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Testimony of The Legal Aid Society
Joint Legislative Budget Hearing 2021-22: Health/Medicaid

Submitted by:
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Introduction

Thank you to the Assembly Ways and Means Committee and Senate Finance Committee for the opportunity to provide testimony on the 2021-22 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 state and federal advocacy efforts on a variety of health law and policy matters.

The COVID-19 pandemic has highlighted in previously unimaginable ways the tragic racial disparities in our health care system. The shocking disparities in infection and death rates, and now in vaccination distribution, in communities of color should be a wakeup call to all levels of government about the urgent need to invest resources into the health care safety net. The Medicaid program, public hospitals, and other safety net providers have served as crucial supports to low-income New Yorkers during the pandemic. Unfortunately, the Executive Budget misses many opportunities to strengthen the health care safety net, instead asking for further sacrifice from the communities who have already given too much. It also fails to rectify dangerous Medicaid long-term care policies passed in recent budgets that threaten the ability of elderly New Yorkers and individuals with disabilities to receive care in their homes and communities. These policies make it more likely that individuals who could receive care at home are forced into nursing homes which have been the epicenter of the most tragic consequences of the pandemic.

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Eliminate the Global Cap

The Legal Aid Society opposes the extension of the Medicaid Global Cap in the Executive Budget. The cap should be eliminated. The Global Cap is entirely inconsistent with the fundamental purpose of the Medicaid program – providing high quality health care to low-income New Yorkers and individuals with disabilities. It does not account for enrollment growth or changes in service utilization. The sharp increase in Medicaid enrollment this year is a positive indicator that the program is serving its purpose, not a justification for arbitrary cuts in order to stay under the cap. As a direct result of the Global Cap, the budget includes a 1 percent across-the-board cut that does not exempt the safety net providers that stand to suffer most. The Global Cap has always been a poor excuse for fiscal responsibility in the Medicaid program. It should be replaced by policies that recognize the changing needs of the program and the New Yorkers it serves.

Eliminate All Essential Plan Premiums, Including Dental and Vision Premiums

We strongly support the Executive Budget provision eliminating Essential Plan premiums for those with incomes from 150 percent to 200 percent of the Federal Poverty Level (FPL). This \$20 premium can be a barrier to consistent enrollment in the Essential Plan and its elimination will benefit current enrollees and is expected to result in the enrollment of an additional 100,000 New Yorkers in the program.

The final budget should go further and should eliminate dental and vision premiums in the Essential Plan. Currently, those from 150 to 200 percent FPL must pay an additional \$30 monthly premium for dental and vision in addition to the \$20 monthly premium. The Executive Budget proposes spending an additional \$620 million on provider reimbursement and quality incentive bonuses to insurers in the program. For a fraction of this cost – an estimated \$180 million – all Essential Plan members could have free dental and vision coverage. Poor dental health is closely linked to other negative health outcomes. Not only would free dental and vision premiums improve access to these services, but it would prevent the administrative costs of churning members in and out of dental and vision coverage if they have difficulty maintaining premium payments. This is a vastly more urgent priority than payments to providers and insurers.

Maintain 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 \$1.434 million to maintain flat funding for the program.

Since 2010, CHA has provided consumer assistance services to more than 384,000 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

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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, working with consumers who did not know how to access health services when physicians' offices closed and helping clients understand the impact of COVID-related policies on Medicaid and other coverage. The need for CHA services has only grown as consumers continue to need assistance navigating coverage rules, appealing denials of health services, and fighting medical bills.

Reject Cuts to Safety Net Providers

The Legal Aid Society strongly opposes the proposed elimination of Indigent Care Pool (ICP) funding for public hospitals. ICP funding supports hospitals that treat a disproportionate share of Medicaid recipients or individuals who are uninsured – a role that public hospitals serve in all times but particularly during the COVID-19 pandemic. The pandemic has highlighted the crucial role that public hospitals serve in their communities and the ways in which they have been chronically underfunded. It is outrageous to cut their funding further during this time.

Enact Comprehensive Medical Debt Reform and Medicaid Overpayment Reform

The Executive Budget misses an opportunity to assist New Yorkers struggling with medical debt. The final budget should incorporate all of the provisions of the Patient Medical Debt Protection Act (PMDPA), A3470A/S2521A, which would take numerous important steps to address the crisis of medical debt in New York, which disproportionately impacts communities of color, and which has been exacerbated by the financial impacts of the pandemic.

In addition, the final budget should include the provisions of S4540/A5613, which would reform the Medicaid overpayment investigation and collections process and bring fairness to a process that is deeply unfair and rife with due process violations. The Legal Aid Society represents hundreds of current and former Medicaid recipients facing these investigations. Very often, our clients were in fact eligible for Medicaid for all or part of the period of the investigation, but many are pressured into signing settlement agreements that they cannot afford without a full and fair investigation into their eligibility or an opportunity to provide information about financial hardship. Often, the result of one of these settlements (or a default judgment for those who do not settle and are sued) is to plunge New York families into debt when they have just begun to get out of poverty.

We support the proposal in the Public Protection and General Government Article VII bill that would limit the interest rate on a judgment or accrued claim to the one year United States treasury bill rate. The PMDPA and the Medicaid overpayment legislation include this provision for medical debt and Medicaid overpayment cases, but we encourage the Legislature to include this broader provision in the final budget.

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Expand the Essential Plan for Those Impacted by COVID But Excluded from Medicaid

The Legal Aid Society supports broad-based health coverage expansions that include individuals who are excluded from Medicaid and other public health insurance because of immigration status. We strongly urge the Legislature to advocate for inclusion in the final budget of provisions that, at minimum, open Essential Plan enrollment to those with a confirmed or suspected COVID-19 infection who are ineligible for Medicaid because of their immigration status.

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. 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. These provisions should be repealed:

- New minimum requirements for eligibility for Personal Care Services (PCS), Consumer Directed Personal Assistance Services (CDPAP), 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, hastening Medicaid recipients' decline or putting an undue burden on family members to provide informal care.
- 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.
- The addition of more assessments and layers of bureaucracy to the home care assessment process will delay new applicants from enrolling in plans and increases in services for those who need more 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.

In addition, the final budget should include provisions to ensure that the nearly 20,000 Medicaid nursing home residents who have been disenrolled from MLTC since August can return home to the community if that is their goal. This policy change, passed as part of the 2018-19 budget, excludes from MLTC those who are in a "long term nursing home stay" of at least three months. Unfortunately, for those who do wish to return home to the community, disenrollment from MLTC can cause significant delays. We are discouraged that this provision was implemented during the pandemic, when visits and social supports for those in nursing homes have been severely limited. In addition, the recent implementation of this provision does not include important protections to ensure that those who do intend to return to the community are not hindered from doing so. We

recommend that all notices of disenrollment be sent to the nursing home resident's "designated representative" in addition to the resident. Currently, notices are only sent to those identified as a representative on a Medicaid application. Many nursing home Medicaid applications are submitted by the nursing home itself and leave out the individual's actual designated representative. This has allowed for the disenrollment from MLTC of nursing home residents who in fact are intending to return home but did not receive the notice.

In addition, no nursing home resident who indicated a desire to be discharged home on the quarterly Medical Data Set form should be disenrolled from MLTC. Also, the "Special Income Standard for Housing Expenses" that allows individuals leaving a nursing home to afford to remain in the community must be expanded to include those who leave the nursing home under the "Immediate Need" program rather than enrolling directly in MLTC.

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.

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