferring real estate to certain family members and making gifts to disabled children. The rules permitting these purchases are very specific and are often unknown or misunderstood by non-attorneys offering to prepare applications for Medicaid benefits. Many families with limited resources are not able to afford to pay for appropriate legal advice.

EXAMPLE:

The law, as currently written, has real life consequences. A client (age 78) came to see me in 2017. Her husband (age 85) had suffered a stroke and was in a long-term care facility following a brief period of hospitalization. She and her husband owned a modest home in Middletown with a fair market value of $188,000. They had assets totaling $125,000 consisting of a joint savings account with $32,000. He had an IRA account with $49,000 and she had an IRA account with

$44,000. His social security was $1,387 and hers was $1,456. They had a home equity line of credit with an outstanding balance of $175,000 requiring monthly payments of $1,614.15.

In order to qualify for Medicaid benefits to cover the cost of his long-term care, she was required to spend down one-half of the total assets, leaving her with $62,500. The husband died in 2018. His social security payments stopped and her monthly income was immediately decreased to $1,456, forcing her to take funds from her savings each month in order to pay for the cost of living including mortgage payments, food, prescriptions, heat, insurance, maintenance, and transportation. It is expected that she will spend all of her funds within 4 years following the date of her husband's death.

COMMENTS:

One of the comments that we, as elder law attorneys, hear most frequently from our clients is their desire to remain at home as they age. I have yet to meet a client who says "I can't wait until I am sick enough to go into a convalescent home". Having a spouse suffer a debilitating illness such as a stroke, dementia, or Alzheimer's Disease is stressful. Most of my clients are shocked when they realize that a loved one requires long-term care. The typical cost in the area where I practice is more than $500 per day plus add-ons. In many cases, the illness of a spouse eliminates the ability of a non-institutionalized spouse to remain in their home or apartment if they require long-term care services.

I have represented a number of individuals this past year who live in homes that they have owned for more than 40 years and who have less than $150,000 in joint assets. When their spouse became ill and needed to be placed in an institution, the community spouse was terrified that they would be forced to sell their home because they could no longer afford to pay the taxes, insurance, maintenance and upkeep. Similarly, I have represented a number of individuals who lived in assisted living facilities. When their spouse became ill and needed long term convalescent care, one of the primary fears of the spouse remaining in the assisted living unit was whether they could afford to remain in their assisted living unit. In all of these cases, being able to retain up to the maximum allowable community spouse protected amount would enable these individuals to live with a little less fear and a lot more independence and dignity.

The Connecticut Department of Social Services requires that the applicant be eligible for Medicaid benefits when the application is submitted. However, Home Care benefits are paid from the date of approval, not the date of the application. Often, the community spouse must pay for home care services while waiting for the decision.

It is also significant to recognize that the Veterans Administration (VA) recently adopted a net worth limit for Aid and Attendance Benefits. The VA established the net worth limit at the

Community Spouse Resource amount ($130,773 in 2021. The VA does not require that the Veteran or the spouse reduce their assets below this amount.

In 1965, President Lyndon Johnson said that "every citizen will be able, in his productive years when he is earning, to insure himself against the ravages of illness in his old age. No longer will illness crush and destroy the savings that they have so carefully put away over a lifetime so that they might enjoy dignity in their later years." Unfortunately, President Johnson's hope did not become reality.

The Elder law Section of the Connecticut Bar Association and the Connecticut Chapter of the National Academy of Elder Law Attorneys (CT NAELA) support SB 818. This bill increases the amount that the Community Spouse may retain. This change will permit spouses living in the community to preserve resources that will enable them to pay expenses that are not covered by their income, manage unexpected repairs to their homes and vehicles. In many cases, this increased sum will enable individuals to remain in their homes and apartments and not force them to move to low-income housing or convalescent homes. Currently twelve states permit the Community Spouse to retain the maximum Community Spouse Protected Amount.

Attorney Kathleen Hayes has also submitted testimony emphasizing the importance of protecting Connecticut's impoverished, ill and elderly population, establishing laws to permit elders to enjoy quality care at home, while also reducing costs to the State. Allowing the community spouse to retain the Maximum Community Spouse Protected Amount ($130,380) is a step toward enabling the spouse to remain in the community with the ability to preserve his or her independence and dignity.