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**Testimony to the New York State Legislature
Joint Hearings of the Senate Finance and
Assembly Ways & Means Committees
2024-2025 Executive Budget**

Topic: Economic Development

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The Center for Elder Law and Justice (CELJ) greatly appreciates the opportunity to provide our comments to the Joint Legislative Budget Committee on Economic Development. CELJ has been serving the Western New York region for over 40 years, providing free civil legal services to older adults, persons with disabilities, and low-income families. CELJ's primary goal is to use the legal system to assure that individuals may live independently and with dignity. CELJ also advocates for policy and systems change, particularly in the areas of housing, elder abuse prevention, nursing home reform, and consumer protection. Currently CELJ provides full legal representation in ten counties of Western New York. CELJ's Free Senior Legal Advice Helpline is open to all of New York State. CELJ operates a central office in downtown Buffalo, with three additional offices in Cattaraugus, Chautauqua, and Niagara counties.

The Executive's proposal includes several important provisions that will positively impact our clients. CELJ urges the Legislature and the Executive to work together and implement essential legislative changes that help ensure older adults can age without the burden of medical and other debt.

- **Support: TED Part JJ with Additional Amendments to Protect Consumers Against Unfair, Deceptive, and Abusive Acts and Practices**
- **Support: HMM Part O to Address the Medical Debt Crisis in New York**
 - **Support: Expansion of Financial Assistance to Hospital Patients**
 - **Support: Prohibition Against Denial of Admission or Treatment to those with Unpaid Medical Bills**
 - **Support: Prohibition Against Commencing a Lawsuit for Medical Debt Against Low-Income Individuals**
 - **Support: Proposal to Separate Patient Consent for Treatment and Patient Consent to Pay for Services**
 - **Support: Prohibition Against Commencing a Lawsuit for Medical Debt Against Low-Income Individuals**

Support: TED Part JJ with Additional Amendments to Protect Consumers Against Unfair, Deceptive, and Abusive Acts and Practices.

CELJ strongly supports and appreciates the Executive's inclusion of amendments to General Business Law (GBL) section 349 that would expand the act to allow consumers to challenge not just deceptive business acts and practices but also conduct by businesses that is unfair and abusive. **The Executive's proposal must be strengthened to clearly remove the "consumer oriented" requirement that has been one of the biggest barriers to consumers utilizing this provision, to remove the cap on damages for violations of this provision, and to remove barriers to bringing class action lawsuits under this provision.** Currently the law provides very limited effective deterrence and protection for consumers due to many barriers that prevent consumers from using the provisions in their individual cases. We believe that with these amendments, this provision will be key to protecting consumers from the unfair and inequitable conduct that they come to us so frequently to address.

The addition of unfair and abusive acts will add coverage for conduct that may not meet the level of intentionally deceiving consumers but that is unconscionable and harmful to consumers. For example:

- A consumer who has their Social Security seized by a creditor even though it is exempt from collection, currently cannot challenge this action as there is no deception. Adding 'unfair and abusive' to the statute will deter this practice.
- Nursing home debt lawsuits that are filed before the nursing home has even submitted the bill to the consumer's insurance, or the nursing home cases in which relatives or other third parties are sued for a loved-one's nursing home stay in direct violation of federal law. Though not deceptive, these practices would be actionable under the unfair and abusive portions of the proposed new statute.

The Executive's **proposal also increases penalties available for violations of the statute**, which will act as a positive deterrent and will help compensate those who have suffered financial losses at the hands of bad actors. **These penalties must be further expanded and strengthened as set forth under S.795/A7138.** S.795/A.7138 would enable consumers to seek to recover actual damages and \$1,000. The budget proposal states that the consumer must be limited to actual damages or \$1,000, whichever is greater. In addition, S.795/A7138 does not place a cap on additional damages that courts may award upon a finding that the bad actor willful or knowingly violated the act. The budget proposal limits such an additional award to an amount "not to exceed three times the actual damages up to one thousand dollars." CELJ supports removing the cap on additional damages. It is important to send a message to deter bad actors in the marketplace from engaging in these unfair practices. Many of the bad actors at play may have deep pockets and limiting damages that may be imposed in a case where the wrongful conduct was willful and knowing decreases the effectiveness of the proposed legislation.

CELJ supports the explicit removal that all requirements that the act or practice be consumer oriented or part of an established pattern and affirmatively declare that this is no longer required. The requirement that has been in place under GBL 349 for many years is that

the consumer must prove the deceptive activity was not just perpetrated against them but is part of the business practices of the company and has been perpetrated against others. This has been one of the major barriers to consumers actually being able to use GBL 349 in a meaningful way to protect themselves. The evidence needed to establish this in court is often not available to the consumer or their attorneys. Corporate entities often claim the information sought on this issue is “proprietary” and refuse to provide it, even in the discovery requests it receives during litigation. It is often not in the consumer’s ability to search the public records or to access information that would allow them to make a claim of a wider, consumer-oriented practice. Since it is so ingrained in the application of the current statute, it would be highly beneficial to include language that affirmatively cancels this requirement.

CELJ supports the inclusion of language allowing class actions to be brought under GBL 349. Class actions serve as important tools to dissuade bad actors from continuing their unfair, deceptive, and abusive practices. They are also an important way for consumers to be able to recover from the impact of these bad practices. The current budget proposition to amend GBL 349 puts restrictions on the ability to bring class action lawsuits by disallowing them in situations where the bad actor tries to identify others who have been harmed and asserts that they will stop the improper activity that violates the statute. It puts the onus on the bad actors to attempt to identify other similarly situated individuals who may have been affected by the improper activity and allows them to get off the hook by making an assertion that they have stopped the improper practice. It gives the bad actors a further way out by just stating that they will cease to engage in the practice in the future without the important tool of court oversight and monitoring that would come with a class action to ensure that they actually do cease their abusive activities. Thus, removing the barriers to bringing class action lawsuits in these matters is vitally important to the effectiveness of this proposal.

Support: HMM Part O to Address the Medical Debt Crisis in New York State

Every day we see firsthand the devastation caused by unexpected illness. Most of our clients are living on a fixed income, barely affording their basic necessities. When faced with steep medical bills for which they have not budgeted, our clients do not know where to turn. Medical providers are failing to communicate to their patients of the existence of financial assistance programs that would greatly reduce the financial burden for many low-income consumers. Many of our clients come to us after the timeframe to apply for this assistance has already expired. Complicated health insurance systems are difficult to navigate and most people do not know how to ensure they are receiving the full coverage their policies allow. We see many instances where our clients believe their insurance coverage should protect them only to find out later that their claims are denied, leaving them with tens of thousands of dollars of debt. We continue to see family members being sued for their loved ones’ nursing home stays, even though this violates the federal Nursing Home Reform Act.

Recent studies have demonstrated the disparate impact of medical debt across New York State. A study by the Urban Institute done using 2022 statewide data shows that medical debt disproportionately affects communities of color and moderate and low-income communities. This study found that in Western New York as of February 2022, the percentage of consumers with medical debt in collections for all communities was eight percent, but for communities with fifty

percent or more of the population being persons of color the rate was fourteen percent. For the lowest income communities making between \$2500 and \$54,200 a year the rate was thirteen percent.¹

Medical debt issues often lead to further consumer debt as consumers may try to pay these exorbitant bills with credit cards or by taking on loans. Medical debt can lead to bankruptcy or the loss of a home or other asset. The fear of medical debt can lead to patients delaying or forgoing important medical care.

CELJ Supports the Expansion of Financial Assistance Available to Patients

CELJ strongly supports the budget proposal to expand the availability of patient financial assistance to pay medical bills. Raising the income level at which such assistance is available is a positive step as is including the underinsured in the eligible pool of recipients. The definition of underinsured is helpful in making this term more concrete to ensure that people's out of pocket medical costs do not eat up more than ten percent of their gross annual income. This is especially important as the cost of necessary living expenses has gone up, including the cost of housing, food, gas, etc. Many middle-income families are living on tighter and tighter budgets making a medical event even more likely to be catastrophically damaging to their abilities to continue to pay for their other necessary living expenses. Our clients, who are typically on Social Security and sometimes a pension, are reporting increasing difficulty in affording their out-of-pocket medical expenses. This expansion of financial assistance will be a positive step towards ensuring that individuals are able to afford their medical care without having to borrow or reduce spending in other areas of their budget.

The additional notice requirements are also helpful. We often see clients come to us with extensive medical bills who are completely unaware of the existence of financial assistance programs. Their providers have not adequately informed them of the options available. The medical billing system is so complex that the bill may not arrive to the patient for a long time after the services have been rendered. Ensuring that notice is given at multiple stages of the process, i.e. at intake/registration, at discharge, and again during billing will be helpful. CELJ advocates that this proposal go even further to ensure that patients are made aware of the financial assistance that they might access. Including more specific language that is straightforward, easy to understand, and thoroughly explains the options would go a long way to increasing the number of individuals who seek out the assistance for which they qualify. Leaving the language up to each individual provider leaves open room for confusion and lack of meaningful compliance with these notice requirements. Going a step further to impose an affirmative duty on providers to send applications for assistance out along with the bill would alleviate the burden to initiate the process that is currently placed on the patient and would likely increase the number of patients who take advantage of these programs.

The removal of the requirement to apply for financial assistance within a certain time period is a tremendous step in the right direction. In our practice we are constantly seeing individuals who come to us too late to apply for financial assistance and who are dealing with a mountain of varying

¹ Karpman, Michael, et. al. *Medical Debt in New York State and Its Unequal Burden Across Communities*. July 2023. <https://www.urban.org/research/publication/medical-debt-new-york-state-and-its-unequal-burden-across-communities>.

types of debts which become overwhelming. Allowing the consumer the opportunity to apply for financial assistance at any stage of the collection process will go a long way to increasing access. Explicitly clarifying that “any stage of the collection process” includes litigation will further help the effort to expand access to financial assistance. As with other consumer protections, we expect that creditors will argue to limit their obligation to provide such assistance by asserting that the collection process refers to the pre-litigation efforts to collect. Thus, it would be beneficial to clarify this point in the statute. Often our clients do not take steps to address their debt until they are threatened with a lawsuit at which time it is usually too late to apply for financial assistance. Expanding financial assistance to those in litigation over medical debts would be helpful in ensuring that these financial assistance funds get into the hands of those who need them and serve the purpose for which they are intended.

CELJ Supports the Prohibition Against Denial of Admission or Treatment to Those With Unpaid Medical Bills

Too often we have clients who feel pressured to settle medical debt cases that they might otherwise win in court as a result of their fear of being denied future treatment and services. Prohibiting the practice of denying admission and treatment to those with unpaid bills will be a positive step to ensuring that clients can consider their options clearly without fear that they will not be able to access the medical care they might continue to need in the future.

CELJ Supports the Prohibition Against Commencing a Lawsuit for Medical Debt Against Low-Income Individuals

The threat of a lawsuit can often times trigger or worsen ones physical health. Clients report to us the physical toll that the stress they are undergoing because they are being sued causes. A lawsuit will typically add several thousands of dollars to an individual’s debt since the creditor’s attorney will always ask to have the judgment include the legal fees and costs of bringing the action. Alleviating these concerns for consumers who are already struggling with health and financial issues is a positive step that will greatly benefit our clients. Furthermore, adding a provision that requires a plaintiff to pay the legal fees and costs incurred by a defendant who is wrongly sued without a proper investigation of their income prior to the commencement of the lawsuit will help deter creditors from ignoring their obligation to investigate the consumer’s income prior to filing a lawsuit.

CELJ Supports the Proposal to Separate Patient Consent for Treatment and Patient Consent to Pay for Services

We often encounter legal cases hinging on signed documents that are required to consent for care but that also impose financial liability. Separating these two documents will help protect consumers against signing contracts under duress in which they agree to take certain measures to ensure payment. Nursing home admission agreements are perfect examples. Our clients sign without having had the document explained to them and without having any understanding of what they are signing. They feel they must sign in order to receive the care they need but are then agreeing, without always knowing, to take certain measures to ensure their bills are paid. This proposal will help curb these practices.

CELJ strongly supports the budget proposal seeking to enhance consumer protections with the above-suggested amendments. We appreciate the opportunity to offer this testimony and can be reached at 716-853-3087 x247 or by email to agathings@elderjusticenyc.org with any questions.