

Full Wallets, but Using Health Program for Poor

By ANEMONA HARTOCOLLIS

After immigrating to New York City from China in the 1970s, Z. Y. Tung and his wife worked hard – he as a bank manager, she as a public school secretary – lived frugally and saved every penny they could for the next generation.

Until five years ago, when his wife, Wen Mei Hu, racked by bone-marrow cancer, had to be put in a nursing home, where the bills ran past \$100,000 a year, threatening to quickly drain the couple's life savings of \$500,000. The nursing home told him not to worry: If he signed a document essentially refusing to support his wife of several decades, Medicaid, the federal insurance program for the indigent, would pick up the bill.

"What about me, because I am responsible?" Mr. Tung inquired. He was told that only millionaires had to pay such high costs, and reluctantly, seeing no other choice, he agreed.

Last year, more than 1,200 people in New York City officially turned their backs on their husbands and wives to qualify for Medicaid, triple the number of people five years ago. The practice, known as "spousal refusal," is becoming more common as the population ages and the cost of nursing care rises – and it is coming under increasing attack by government officials looking to curb ballooning Medicaid expenses.

In a recent report, Lt. Gov. Richard Ravitch warned that spousal refusal could be abused as "an entitlement for the less needy" and urged state officials to rethink it, noting that

long-term care accounts for nearly half the state's Medicaid spending.

Lawyers for the elderly argue the tactic of spousal refusal is legal nationwide, and it is most commonly used in New York and Florida, where 136 people refused to support a sick spouse last year.

Without the option of spousal refusal, lawyers say, American health care is like a ghoulish lottery. Those who need doctors' care for illnesses like cancer or heart disease are covered by Medicare, the insurance program for the elderly, while those who need more custodial care for Alzheimer's or stroke must pay for it themselves or dispose of their assets to qualify for Medicaid.

The federal government allows a healthy spouse to keep a house, a car, up to about \$2,700 a month in income and up to about \$110,000 in other resources. Anything above that must be spent on nursing care before Medicaid kicks in.

Nursing home care cost an average of \$123,000 a year in New York City and \$135,000 a year on Long Island in 2008, according to the latest available state data, or twice as much as the yearly cost of the most prestigious colleges and more than the income of all but the top 20 percent of American households.

Howard Krooks, a lawyer who practices in Boca Raton, Fla., and Rye Brook, N.Y., said spousal refusal was becoming more popular with bad economic times. "There's no question it's playing a pivotal role in people's ability to finance long-term care," he said. "They need help."

The way it works: the healthy

spouse refuses to share the marital assets, and the sick spouse assigns his or her "right of support" to the state. The state will then pick up the cost of nursing home care, or in New York, home health care, as well. But there is a catch: the state, through the local governments that help administer Medicaid, can sue the healthy spouse to recover the cost of the care.

That's what happened to Mr. Tung.

In April, he received a letter from the city asking him to disclose his resources so that he might "contribute" to the care of his wife. Mr. Tung, who is now 79 and lives in Midwood, Brooklyn, readily submitted all of his financial information, he said, because he thought that the amount of the contribution would be voluntary and he was more than willing to pay, say, \$10,000 a year or so.

"I am an honest person," he said. "I am willing to pay something for my wife."

His monthly income, \$2,817, was low enough. But his assets, mostly mutual funds and stocks carefully socked away over the years, came to \$550,000 – \$440,000 over the limit. The city asked that he pay \$270,000, the bill for five years of home care. (His wife left the nursing home after a short time.) His lawyer, Pauline Yeung-Ha, negotiated a settlement of \$150,000, which Mr. Tung has paid.

If he had known this would happen, he said, he would have lived a less abstemious life. "If I know before, long ago, I spend all the money," he said. "It's very easy, very easy. Just buy a common house. It's comic,

you know."

Lawyers generally advise that even with the potential of being sued, spousal refusal makes sense because Medicaid pays less for nursing home care than private clients do.

One of Mr. Krooks's clients, an 86-year-old semiretired accountant who lives in Miami Beach, put his wife, who has Alzheimer's, in a nursing home after she became aggressive.

He had a long-term care insurance policy, but it did not cover his expenses, so he resorted to spousal refusal.

Without it, "I would be bankrupt pretty soon," he said, speaking on the condition of anonymity for fear of facing a lawsuit to recover the money.

While many state and local governments do not openly acknowledge the spousal refusal option, New York City actually provides a form letter for it.

"When families come in and I reveal they could use spousal refusal, it's as if I've just lifted 10 pounds off their shoulders," said Judith Grimaldi, Ms. Yeung-Ha's partner in the Brooklyn law firm Grimaldi and Yeung.

Although some politicians, like Thomas R. Suozzi, a former Nassau County executive, who attacked spousal refusal as a Democratic primary candidate for governor in 2006, have charged that the tactic is abused by "millionaires," New York City officials say that is seldom the case.

Almost every time a New Yorker exercises the option of spousal re-

fusal, lawyers from the Human Resources Administration review the applications and seek to recover money when appropriate, said Carmen Boon, a spokeswoman for the agency.

In 2005, the city worked on 394 cases and collected \$1.5 million; in 2009, there were 1,258 cases, and the city collected \$3.7 million.

"The number of cases the city pursued was a good reflection of the number filed each year," Ms. Boon said. "But the city recovered from only a fraction of those, because in most cases the spouse does not have the financial means to allow any significant contribution."

Mr. Ravitch said in an interview that he favored stricter review of spousal refusal cases, with some discretion built into the system to account, for instance, for cases in which the healthy spouse "has a very long life expectancy and didn't have the resources to take care of their own health for the remainder of their lives."

Governor-elect Andrew M. Cuomo, whose support would be needed for any changes, declined to comment.

Lawyers within the New York State Bar Association who represent the elderly have proposed a compromise system. It would allow people to negotiate a payment plan with the state, in which they would pledge to pay a "fair share" of their spouses' nursing home costs – perhaps half their assets – while keeping enough for their own living expenses, Mr. Krooks said. There are plans to try out a version of this system upstate.