



**Assembly Ways and Means and Senate Finance Committees
Joint Legislative Budget Hearing on Health/Medicaid**

Written Submission by
Empire Justice Center, Health Law Unit
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Empire Justice Center is a statewide, multi-issue, multi-strategy non-profit law firm focused on improving the “systems” within which poor and low-income families live. With a focus on poverty law, Empire Justice Center undertakes research and training, acts as an informational clearinghouse, and provides direct representation and support to local legal services programs and community-based organizations. As an advocacy organization, we engage in legislative and administrative advocacy on behalf of those harmed by poverty and discrimination. As a non-profit law firm, we provide legal assistance to those in need and undertake impact litigation in order to protect and defend the rights of disenfranchised New Yorkers. The health law team is dedicated to ensuring access to quality, affordable health coverage for all New Yorkers.

New York Should Repeal the Medicaid Spending Cap

New York’s Medicaid spending cap has been in place since 2011. It was presented as a mechanism to limit growth in Medicaid spending and instill discipline in Medicaid budgeting. The cap was set indiscriminately and was not designed to keep pace with the growth of the program. While we appreciate that the Governor’s budget proposal would improve the formula for setting the cap (and support this change if the global cap is retained), the 2022-23 Executive budget would extend the cap for an additional two years.

Empire Justice Center fully endorses the position of **Medicaid Matters NY** (of which we are a member organization) and **New York Legal Assistance Group (NYLAG)** in seeking removal of the global cap. Most significantly, the cap is not designed to be responsive to increases in the number of people covered by the program or the cost of health services. As the COVID-19 pandemic has demonstrated, we need flexibility to

respond to urgent needs that increase Medicaid enrollment and spending, without the constraints of the arbitrary cap.

Medicaid Expansion for Aged, Blind & Disabled

Empire Justice Center fully supports the Governor’s bill that will expand Medicaid eligibility for seniors and people with disabilities by raising the income limit from 84% to 138% of the Federal Poverty Level (FPL) and eliminating the asset test. These changes are necessary and we applaud the Governor for addressing the inequity that currently exists in Medicaid eligibility due to age and disability status. Raising the income limit will prevent low-income New Yorkers from falling off the “Medicaid cliff” when they receive Medicare. Eliminating the asset test will ensure that seniors and people with disabilities are not disproportionately penalized for having modest cash savings. Together, these changes will enable more New Yorkers to have access to the care they need.¹

Expand Eligibility for the Medicare Savings Programs

The expansion of Medicaid eligibility for the “disabled, aged, blind” populations is a very important step in improving equity and access to health services. However, many of these beneficiaries also have Medicare expenses that they struggle to afford on limited annual household incomes. The Medicare Savings Programs (MSP) provide critical financial support for low-income older adults and people with disabilities by helping meet the costs of Medicare premiums and possibly coinsurances and deductibles as well. This financial assistance can be a lifeline, allowing enrollees to maintain their coverage; access needed care; and afford other necessities, like food and rent.

We echo the positions of **Medicaid Matters NY**, **Health Care for All New York (HCFNY)**, **NYLAG** and **Center for Elder Law Justice**, and support expanding the eligibility for the MSP from 135% of the FPL to 156%. This would improve affordability, enabling low-income individuals to use their Medicare benefits without accruing debt. This modest eligibility expansion to MSP can be achieved in way that that allows for administrative efficiency, and without added cost to NYS.

¹ See <https://medicaidmattersny.org/advocates-urge-governor-to-include-eligibility-equity-in-the-executivebudget/> for additional information and examples as to why this expansion is needed.

Expand Access to the Essential Plan and Post-Partum Care for Immigrants

Empire Justice Center supports the Governor's proposal to expand eligibility for the Essential Plan from 200% to 250% of the FPL, allowing many more New Yorkers to access affordable health insurance coverage through the Marketplace. However, we echo the concerns raised by **Medicaid Matters NY**, **HCFNY** and **NYLAG** that the Essential Plan was not expanded to cover all immigrants.

Empire Justice Center also supports the expansion of Medicaid coverage from 60 days, to a full 12 months post-partum. This overdue change will provide much needed continuity of care, and protect new parents from the adverse effects of unaffordable medical bills. However, we join with **Medicaid Matters NY**, **HCFNY** and **NYLAG** in highlighting that the Executive Budget proposal excludes many immigrants. New York State currently uses state-only funding to provide coverage during pregnancy and 60 days post-partum for immigrants who are not eligible for federally funded Medicaid. By failing to include immigrant women from the proposed coverage expansion to 12 months post-partum, New York would be reversing, rather than furthering the goal of reducing maternal mortality and morbidity for all New Yorkers. The Legislature must ensure the expansion of the Medicaid for Pregnant Women program covers all individuals currently eligible for the program, regardless of immigration status.

Retain Prescriber Prevails

The Executive Budget once again proposes to eliminate "prescriber prevails." This longstanding requirement ensures that an individual's medical provider has the final say in any disputes over which drug (in certain drug classes) would treat their patient safely and most effectively. This requirement is necessary because these medications are used to treat complex medical conditions which, if denied or disrupted, can jeopardize an individual's short- and long-term health. Empire Justice Center opposes this change and strongly urges that prescriber prevails be retained.

New York Should Repeal the Changes to the Medicaid Program Implemented Under Prior Budgets as They Result in Harm to Our Most Vulnerable Populations

Empire Justice Center fully endorses the position of **New York Legal Assistant Group** and **Medicaid Matters NY** in seeking the repeal of MRT II changes, including the following:

I. Activities of Daily Living (ADL) Restrictions

Currently, Personal Care Services (PCS) and Consumer Directed Personal Assistance Program (CDPAP) are available for those needing assistance with one ADL. The new minimum ADL requirements will limit access to PCS and CDPAP to those who need physical assistance with three ADLs. There is only one exception: those with dementia may qualify if they need cueing or supervision with two ADLs. This means that individuals with traumatic brain injury (TBI), developmental disabilities, vision loss, cognitive impairments other than dementia, and more, will be denied these vitally important services – simply because they do not need physical assistance with three ADLs. New York’s most vulnerable populations will now find themselves in a situation where they are at significant risk of institutionalization.

II. Practitioner Panel (IPP) + Independent Review Panel (IRP)

The regulations include two new assessments (together the “Independent Assessor”) that will not only eliminate the role of the individual’s treating physician in determining the level of care their patient needs, but will also cause huge delays in consumers accessing home care services. The new process will increase State administrative costs, taking more money away from actual services. The Independent Assessor requirements, in addition to the existing independent nursing assessment, will overwhelm an already strained system, leaving vulnerable New Yorkers at significant risk of institutionalization as they wait to receive home care services. We echo the concerns that have been raised by **NYLAG** regarding the lack of capacity to start this program, especially during the current nursing staff shortages.²

III. 30 Month Lookback for Community-Based Long-Term Care

The goal of the lookback is to prevent wealthy individuals from accessing Medicaid for long-term care. However, in practice, wealthier individuals can always find ways to shelter assets, via trusts, waiting out penalties, and retirement accounts, rendering them exempt from Medicaid. This means that individuals with moderate means, who tend to have savings in cash rather than a home or retirement accounts, end up being the ones who are penalized with a lookback. We urge the Legislature to repeal this lookback, particularly in light of the of proposed elimination to the asset test for Medicaid eligibility.

Conclusion

Empire Justice Center supports the proposals in the Executive Budget that would expand access to health insurance coverage and health care. However, there are still clear

² Many concerns about implementation of this program can be found in a joint letter from NYLAG and Medicaid Matters NY dated Dec. 15, 2021, posted at <http://www.wnylc.com/health/download/801/>.

shortfalls in certain areas – such as access for immigrants, and seniors and people with disabilities who seek to live independently at home. By addressing these inequities, the Legislature can help the entire system reach greater equity for all New Yorkers, but there is more to be done longer-term. The health care patchwork that exists today is failing New Yorkers, insured and uninsured alike. A single-payer program would eliminate coverage disparities based on income and immigration status, as well as funding disparities between safety-net hospitals and hospitals in wealthier communities.

Thank you for this opportunity.

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