HARLEM UNITED

Testimony of Jacquelyn Kilmer, Chief Executive Officer

2021 Joint Legislative Public Budget Hearing on Health

February 25, 2021

Thank you for the opportunity to provide testimony on the FY2022 Executive Budget on behalf of Harlem United. For over 30 years, Harlem United's mission has remained the same: to provide healthcare, housing, prevention and supportive services to those most in need throughout Upper Manhattan and the South Bronx. Each year, Harlem United conducts more than 24,000 medical visits, provides housing for nearly 1,000 formerly homeless people, engages over 10,000 clients across all programs, and offers more than 20,000 hot meals and pantry boxes to low-income New Yorkers.

We are providing this testimony specifically to address (1) the planned pharmacy benefit carve-out from Medicaid managed care to a fee-for-service model which was adopted as part of the FY2021 budget, and (2) the 340B Reimbursement Fund established in Part C of the Health and Mental Hygiene Article VII legislation in the FY2022 Executive Budget, as amended in the 30-day amendments. We are strongly opposed to both, and respectfully urge the Legislature to reject the Medicaid pharmacy benefit carve-out, reject the 340B Reimbursement Fund, and support A.1672A(Gottfried)/S.2520(Rivera) which will delay implementation of the pharmacy carve-out for 340B covered entities and HIV Special Needs Plans until April 2024.

It is imperative that immediate action be taken by the Legislature to stop the implementation of the pharmacy carve-out. On February 25, 2021, the day of this budget hearing, we were informed that the health plans have just been instructed by the Department of Health to send letters to their beneficiaries notifying them that the pharmacy carve-out will be implemented starting May 1, 2021 (the original date was to be April 1, 2021, but beneficiaries must receive 60 days' prior notice of any change). The health plans are being instructed to send these notices to their beneficiaries on March 1, 2021. The health plans have been given barely 4 days' notice that they must send out these notices. It is simply unconscionable for the Department of Health to require that these notices be sent prior to the completion of the budget process, at the earliest. It is difficult not to draw the conclusion that DOH is well aware that once these notices are sent out, it will be nearly impossible to reverse the decision to implement the carve-out or to at least delay implementation, and that this is a way to do an end-run around the budget and legislative process and force the pharmacy carve-out to become a reality. The Department of Health is playing with the lives of New York's most vulnerable communities.

The pharmacy benefit carve-out will decimate New York's safety net system, including community health centers, Ryan White program providers, and disproportionate share hospitals. Any threat to the safety net system will disproportionately impact Black and brown New Yorkers, New Yorkers with low incomes, immigrants, the uninsured, those who already

experience health disparities—all communities that have been hardest hit by the COVID-19 pandemic.

The pharmacy carve-out will impact the Federal 340B Drug Discount Program and the people who rely on the services and programs that the 340B Program supports. The 340B Program allows safety net providers—like community health centers, HIV clinics, Ryan White program providers and hospitals that serve low income New Yorkers—to buy drugs at discounted prices and get reimbursed at a higher rate. Participating safety net providers, like Harlem United, use the savings to help subsidize the cost of medications so we can provide low-or no-cost medications to our patients. We also reinvest the savings in our programs and services—to expand access to health care for thousands of medically underserved New Yorkers, and to provide services such as healthy meals, housing, transportation, care coordination and legal services. These are services for which we are not otherwise reimbursed, but that are critically necessary to address the health disparities suffered by the highest need communities in New York State. If the State proceeds with the plan to carve out the pharmacy benefit, it will have dire consequences for the fiscal stability of safety net providers and for the health and lives of the people we serve.

If the pharmacy carve-out goes into effect, the savings that the participating safety net providers currently receive from the 340B program will be eliminated. Loss of those funds will force safety net providers to lay off staff, reduce services, eliminate programs and, in many cases, close their doors entirely. The impact on the communities we serve will be devastating. They will lose access to life-saving services and medications. Their health will suffer. Progress in our fight to end the HIV/AIDS epidemic will be stalled if not lost altogether. Our goal of achieving health equity for all—a goal we can only reach through the work of the safety net providers—will become achievable. And this will all happen in the midst of the most significant public health crisis in modern history.

Harlem United (through its healthcare subsidiary) is a covered entity under the 340B Program. If New York State implements the pharmacy carve-out, we will lose approximately $1.5 million to $2 million annually in 340B savings upon which we currently rely to provide essential services for those in our care. We will not be able to replace this money from other sources. We will be forced to lay off staff and reduce our services at a time when the communities we serve need us the most.

As a Federally Qualified Health Center (“FQHC”) with a Healthcare for the Homeless designation, nearly 75% of Harlem United’s patients need and qualify for the 340B drug discount program. The vast majority of our patients live with multiple chronic physical and mental health conditions, requiring complex medication regimens. Harlem United relies on the savings obtained through the 340B Program to subsidize the cost of discounted medications for our uninsured and underinsured patients. In addition to allowing us to subsidize the cost of necessary medications for our uninsured and underinsured patients, by reinvesting the savings we obtain through the 340B Program, we are able to provide outreach, care coordination and patient navigation services through the following staff positions which are funded through the 340B savings:

- Patient Navigator, who tracks patients who are lost to care, checks client eligibility for Medicaid and helps to connect patients to all Harlem United services.
- Jitney Driver, who transports our patients from shelters, SROs, soup kitchens and other locations to our clinics for their appointments, and also transports our patients between and among Harlem United facilities to access our full spectrum of care.
- Business Development (Outreach) Staff and Peers (client stipend workers), who go out into the community to connect folks who are out of care to our clinics and work with existing patients to help retain them in care. Additionally, critical to the goals of Ending the HIV/AIDS Epidemic, the team also works with the virally unsuppressed population to connect them to case management services with the goal of getting them the help and support they need to reach and maintain viral suppression. This team of staff is also now engaged in assisting with registration for our COVID-19 vaccine clinic.

Nearly 75% of the patients Harlem United serves are homeless. All of the navigation, transportation and outreach services described above are critical for engaging and retaining in care this very transient population that we serve. Loss of the savings obtained through the 340B Program will prevent us from being able to provide low-cost and free medications to our uninsured and underinsured patients and will force us to eliminate the positions described above. Loss of these positions will, in turn, severely limit our ability to provide critically needed care to the most vulnerable New Yorkers.

Harlem United also serves a significant number of French-speaking West African immigrants, primarily women, who are in need of specialized gynecological and other women's health services that we are able to provide through our Women's Holistic Health program. We currently employ a physician who is French-speaking and specializes in providing these services to this population. We are currently recruiting for a French-speaking patient navigator to assist with connecting these patients to much-needed support services in Upper Manhattan and other areas of New York City. Without the savings from the 340B Program, we will be forced to scale back or completely eliminate this specialty care and navigation services.

Of particular importance in the current trajectory of the COVID-19 pandemic, FQHCs, like Harlem United, are playing a critical role in implementing the State's vaccination plans. Communities served by the community health centers are those who, due to a long history of discrimination and mistreatment by the medical community, are most suspicious of the medical community in general, and untrusting of drugs and vaccines in particular. It will be the providers in the community health centers who will be the most successful at establishing the trust necessary within these communities to vaccinate as many people as possible. It will be these providers who will need to listen to the fears and concerns of their patients, talk to them, educate them, and build trust, before they can administer the vaccines. While administration of the vaccine is reimbursable, all of the time necessary for outreach to the community and for these discussions leading up to vaccine administration is not reimbursable, and loss of the savings from the 340B Program will significantly impede the ability of our outreach staff and providers to spend this necessary time. The success of the vaccination plans in communities of color depends on the very safety net providers who will be losing millions of dollars if the pharmacy carve-out is implemented.

The carve-out will also jeopardize the State's Special Needs Plans who work hand-in-hand with the community-based 340B providers, who, like Harlem United, help people living with HIV/AIDS access life-extending therapies and reduce hospital use associated with unmanaged HIV disease. Separating the pharmacy benefit from the rest of a patient's care management will result in certain disruption to the coordinated care that is so vital to people living with HIV, most of whom require multiple medications to manage multiple chronic conditions that accompany aging with HIV.

Harlem United does not believe the pharmacy benefit carve-out will achieve the State's stated goals of improving the Medicaid program and containing costs. The Department of Health has stated the carve-out will achieve $87 million in State savings in FY22. However, it will result in an approximately $245 million annual loss to the community based providers who serve the most vulnerable communities in the State. FQHCs, alone, stand to lose a collective $100 million per year. A survey of just 15 HIV clinics and Ryan White program providers found they would lose at least $56.2 million annually, and a small subset of hospitals reported that they would lose an additional $87 million in the first year. We also dispute the Department of Health's calculation of the estimated savings. For example, we now know that the Department of Health failed to account for the loss of Federal funds resulting from the decrease in premium tax that will accompany the pharmacy carve-out. This loss is estimated to be $39 million, thus decreasing the Department of Health's estimated savings to $48 million, assuming all other components of that calculations are correct. The Menges Group has also refuted the State's projected savings, calculating that the State will actually **lose** $154 million in the first year of the carve-out and a total of $1.5 billion over five years, largely due to increases in avoidable emergency and inpatient costs. To be clear, these avoidable emergency room and inpatient costs will occur because of the loss of the safety-net providers who are currently doing all they can to keep the communities they serve out of the emergency rooms and hospitals.

In an attempt to mitigate the negative financial impact the carve-out will have on safety net providers, the Governor's Executive Budget provides for a "permanent" Reimbursement Fund in the amount of $102 million from savings to support covered entities that currently benefit from 340B savings. The methodology for distribution is to be determined by the Commissioner of Health, and despite the fact that implementation is looming, no proposals regarding this methodology have been shared with the stakeholders. What we do know is that, based on the language of the Executive's budget bill, the 340B providers who are eligible to participate in this pool do not include non-clinic Ryan White program providers or disproportionate share hospitals. In the 30-day amendments, the non-clinic Ryan White program providers were added as eligible to participate in this Reimbursement Fund, but no additional funds were added. Despite the fact that the Department of Health repeatedly says that the safety net providers will be "made whole," through this fund, taking into account all of the 340B providers, the $102 million is a mere 40% of the losses they will suffer. In addition, the pool of money for distribution must come from "savings," and so assumes that savings will be realized. Finally, no proposed "mitigation" or "reimbursement" for the 340B providers that is subject to the State budget process is "permanent" or a long-term solution for sustainability of New York's safety net.

The 340B Program is a well-established and existing mechanism created by Congress to ensure that safety net providers have the necessary resources to expand uncompensated care programs and to adequately care for their patients' health and health related social needs. It is unfathomable for New York to implement the pharmacy carve-out, thereby denying otherwise eligible healthcare providers access to these savings at any time, but it is particularly egregious during this public health crisis —a crisis that cannot be effectively addressed without a strong network of trusted community-based safety net providers.

The services provided by the safety net providers using the savings from the 340B Program are critical to reducing the persistent health disparities experienced by the people served by these safety net providers—New Yorkers who face barriers to effective disease prevention and treatment due to race, ethnicity, gender identity, sexual orientation, status as a drug user or sex worker, or other sources of bias, discrimination, and exclusion in health care delivery. These are the same patients who have been most affected by COVID-19.

The pharmacy benefit carve-out will victimize these communities again, by limiting their access to care and support in the midst of a global pandemic. This carve-out is a lose-lose proposition. It will decimate the safety net, people will get sicker, hospital admissions and emergency room visits will increase, all of which will dramatically drive up the cost of the Medicaid program. We strongly believe it is imperative to entirely reject the carve-out for safety net providers participating in the 340B drug discount program. Preventing implementation at this time by passing A.1671A/ is a necessary first step. In addition, it is imperative that all necessary steps be taken immediately to prohibit the Department of Health from requiring that the health plans send notices to their beneficiaries regarding the carve-out until at least after the budget process has been completed.

For questions or follow up, please feel free to contact me directly by phone at 212-803-2886 or 917-428-0049 or by email at jkilmer@harlemunited.org. Thank you.