

**Testimony of The Legal Aid Society**  
**Joint Legislative Public Hearing on 2023-24 Executive Budget**  
**Proposal: Health / Medicaid**

February 28, 2023

Alan Levine  
*President*

Zachary W. Carter  
*Chairperson of the Board*

Twyla Carter  
*Attorney-in-Chief*  
*Chief Executive Officer*

Adriene L. Holder  
*Chief Attorney*  
*Civil Practice*

Thank you to the Assembly Ways and Means Committee and Senate Finance Committee for the opportunity to provide testimony on the 2023-24 Executive Budget. The Legal Aid Society is a private, not-for-profit legal services organization, the oldest and largest in the nation, dedicated since 1876 to providing quality legal representation to low-income New Yorkers. It is dedicated to one simple but powerful belief: that no New Yorker should be denied access to justice because of poverty. The Legal Aid Society's Health Law Unit (HLU) provides direct legal services to low-income health care consumers from all five boroughs of New York City. The HLU operates a statewide helpline and assists clients and advocates with a broad range of health-related issues. We also participate in city, state, and federal advocacy efforts on a variety of health law and policy matters.

Over the last three years, the COVID-19 pandemic has highlighted and exacerbated the stark racial disparities in our health care system, and The Legal Aid Society's client communities have been disproportionately harmed by the health and financial impacts of COVID. Soon, the end of Medicaid continuous coverage provisions will put unprecedented strain on the Medicaid program, Medicaid recipients, and the advocates who help them. We look forward to working with the Legislature, the Department of Health, and other advocates and stakeholders to ensure that coverage loss is minimized, especially for the lowest-income New Yorkers.

Last year, the final state budget took important steps to increase Medicaid coverage for seniors and people with disabilities, by creating parity in the Medicaid income level and by expanding coverage to undocumented seniors 65 and older and for one year post pregnancy. Although the increase in the income level has only recently been implemented, we are already seeing a positive impact on our client community. We are deeply disappointed that the Executive Budget and the pending 1332 waiver request rescinds commitments made by the Hochul administration to expand coverage to low-income New Yorkers regardless of immigration status. We look forward to working with the Legislature towards a final budget that strives for an equitable health care system for all New Yorkers.

**Extend Public Health Insurance Coverage to All New Yorkers, Regardless of Immigration Status**

We strongly oppose the delay of the implementation of the extension of Medicaid coverage to individuals 65 and over, regardless of immigration status to January 2024, and the exclusion of undocumented immigrants from the state's proposed 1332 waiver request.

**Justice in Every Borough.**

We recognize that the wind down of the COVID Medicaid extensions has put a strain on Department of Health resources. However, this is a crucial expansion of coverage to vulnerable New Yorkers that should be prioritized. Given that the implementation was originally slated for April 1, 2023, advocates had begun the process of informing client communities of these changes many months ago. This delay compromises our clients' health as well as their trust in the Medicaid program.

For example, The Legal Aid Society is currently working with a 71-year-old client with serious chronic health issues who is undocumented despite being married to a U.S. citizen for many years. Her late husband handled the family's immigration matters and she does not understand how she never achieved legal status. While our unit and our Immigration Law Unit are working to understand her immigration options, we had initially been able to advise her that she could at least enroll in full Medicaid coverage in April. Now, access to comprehensive coverage has been delayed until next year, placing her ongoing health at risk.

Last year, The Legal Aid Society was pleased to hear Governor Hochul acknowledge that New York would pursue a goal of covering all otherwise-eligible New Yorkers, regardless of immigration status, under New York's Essential Plan. Not only does the draft 1332 waiver application retract this commitment, it is also hugely shortsighted from both a fiscal and public health perspective.

If New York requests an immigrant coverage expansion to the Essential Plan in its 1332 Waiver application, the state would save the \$544 million it spends each year on Emergency Medicaid. This could be used on other budget initiatives. Moreover, the pandemic made clear the vital care that New York hospitals, particularly our critical safety net hospitals, provide to New Yorkers. The demand (at roughly \$1,174 per person per year) for uncompensated care spending for these hospitals would drop under an Essential Plan that includes coverage for undocumented New Yorkers. Finally, the state has an \$8 billion surplus in its Basic Health Plan/Essential Plan Trust Fund, funded by the federal government, that increases by \$2 billion each year and can only be used to pay for health coverage. This expansion would come at no cost to the state.

New York is also falling behind states that have received permission from CMS to cover immigrants. Colorado and Washington, for instance, have used waivers to do so and have kept hospitals open in otherwise underserved and rural communities. Furthermore, the waivers have protected their residents from medical debt. The Legal Aid Society strongly encourages the state to include Essential Plan expansion to all otherwise-eligible New Yorkers in its 1332 Waiver application by adopting S.2237 Rivera/A.3020 Gonzalez-Rojas (Coverage4All legislation) in this year's budget.

### **Eliminate the Medicaid Asset Limit**

Last year, the state took important steps toward parity in Medicaid for older adults and individuals with disabilities by making the income limit consistent with the limit for non-disabled adults under age 65. However, the state has still not eliminated the "Medicare cliff," whereby individuals who have

previously been Medicaid-eligible become ineligible when they turn 65 or become eligible for Medicare two years after receiving Social Security Disability. This blatant inequity in Medicaid eligibility for older adults and people with disabilities disrupts access to care and disproportionately leads to denials of coverage for communities of color. Given that a primary residence is exempted from the asset test, homeowners can in fact have significant assets and still qualify for Medicaid. There are stark racial disparities in homeownership in New York and nationally. We strongly urge the Legislature to include elimination of the asset test, or at minimum, a significant increase in the asset test to 600 percent of the Federal Poverty Limit, in one-house budgets.

### **Expand the Medicaid Buy-In for Working People with Disabilities While Protecting Access for Lower-Income Individuals**

The Legal Aid Society supports most of the proposed changes in the Executive Budget to the Medicaid Buy-In for Working People with Disabilities (MBI-WPD). First, we applaud the proposal to eliminate the program's age cap. We frequently work with clients who would be eligible for the program but for being 65 and over, and have fewer options to maintain their Medicaid eligibility only because of their age. As noted above, we believe that the asset test should be eliminated or at least increased for all Medicaid recipients, and therefore appreciate the inclusion in the budget of a much higher asset test of \$300,000 for the MBI-WPD program. We also support the increase in the income limit for this program, but believe that the income and asset test calculations should be based on the actual number of individuals in a household, including minor children, rather than being limited to one or two.

We are concerned about the inclusion in the budget of a cap of 30,000 individuals for the MBI-WPD program. Given the significant proposed increases in the income limit for the program, the number of eligible individuals could increase substantially, especially among higher income individuals. Lower-income individuals should not compete for limited spots in the program with individuals who could have ten times their income.

### **Provide Continuous Medicaid Coverage to Age Six**

The Legal Aid Society recommends that the Legislature include continuous Medicaid coverage from birth to age six in the budget. This will ensure consistent care during the first vulnerable years of life and reduce administrative burdens as children churn on and off coverage.

### **Maintain Funding for Community Health Advocates**

The Legal Aid Society strongly supports the \$3.5 million appropriation for the Community Health Advocates (CHA) program in the Executive Budget and urges the Legislature to provide an additional \$1.734 million to maintain flat funding for the program.

Since 2010, CHA has provided consumer assistance services to more than 472,000 New Yorkers with both private and public health insurance in every county of New York State. The Community Service

**Justice in Every Borough.**

Society of New York (CSS) administers the program with the support of three Specialist agencies – The Legal Aid Society, Empire Justice Center, and Medicare Rights Center. CHA supports a network of 27 community-based organizations and small business-serving groups that provide services throughout the State and operates a helpline to provide real-time assistance to health care consumers. CHA assists with a wide range of health insurance problems including service denials, billing disputes, and questions about coverage. CSS and the Specialists provide technical assistance and accept referrals of complex cases from organizations throughout the network.

Throughout the pandemic, CHA has served as a critical resource for New Yorkers, and CHA's services will be especially crucial as 8 million New Yorkers must recertify for public health insurance coverage for the first time since before the pandemic. In addition, now that the CHA phone number is on all notices of service denial, reduction, and discontinuance for individuals in Medicaid managed care, The Legal Aid Society and other CHA advocates have seen an increasing number of Medicaid recipients seeking assistance with denials of critical health care services.

### **Support Home and Community Based Services by Fairly Funding the Home Care Workforce**

New York's home health worker shortage is well documented. There is significant agreement that the primary reason for this shortage are the low wages paid for this challenging work. The COVID-19 pandemic has exacerbated the problem with these frontline workers, who are overwhelmingly immigrant women of color, being overlooked in New York health policy. The shortage has resulted in many people with disabilities experiencing delays in receiving the services they depend on or not receiving services at all, thereby forcing them into hospitals and nursing homes. The Legal Aid Society has numerous clients who are not consistently receiving the hours of care for which they have been authorized because of the lack of availability of aides. We understand the problem is even worse outside New York City. New York must address this urgent problem.

Unfortunately, the Executive Budget misses opportunities to shore up the home care workforce and includes dangerous policies that could exacerbate the shortage. The proposed budget exempts home care workers from minimum wage indexing, which will have the effect of freezing wages. The Legal Aid Society urges the Legislature to include Fair Pay for Home Care in this year's budget, which would increase wages to 150% of the regional minimum wage. We also strongly urge the Legislature to restore wage parity for the Consumer Directed Personal Assistance Program (CDPAP). Not only does CDPAP provide an important option for consumers who prefer to train and hire their own aides, but it is often the best or only option for care for individuals who have skilled needs that can't be met by personal care aides, or who are unable to secure aides through a traditional agency due to the shortage.

### **Repeal Harmful Changes to Medicaid Long Term Care Services**

The tragic impact of the COVID-19 pandemic on New Yorkers in nursing homes is a stark reminder that Medicaid home and community based services should be prioritized and supported.

**Justice in Every Borough.**

Unfortunately, numerous provisions of recent state budgets, most of which have not yet been implemented, will make it more difficult for elderly New Yorkers and individuals with disabilities to receive the Medicaid long term care services that would allow them to remain safely in the community. The following provisions should be repealed:

- Minimum Needs restrictions. The Legal Aid Society supports S.328 (Rivera) to repeal the new minimum requirements for eligibility for Personal Care Services (PCS), Consumer Directed Personal Assistance Services (CDPAS), and for enrollment in Managed Long Term Care (MLTC). These arbitrary standards discriminate based on diagnosis and have no legitimate connection to the need for care. When implemented, they will serve only to deny care to those who need it, hasten Medicaid recipients' decline, or place an undue burden on family members to provide informal care.
- The 30-month lookback and transfer penalty for those seeking Medicaid home care services. This will add an enormous administrative burden to home care processes and will result in dangerous delays for those seeking services.
- Elimination of Level I "housekeeping" services. These services, for individuals who need assistance with environmental tasks such as cleaning, meal preparation, or laundry, play an important role in preventing falls and other accidents that cause Medicaid beneficiaries to need higher levels of care.

### **Prioritize DOH Oversight of Plans Rather than Performance Metrics and Possible Procurement**

The Legal Aid Society appreciates the Executive Budget's focus on managed care plan performance and accountability as reflected in the proposal to remove Managed Long Term Care plans from the program that do not meet particular standards, and procure plans if necessary. However, we have concerns about the standards used in this proposal and believe that this type of significant overhaul of the managed care program should not be necessary to accomplish improved oversight of the plans.

We strongly believe that DOH currently has tools at its disposal to provide better oversight of the plans. We believe there are metrics that the state should be tracking that are much more important to the actual provision of care than those included in the budget, including plans' support of care in the community and whether plans arbitrarily deny care or services. Plans should be evaluated on the number of home care cases that are insufficiently staffed and whether they successfully move individuals from nursing homes back to the community.

The Legal Aid Society frequently files complaints to the managed care and Managed Long Term Care complaint lines on behalf of clients. Rarely, plan errors are acknowledged and cases are resolved in our clients' favor. However, in most cases, the complaint unit simply reports back the plan's version

of events as its conclusion. There is rarely any indication that the situation is being investigated as a systemic problem even when supporting evidence exists. There are minimal consequences for plans that violate the model contract.

For example, for several years we have repeatedly brought cases to the Department of Health's attention in which a plan denies services as being a non-covered benefit rather than not medically necessary. This deprives a consumer of their right to an External Appeal. We continue to see plans sending these incorrect denials on a consistent basis.

We would strongly support budget provisions that strengthen enforcement mechanisms against plans that violate law, regulations, or contracts, and we believe that the state should prioritize the investment of resources for this purpose.

### **Conclusion**

Thank you for the opportunity to provide this testimony. We look forward to working with the Assembly and Senate to advocate for a final budget that strengthens the Medicaid program and the health care safety net.

Rebecca Antar Novick  
Director  
Health Law Unit  
The Legal Aid Society  
199 Water Street, 3<sup>rd</sup> Floor  
New York, NY 10038  
(212) 577-7958  
RANovick@legal-aid.org