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Testimony of The Legal Aid Society

2016-2017 Joint Budget Hearing: Health/Medicaid

Submitted by Rebecca Antar Novick,
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The Legal Aid Society respectfully submits this testimony in response to the 2016-2017 Executive Budget Proposal on Health/Medicaid. 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 state and federal advocacy efforts on a variety of health law and policy issues.

The Legal Aid Society applauds Governor Cuomo, the Legislature, and the Department of Health for another year of successful implementation of the Affordable Care Act and their commitment to facilitating the expansion of health care coverage for many more New Yorkers. In this period of sweeping change for New York's Medicaid program and the entire health care delivery system, it is particularly important that low-income New Yorkers' access to quality health care benefits and services is protected. We wish to comment on several proposals that we believe could have a significant impact on our clients' health and well-being.

Provide Additional Funding for Community Health Advocates

The Legal Aid Society strongly supports the \$2.5 million appropriation for the Community Health Advocates (CHA) program in the Executive Budget, and urges the Legislature to provide \$1.5 million in order to increase CHA funding to \$4 million.

Since 2010, CHA has provided consumer assistance services to approximately 213,000 New Yorkers with both private and public health insurance in every county of New York State. The Community Service 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.

The CHA program was originally funded through federal Consumer Assistance Program and Exchange grants. At its height, CHA operated as a \$6.1 million program, but those federal funds are no longer available. The Legal Aid Society and the other CHA agencies are grateful that the program was funded with state-only dollars at a level of \$3 million in last year's budget, with the Assembly providing \$500,000 of that funding. However, because of the need to shift to a state budget cycle, CHA was required to spend last year's \$3 million appropriation over nine months and is therefore operating with a \$4 million annualized budget. This has allowed the program to expand its reach in communities throughout the state, but if the program is not funded at a \$4 million level this year it will be unable to continue the network at its current level.

Retain "Prescriber Prevails" in Medicaid Managed Care and Fee-for-Service

The Executive Budget proposes to eliminate the use of "prescriber prevails" in fee-for-service (FFS) Medicaid and Medicaid managed care, only preserving this important protection for atypical antipsychotics and antidepressants.

Although prescriber prevails had been largely eliminated from Medicaid managed care previously, exceptions still exist for the anti-retroviral, anti-rejection, seizure, epilepsy, endocrine, hematologic, and immunologic therapeutic classes in addition to atypical antipsychotics and antidepressants, recognizing that these classes of drugs treat complex and life-threatening conditions for which precise and appropriate treatment is necessary.

This proposal to severely restrict prescriber prevails would have a detrimental impact on people with disabilities and chronic conditions, as well as on those who rely on specific drugs and drug combinations. For these individuals, medical providers are best suited to determine which drug would treat their patients most effectively. Denials of necessary drugs, even if appealed and ultimately resolved in a patient's favor, can endanger Medicaid beneficiaries when they face sudden disruptions in treatment. Providers are best equipped to ensure that their patients have access to the safest and most effective treatments for their conditions.

Preserve Spousal/Parental Refusal

The Governor's budget would eliminate the longstanding right of "spousal/parental refusal" for vulnerable adults and children in New York State. As proposed, the "refusal" will only be applied in situations where a parent lives apart from his or her sick child or where a "well" spouse lives apart from or divorces an ill spouse.

The Legal Aid Society represents families for whom “refusal” represents the only option to secure affordable coverage. Fortunately, we have observed anecdotally that the need for spousal and parental refusal has lessened as a result of expanded Medicaid eligibility and the availability of subsidized private coverage with the Affordable Care Act. However, this provision remains an essential option for some families who may otherwise be unable to afford coverage. Although the expansion of “spousal impoverishment” protections for individuals in the Managed Long Term Care (MLTC) program has made spousal refusal unnecessary for some families, spousal impoverishment is only available to those who have already been determined eligible for Medicaid. Therefore, in many cases couples cannot take advantage of spousal impoverishment without using spousal refusal to enroll in Medicaid. There are a number of additional situations in which spousal refusal remains the only option for affordable health insurance:

- Children with severe illnesses not covered by a “waiver” program, such as those with cancer whose parents cannot afford the high cost of their care;
- People excluded from MLTC, such as those receiving hospice services;
- Married adults who rely on Medicaid for acute and primary care rather than long-term care, and who cannot afford to meet their spend down to access services; and
- Married couples who rely on help with Medicare out-of-pocket costs through the Medicare Savings Program (MSP).

Minimize the Impact on Consumers of Changes to the Managed Long Term Care Program

Medicaid beneficiaries in New York have experienced drastic changes in the way they receive their care over the last five years. As the program continues to shift as we enter the sixth year of the Medicaid Redesign process, vulnerable beneficiaries must not bear the brunt of these changes in a way that compromises access to care.

For example, the Governor’s budget would change the eligibility standard for Managed Long Term Care (MLTC) from needing 120 days or more of home and community based services to needing nursing home level of care. Though we understand that this will impact a relatively small group of individuals, as most MLTC members do meet the nursing home standard and current members will be grandfathered in, we are concerned about whether the local districts have the capacity to adequately deliver home and community based services to a larger population. In addition, MLTC has provided benefits to people that are not available outside of the program, such as home modifications that allow them to live safely and independently at home.

The Legal Aid Society was recently contacted by a client eligible for home care services through the local district who was told that she would not receive services simply because the district could not provide a vendor to provide the services. We are aware that our upstate colleagues are seeing even more significant access problems with regard to home care services and local district capacity.

In addition, transportation services have been removed as an MLTC benefit in the Governor's proposed budget. We understand the utility of aligning the transportation benefits across programs. However, consumers have experienced challenges in accessing transportation services and understanding the benefits to which they are entitled. Regardless of how the transportation benefit is administered, it is a Medicaid benefit which affords beneficiaries due process rights when benefits are denied or discontinued. The state should work to ensure that MLTC members are informed of their rights to access transportation services and that these rights are protected.

Each time there are changes to the way that Medicaid beneficiaries must access benefits and services, there is an increased risk that beneficiaries will lose access to these services. It is crucial that MLTC members' access to transportation to medical appointments be preserved and that plans continue to play a role in coordinating access to the transportation benefit even if they are no longer directly providing the transportation.

Thank you for the opportunity to submit this testimony. Please contact Rebecca Antar Novick, Director, The Legal Aid Society Health Law Unit at (212) 577-7958 or RANovick@legal-aid.org for more information.