

Pataki veto spurs nursing home issue

Change in debt burden could strain spouses' finances

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ALBANY -- Spouses of nursing home patients and of those receiving care at home will no longer be able to refuse to help pay the cost, under the provisions of one of Gov. George E. Pataki's budget vetoes.

And the governor claims the Legislature can't do anything about it.

Pataki last week removed from the budget a long-standing provision that allows spouses of ill people to refuse to pay health care bills, which stuck taxpayers with the tab under the Medicaid program that pays the health care expenses of poor people.

The change would save taxpayers \$34.2 million this year and \$68.5 million next year, Budget Division spokesman John Sweeney said.

The move "minimizes the potential waste and abuse in the Medicaid system," Sweeney said.

An average of 630 spouses of nursing home residents a year refuse to help pay for their mates' care, and more than 8,400 spouses of those receiving home care make the same decision, Sweeney said.

There are about 110,000 people in nursing homes in the state. Taxpayers, through the Medicaid program, pay the bills for 78 percent of them, said Carl Young, president of the state Association of Homes and Services for the Aging. Medicaid pays an average of about \$62,000 a year for each nursing home patient -- or a total of more than \$5 billion a year.

But ending the ability of spouses to refuse to pay those bills could also mean that thousands of elderly people could face impoverishment trying to keep up with Medicaid bills for home care and a loss of a large portion of the assets of spouses of Medicaid patients, advocates said.

"You just can't pull the rug out from people without alternatives," William Ferris of the state chapter of AARP said.

"What are people's choices?" Ferris asked. "Get divorced before you send your spouse to a nursing home? There has to be some middle ground."

There are some protections for the spouses of nursing-home patients. They can keep their homes, car and about \$100,000 in assets and still have Medicaid pay the nursing home bill. But for those in home care, their spouses can keep only about \$5,000, in addition to their homes and cars.

Young said the protections for relatives of home care patients should be improved, but that it is important for the state to have more spouses help pay for the care of their partners.

"Spousal refusal is terrible public policy," he said. "It seems to say that we should change the words of our marriage vows from 'death do us part' to 'until you're an inconvenience to me.'"

Pataki has proposed for years that the state do away with spousal refusal, but it has always been restored by the Legislature.

But this year, Pataki claimed the Legislature violated the state constitution by changing the language of the Medicaid bill to keep spousal refusal. Thus, lawmakers can't override the veto, Sweeney said.

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The spousal issue is one of many in which lawmakers and Pataki read the constitution differently, and the matter could end up in court if lawmakers and the governor don't strike a deal.

Pataki's veto also throws into a doubt the effective date of a new federal law meant to prevent people from transferring their money before going into a nursing home.

Long-standing law required that any gift made within three years could be counted as income for Medicaid purposes. The federal government in February extended that so-called "look-back period" to five years.

But New York has to first pass a law enabling the new rules to take place, explained Bernard Krooks, an elder-law attorney with Littman Krooks LLP, which has offices in White Plains and Manhattan.

The bill Pataki vetoed implemented the new five-year standard, but now that it's vetoed, it's unclear when the new rules might take effect, he said.

"We're in uncharted waters here," Krooks said.