



Health Law Unit
199 Water Street
New York, NY 10038
T (212) 577-3300
www.legal-aid.org

Blaine (Fin) V. Fogg
President

Seymour W. James, Jr.
Attorney-in-Chief

Adriene L. Holder
Attorney-in-Charge
Civil Practice

Rebecca A. Novick
Director
Health Law Unit

Testimony of The Legal Aid Society
Joint Budget Committee Hearing: Health/Medicaid
February 16, 2017

Thank you to the members of the Joint Budget Committee for the opportunity to testify today in response to the 2017-2018 Executive Budget Proposal on Health/Medicaid. My name is Rebecca Novick and I am the Director of the Health Law Unit at The Legal Aid Society in New York City.

Introduction

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 matters.

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 in particular the first year of the availability of the Essential Plan. The popularity of this program is a testament to the fact that working low-income New Yorkers have been desperate for a truly low-cost health insurance option. This coverage is crucial to ensuring that these hard-working individuals can access care in these unstable times.

This is a time of unprecedented uncertainty about the future of health care in this country. We are confident that New York will continue to be a leader in providing high quality comprehensive health care in the Medicaid program to needy New Yorkers. As New York's Medicaid program continues to implement its own sweeping changes, it is particularly

important to protect low-income New Yorkers' access to quality health care benefits and services. 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 an additional \$2.25 million to fortify this critical program.

Since 2010, CHA has provided consumer assistance services to more than 280,000 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 25 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 \$7 million program, but those federal funds are no longer available. The Legal Aid Society and the other CHA agencies are grateful that the program has been funded with state-only dollars for the past two years and appreciate the support of the Legislature to add \$500,000 in 2015-16 and \$750,000 in 2016-17 to funding provided in the Governor's budget. However, a decrease in annualized funding from 2015-16 to 2016-17 meant that the program lost two CBOs from the network. With more funding, CHA can help more New Yorkers, shoring up helpline staff to keep up with increasing demand and contracting with more organizations throughout the state where consumers can get assistance in person. CHA is already handling calls from consumers who are extremely concerned about what the news out of Washington means for their coverage. In the face of uncertainty about the ACA and the Medicaid program, CHA's role is more important than ever.

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 six years. As the program continues to shift as we enter the seventh year of the Medicaid Redesign process, vulnerable beneficiaries must not bear the brunt of these changes in a way that compromises access to care. We urge the Legislature to take the opportunity when legislating changes to the program to incorporate provisions that ensure that clear information is provided to beneficiaries and that plans or local districts are held accountable when there are failures of care management or access to services.

Eligibility for MLTC

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 a continuous period of more than 120 days from date of enrollment, to then on October 1, 2017, 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 that the local districts may not 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. Individuals who receive personal care services at the local district also would not be eligible for spousal impoverishment budgeting. Spousal impoverishment budgeting allows MLTC enrollees to remain in the community while their spouse maintains some income and assets. Depriving a segment of the current MLTC population of this protection could have the consequence of prematurely forcing personal care recipients into a nursing home where spousal impoverishment budgeting is available.

Transportation Carve-Out

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, this change, if it goes forward, has the potential to disrupt care. This change should only proceed in combination with provisions to more carefully evaluate the ability of the state's transportation vendors to provide appropriate services to MLTC enrollees. Current law states that the commissioner should adopt quality assurance measures for the transportation vendor "if appropriate."¹ It is not only appropriate but essential that any transportation vendor with which the state contracts meets stringent quality measures and demonstrates expertise in serving this complex population.

Recently, a seriously disabled Legal Aid Society client in mainstream Medicaid Managed Care waited for transportation home from a medical appointment for three hours, half of that time outside in the cold because his doctor's office had closed for the day. The same client had difficulty arranging for transportation to a pharmacy for a fitting for a medical device, even though the plan had ordered the fitting.

Unfortunately our MLTC clients have transportation problems as well. One of our clients who is blind, wheelchair bound, and receives dialysis does not get assistance getting in and out of the ambulette from her transportation vendor and often requires help throughout her trips. Only after extensive advocacy with her MLTC plan did the plan acknowledge that she cannot safely travel without the assistance of her personal care aide and that her aide should be paid for that time.

¹ N.Y. Soc. Serv. L. § 365-h(4).

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 competent transportation services and that these rights are protected. The state should also exercise tighter oversight of transportation providers no matter how the benefit is administered.

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.

Preserve Spousal/Parental Refusal

The Governor's budget would limit the longstanding right of spousal refusal for vulnerable individuals in New York State. As proposed, the refusal will only be applied in situations where a spouse lives apart and is unwilling to support the applicant. Under the current law, the refusal is applied in situations where a spouse lives apart *or* is unwilling to support the applicant.

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).

Retain "Prescriber Prevails"

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.

Increased Cost Sharing in the Essential Plan

The Governor's budget would expand the cost sharing requirements for the Essential Plan and implement a \$20 monthly premium for individuals with incomes between 138 and 200 percent of the federal poverty level. The premiums would be increased by the annual growth percentage in the Medical Consumer Price Index beginning in 2018.

The Legal Aid Society represents individuals for whom increased cost sharing is a barrier to enrolling in health insurance. In other states that have introduced cost-sharing for low-income adults, individuals have disenrolled and gone without needed care as a result of premiums and cost-sharing changes. The Legal Aid Society is concerned that \$20 monthly premiums will affect the coverage of people who may not be able to pay because of poverty.

While cost-sharing may be effective in limiting program costs, studies have shown that cost-sharing decreases the likelihood of beneficiaries using essential services. In a study about the effect of cost-sharing and premium change on low-income adults enrolled in Washington's Basic Health Plan, 20% of individuals went without needed care over a five to six month period and 28% reported they would drop their own coverage if premiums rose even slightly.²

Increased Prescription Drug Copays

² Hendyx, Michael, et al. "Effects of a Cost-Sharing Policy on Disenrollment from a State Health Insurance Program." *Social Work in Public Health*: Vol. 27 (No. 7): 671-686. 2012; Snyder, Laura and Rubowitz, Robin, "Premiums and Cost-Sharing in Medicaid: A Review of Research Findings." Kaiser Commission on Medicaid and the Uninsured, 2013.

We are concerned about the increase in prescription and non-prescription drug copayments in the Medicaid program. As noted above, even moderate increases in consumer cost-sharing can interfere with low-income individuals' ability to access coverage. The reality is that many of our clients do not have \$1 or \$2 to pay for a prescription and will miss out on taking needed medicine because they lack the copayment.

It is particularly important that any increase to consumer cost-sharing should be accompanied by meaningful efforts by the state to remind providers and consumers about their rights with regard to accessing services. When the pharmacy benefit was carved in to Medicaid Managed Care in 2011, The Legal Aid Society received many calls from consumers who had been denied prescriptions because they could not afford the copay. Although Department of Health staff were very helpful in resolving individual cases and reminding pharmacies about their obligations, it is inevitable that many more people throughout the state were turned away without their medications and did not make it to an advocate who could help. The problem happened in small pharmacies and huge chains alike. Plans, pharmacies, and consumers should be advised of Medicaid beneficiaries' right to a drug or supply even if they cannot pay the copayment.

Conclusion

Thank you for the opportunity to testify today. We look forward to working with the legislature to help preserve a strong Medicaid program while protecting beneficiaries' rights.

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