



# ELDER LAW ASSOCIATES PA

**ELLEN S. MORRIS, Esq.**  
EMORRIS@ELDERLAWASSOCIATES.COM

**HOWARD S. KROOKS, Esq., CELA**  
HKROOKS@ELDERLAWASSOCIATES.COM  
ADMITTED IN FLORIDA & NEW YORK  
CERTIFIED ELDER LAW ATTORNEY THROUGH NELF

OF COUNSEL:  
**STUART R. MORRIS, Esq., CELA**  
SMORRIS@LAW-MORRIS.COM  
CERTIFIED ELDER LAW ATTORNEY THROUGH  
THE FLORIDA BAR & NELF

7000 WEST PALMETTO PARK ROAD  
SUITE 310  
BOCA RATON, FLORIDA 33433

(561) 750-3850

**1-800-ELDER LAW (353-3752)**

FAX: (561) 750-4069

[WWW.ELDERLAWASSOCIATES.COM](http://WWW.ELDERLAWASSOCIATES.COM)

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## Is the Compact for Long Term Care Right for Florida? By Howard S. Krooks, JD, CELA

The New York State Bar Association Elder Law Section has proffered an alternative means of financing long term care that other states are watching very closely as it moves through the New York State legislature. Last year, Senate Bill S. 3530-C passed the Senate unanimously. Although the bill died at the end of the legislative session in June 2006, it has been reintroduced as S. 116 this year. A companion bill is expected to be introduced into the Assembly and, if a joint bill is approved, it would go to New York's newly elected Democratic Governor Elliot Spitzer for signature.

The New York State Compact for Long Term Care (the "Compact") is a partnership between private citizens and the government whereby private citizens pledge a stated amount of assets to be used for qualified long-term care costs in exchange for a government subsidy that will cover ongoing long-term care expenses. It attempts to present a fair deal to seniors and persons with disabilities confronted with the dilemma of how to pay for long term care costs by allowing them to avoid forced impoverishment (a requirement of the current Medicaid program). After the pledged amount has been spent, the individual can retain a certain amount of "protected assets" and a significant portion of his/her income. Individuals who are found to be "chronically ill" as defined by the Health Insurance Portability and Accountability Act would be eligible to become participants in the Compact. Medical eligibility is determined by an independent agency that contracts with an insurer or is approved by the state.

One of the primary benefits of the Compact is the flexibility it provides in allowing an individual to use pledged assets and subsidy dollars to pay for any level of care, depending upon need. Therefore, the individual will be able to choose whether to receive home care, assisted living or nursing home care, a choice not currently available under the Medicaid program in most states. In Florida, most people shy away from the home care program under Medicaid due to financial restrictions and limits on the number of hours of home care services that one can realistically hope to receive. This forces many people into assisted living facilities, assuming they can qualify for the Assisted Living Waiver or Diversion

**ADDITIONAL OFFICES:**

**AVENTURA:** 20801 BISCAYNE BOULEVARD, SUITE 304, AVENTURA, FL 33180 ■ (305) 682-8330  
**WEST PALM BEACH:** 777 SOUTH FLAGLER DRIVE, SUITE 800, WEST PALM BEACH, FL 33401 ■ (561) 805-9533  
**WESTON:** 2843 EXECUTIVE PARK DRIVE, WESTON, FL 33331 ■ (954) 726-1214



Program. If not, they may be forced into a skilled nursing facility even though their care needs can properly be met in the home setting.

In order to determine the pledge amount, an independent assessment is performed by a third party administrator. All assets must be included in determining the pledge amount unless the asset is specifically excluded. For example, the home is not a countable resource for purposes of determining an individual's pledge amount. Furthermore, no recovery is permitted against the home at a later point in time. While this is already true for Florida residents applying for Medicaid, this is not the case in most other jurisdictions. The pledge amount is determined by multiplying 36 times the state divisor. In Florida, the maximum pledge amount would be 36 x \$5,000, or \$180,000. If an individual possess more than twice this amount, or more than \$360,000, then the maximum pledge would be \$180,000. If the individual had less than \$360,000, the amount of the pledge would be one-half of the countable assets. For example, an individual with \$250,000 would be required to pledge \$125,000. An individual can satisfy the pledge amount by purchasing an equivalent amount of long term care insurance.

Once the pledge amount has been spent on qualified long term care expenses, the government subsidy covers the ongoing long term care expenses. At that point, the individual would be responsible for 1) a 10% co-pay (equal to 10% of the cost for such services), and b) 25% of his/her income. The ability to keep up to 75% of one's income should allow many individuals to remain in their homes by freeing up income otherwise payable to the state under the Medicaid program.

The individual benefits from this type of program by guaranteeing preservation of assets and enhancing the available choice of services and providers. Certain individuals who could not qualify for long term care insurance would be able to become Compact participants, filling an important gap in today's long term care system. The government benefits by shifting the financial burden of the up front costs for long term care onto the state resident, receiving income from the participant and a co-pay, both of which will defray costs once the subsidy begins, and allow providers to receive the Compact rate instead of the Medicaid rate, an amount equal to up to 10% more than the Medicaid rate.

Since this is a pilot program which has not been implemented as a vehicle for those in need, we cannot anticipate each and every challenge that may arise when this program is put into practical use. For now, the Compact seems to offer many advantages over the Medicaid program as outlined above while simultaneously allowing participants to take personal responsibility for their long term care costs.. The Florida Bar Elder Law Section and the Academy of Florida Elder Law Attorneys are taking a close look at the Compact to determine whether it could represent a viable alternative to financing long term care in Florida..

Howard S. Krooks, J.D., CELA, is a partner in Elder Law Associates PA, with offices located in Boca Raton, Aventura, West Palm Beach and Weston, Florida. Mr. Krooks is a certified elder law attorney by the National Elder Law Foundation as accredited by the American Bar Association.