



# Coalition to Protect the Rights of New York's Dually Eligible

## Preserve "Spousal/Parental Refusal" for Vulnerable Populations (Sec. 18)

The Governor's proposed 2014-2015 budget will eliminate the longstanding right of "spousal/parental refusal" for children with severe illness, low-income seniors who need Medicaid to help with Medicare out-of-pocket costs, and other vulnerable populations. As proposed, the "refusal" will only be honored and Medicaid granted if a parent lives apart from his sick child, or a "well" spouse either lives apart from or divorces an ill spouse. The Coalition to Protect the Rights of New York's Dually Eligible opposes denying Medicaid to these vulnerable groups, and questions whether this cut will achieve the savings intended. The Governor's budget does preserve "spousal refusal" for couples when one spouse is receiving Managed Long Term Care (MLTC) services – but this is already required in a little-known provision of the Affordable Care Act (ACA).<sup>1</sup> Beginning now – January 2014 – all states must expand "spousal impoverishment" protections to most married couples in the community, including those where one spouse receives home care or "waiver" services. New York State's preservation of "spousal refusal" for people enrolled in MLTC is an important part of these federally-mandated spousal impoverishment protections, but it does not go far enough to comply with the law and prevent harm. However, there are a number of populations that need to be protected, including people who would lose vital access to Medicaid after losing spousal/parental refusal protections under the current budget proposal.

- **PERSONS NOT YET ENROLLED IN MANDATORY MLTC**—MLTC is just rolling out upstate, and is not projected to cover most upstate counties until the end of 2014. Spousal refusal must continue to be available in counties where MLTC is not yet mandatory. The legislation should also provide for spousal refusal to be restored in the event mandatory MLTC is repealed.
- **CHILDREN WITH SEVERE ILLNESS**—The refusal law currently applies to any "legally responsible relative" including parents of minor children. The proposed exception is only for spouses of MLTC recipients. Although some children with chronic disabilities are covered by a waived program, which does not count parents' income, and others will benefit from the Medicaid expansion under the ACA, there are still some children with serious illness who will be denied Medicaid without "parental refusal" even if their parents are neglectful or abusive
- **PERSONS RECEIVING HOSPICE CARE AND OTHERS EXCLUDED FROM MLTC** – Terminally ill people enrolled in a home hospice and those who need help with housekeeping chores (personal care Level I) because of their disabilities are excluded from MLTC and therefore must access Medicaid personal care through their local Medicaid programs. Under the Governor's proposal, they would be denied Medicaid access without the protection of spousal refusal.
- **MARRIED ADULTS WHO RELY ON MEDICAID FOR ACUTE AND PRIMARY CARE RATHER THAN LONG TERM CARE, OR TO HELP WITH MEDICARE OUT-OF-POCKET COSTS**—Married adults who need Medicaid for primary or acute medical care and who are not eligible for MLTC would be denied "spousal refusal" rights under this proposal, even if their spouses are abusive or neglectful. Because of the expanded income limits for adults under 65 under the Affordable Care Act, fewer married persons under age 65 will need to use spousal refusal. However, seniors on Medicare are still subject to the old Medicaid income limits - 92% of the Federal Poverty Line (FPL) for couple income limit of \$1,192/month. For these seniors, Medicaid can be vital secondary insurance for severe illness, at little cost to the State, since most of their medical care is covered by Medicare. Also, Medicare recipients with incomes under 135 percent of FPL rely on **Medicare Savings Programs (MSPs)** to help with Medicare out-of-pocket costs, saving them \$104.90 per month in Part B premiums and qualifying them for "Extra Help" (the Low Income Subsidy), which saves dual eligibles an average of \$4,000 in prescription costs each year *at no cost to the State*. In fact, for individuals in "QI-1" -- one of the three MSP programs -- the entire cost is paid by the federal government, with no state share. Spousal refusal can qualify needy seniors and people with disabilities for MSPs.

Additionally, while it is not clear whether a change is intended, we urge keeping the standard in the current law -- where the "applicant has a responsible relative with sufficient income and resources to provide medical assistance as determined by the regulations of the department." The proposed legislation changes this

standard by “comparing the amount of available income and/or resources of the applicant, including the amounts deemed available to the applicant from legally responsible relatives, to an applicable eligibility standard.

*Here are examples of who could be affected by the Governor’s proposal:*

***Helping Senior with Medicare Out-of-Pocket Costs through Medicare Savings Program and Medicaid***

Mrs. D, age 70 and living in the Bronx, suffered vascular and retinal damage from ongoing treatment for cancer. Her Medicare Advantage plan deductible and co-payments were \$5,000 per year, including \$65 for each specialist visit and \$3900/year in co-payments for her seventeen medications. Her Social Security is \$780 per month, and her husband’s retirement income is \$3,000 per month. They have no savings, high credit card debt, and rent and utilities take up a third of their income. Using Spousal Refusal, NYLAG helped her obtain Medicaid and the Medicare Savings Program in June 2013. Medicaid now helps with Medicare coinsurance for her cancer treatment, and the “Extra Help” with Part D – fully paid by the federal government - reduces her prescription co-payments to \$136/year. She also saves \$104.90 month with help of the Medicare Savings Program paying her Part B premium.

***Spousal Refusal Gives Lifeline for Abused Woman and Cancer Survivor to Retain Medicaid***

Ms. D, a 56-year-old Social Security Disability recipient and cancer survivor, could renew her Medicaid coverage through the Medicaid Buy-In for Working People with Disabilities (MBI-WPD) only through spousal refusal. Living in a remote area of a large upstate rural county, she had an abusive spouse she was trying to leave, but had no other place to go. She is in the process of trying to relocate to the downstate area to be closer to her family. Keeping her MBI-WPD coverage was critical to her well-being and health, and allowed her to retain her Part D Extra Help benefit. Empire Justice Center helped her maintain this lifeline – but only with spousal refusal.

***Medicare Savings Program Relieves Burden of Medicare Out-of-Pocket Costs Disabled Adult***

A woman in Orleans County, age 59, receives Social Security Disability benefits for multiple long-term chronic disabilities. Her husband stopped covering her under his employer group health insurance when it became unaffordable. She didn’t know that she needed to sign up for Medicare Part B or Part D when she was first eligible. When she went to enroll, she had a high late enrollment penalty and gave up without enrolling. By October 2013, she had stopped taking her prescription drugs because she couldn’t afford them and wasn’t going to her doctor regularly. Her monthly Social Security check was only \$830. Her husband earnings (gross \$32,000/yr) went toward their mortgage, utilities, food, transportation and his health insurance premiums. She was too young for EPIC. Medicaid was not an option as her spend-down would be extremely high. Empire Justice Center helped her enroll in the Medicare Savings Program, using spousal refusal. With MSP, she enrolled in both Medicare Part B and Part D without any late enrollment penalty, and automatically receives “Extra Help” with Part D drug costs.

***Parental Refusal Provides Crucial Medical Care for Developmentally Disabled Teen***

A 13-year-old girl developmentally disabled with microcephaly since birth has severe developmental delays. Last year, she lost SSI that she had received since she was 8 years old when her father was promoted at work. Without SSI, she also lost Medicaid including crucial Medicaid home care services such as medical care, speech and physical therapy. With her father’s income, she can only qualify for Medicaid with a “parental refusal,” unless she enrolls in the OPWDD waiver. Her parents had never registered her with OPWDD because they did not know about it and had cobbled together adequate Medicaid services for her. NYLAG helped her obtain Medicaid using a parental refusal, reinstating her crucial services. Meanwhile, her mother has applied for the OPWDD waiver but has already waited months for an assessment.

<sup>1</sup> Section 2404 of the Patient Protection and Affordable Care Act (PPACA) amends 42 USC 1396r-5(h)(1)(A) to define “institutionalized spouse” effective Jan. 1, 2014 to include all “medically needy” spouses including those in various home care programs.

**STEERING COMMITTEE:** Center for Disability Rights • Center for Independence of the Disabled/NY • Community Services Society • Consumer Directed Personal Assistance Association of New York State • Empire Justice Center • Legal Aid Society NYC • Medicare Rights Center • New York Association on Independent Living • New York Legal Assistance Group.

**CONTACT:** Cathy Roberts: [croberts@empirejustice.org](mailto:croberts@empirejustice.org) 518.462.6831 or Valerie Bogart: [vbogart@nylag.org](mailto:vbogart@nylag.org) 212.613.5047