

BERWITZ & DiTATA LLP

Attorneys and Counselors at Law
224 Seventh Street
Garden City, New York 11530
Telephone (516) 747-3200 • Facsimile (516) 747-3727

Lawrence N. Berwitz

Maureen Rothschild DiTata

Medicaid Reform Under Governor Pataki's 2005-2006 Budget Bill

In our last issue we reported that Medicaid reform had received a reprieve from the Legislature. While it is widely conceded that the staggering cost of long-term care has a significant impact on the state's budget, during the last term, the Senate and the Assembly rejected the Governor's proposals for Medicaid cutbacks in favor of implementing budgetary provisions which promote the purchase of private, long-term care insurance. Unfortunately, Governor Pataki's new budget proposal once again calls for significant cutbacks in Medicaid.

Like the prior proposal, the new budget bill calls for the application of the same transfer of asset rules, under which an ineligibility for services, or "penalty," is imposed following a transfer or gift, to home-care applications as is currently imposed for institutional care applications.

The prior proposal sought the elimination of the spousal refusal strategy. The current bill seeks to limit the applicability of spousal refusal to situations where the spouse is actually absent and refuses to make income and resources available to pay for care. In addition, the Department of Health would be granted authority to request the Attorney General to commence spousal recovery actions.

The new bill once again suggests changes which, because Medicaid is federally financed, will require the commissioner to secure federal approval. So, for instance, it calls for the extension of the 36-month "look-back period," the period during which applicants for Medicaid must disclose all financial transactions, to 60 months. The state legislature is not likely to implement this change unless it is assured that federal financing will not be affected. Similarly, under the new proposal, the penalty period resulting from all transfers would commence to run on the date of application instead of the date of transfer.

Medicaid reform has been and continues to be a "hot button" for budget planners. We can anticipate that the call for these reforms will not disappear – just one more reason that Medicaid planning should be implemented sooner rather than later.