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Testimony of The Legal Aid Society

Joint Legislative Public Hearing on 2022-23 Executive Budget Proposal: Health

February 8, 2022

Thank you to the Assembly Ways and Means Committee and Senate Finance Committee for the opportunity to provide testimony on the 2022-23 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.

As the COVID-19 pandemic continues, the virus' disproportionate impact on The Legal Aid Society's client communities persists, highlighting the tragic racial disparities in our health care system. We are greatly encouraged by many of the bold steps taken in the Executive Budget to expand coverage and help address these disparities. However, we believe that the final budget can do more to strengthen health access for all New Yorkers, particularly by remedying the exclusion of certain immigrants from some of the Executive Budget's coverage expansions. We look forward to working with the Legislature towards a final budget that strives for an equitable health care system for all New Yorkers.

Recommendations of The Legal Aid Society

Provide Medicaid eligibility equity for seniors and people with disabilities.

The Legal Aid Society strongly supports the Governor's proposal to bring seniors and people with disabilities to the same Medicaid eligibility criteria as all other adults in New York by increasing the income limit and eliminating the asset test for this population. The current blatant inequity in Medicaid eligibility for older adults and people with disabilities disrupts access to care and disproportionately leads to denials of coverage for communities of color.

The Legal Aid Society frequently represents individuals who, despite having incomes lower than \$1,000 per month, lose Medicaid eligibility when they become disabled or turn 65. After falling off

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this “Medicaid cliff,” these individuals often struggle to maintain enrollment in Medicaid through the complex and administratively burdensome Medicaid Spenddown or Excess Income Program. The Governor’s proposal would not only increase Medicaid coverage, but would cut down on administrative burden for the local districts.

Expand Medicare Savings Programs to better coordinate with Medicaid reforms.

In order to better coordinate these much-needed Medicaid eligibility expansions with the Medicare Savings Program (MSP), the final budget should increase MSP limits. The MSP pays the cost of the monthly Part B premium. For most MSP enrollees, the MSP prevents the Part B premium from being withheld from their Social Security check. If the MSP limits are not expanded, the State will have to reimburse Medicaid recipients with incomes between 120% - 138% FPL for the Part B premium, but with a cumbersome process of sending them a reimbursement check. This is a hardship to very low-income beneficiaries, including many Legal Aid clients, who may have difficulty covering basic expenses while awaiting the State’s reimbursement check. We recommend incorporating into the final budget S. 8228, which would increase the top tier MSP limit from 135% to 156% FPL. It would help 100,000 seniors and people with disabilities at no cost to the state.

Include all immigrants in the extension of Medicaid postpartum coverage.

We strongly support the expansion of Medicaid coverage for pregnant people to one year rather than 60 days postpartum. However, we are very disappointed by the exclusion of undocumented individuals from this coverage. New York has been a leader in recognizing and funding Medicaid for pregnant people regardless of immigration status, and this should continue in the expanded coverage.

Expand access to the Essential Plan to higher income levels, and regardless of immigration status.

We support the Governor’s proposal to expand eligibility for the Essential Plan (EP) from 200% to 250% of the FPL. Although individuals over 200% FPL are currently eligible for subsidized Qualified Health Plans, out of pocket costs can still be prohibitive and EP is a significantly more affordable option for many. However, we are disappointed that a state-funded expansion of the Essential Plan to all income-eligible New Yorkers, regardless of immigration status, was not included in the Executive Budget. We urge the Legislature to include such an expansion (A.880A/S.1572) in the final budget.

It is estimated that 154,000 low-income New Yorkers do not have access to comprehensive, affordable health insurance due to their immigration status. These same immigrant New Yorkers make up 54% of our essential workforce and sustain our communities. From January 2020 – August 2020 (a period of only 8 months), it is estimated that 2,050 undocumented New Yorkers died from COVID-19 because they lacked health insurance coverage. A state-funded Essential Plan could have saved many of these New Yorkers’ lives and could save lives still. As we enter the third year of the COVID-19 pandemic, New York cannot afford to continue to overlook the health and lives of its residents.

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Remove costs and expand services for children in Child Health Plus.

The Legal Aid Society strongly supports the removal of the \$9 monthly premium for children covered by Child Health Plus (CHP) at the 200% FPL eligibility level. Data has shown that more than half of the families in this category lose coverage over the course of a typical year. With this provision, these low-income families will no longer be at risk of losing coverage because of temporary financial difficulties or clerical errors.

We also support the inclusion of more comprehensive benefits in CHP, including ambulance and expanded behavioral health services. Children who are only eligible for CHP and not Medicaid because of family income level or immigration status should not be excluded from important community and family support services, and families should not be at risk of financial strain because an emergency ambulance trip.

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. We acknowledge and appreciate that this year’s budget attempts to account for the growth in the program by proposing a change to the methodology by which the global cap is calculated. However, a full repeal is a more appropriate response to the sharp increase in Medicaid enrollment and would allow the state to more effectively implement the proposed Medicaid expansions.

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:

Independent Assessor – Amongst the MRT II budget cuts of 2020-21 was the enactment of a multi-step home care assessment process, which will cause dangerous delays in the receipt of medically necessary care. Included in the layers of added bureaucracy was the creation of an “Independent Assessor” as well as a new physician assessment which eliminates the opinion of the consumer’s own treating physician. DOH awarded the contract to Maximus, adding to Maximus’ nearly \$4 billion in New York State contracts, and recently delayed implementation until May 1, 2022 due to ongoing staffing issues related to the COVID-19 pandemic. The Legal Aid Society urges an immediate repeal of this initiative and echoes the concerns raised in a letter from NYLAG and Medicaid Matters, posted at

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<http://www.wnyc.com/health/download/801/>. If an independent assessor model were to be implemented, we strongly support the model proposed in A.09023 (Gottfried) which requires that the assessment be done by a not-for-profit group and removes the financial incentive of managed care plans to deny care.

- Minimum Needs restrictions. The Legal Aid Society supports A.5367/S.5028 (Gottfried, Rivera) to repeal the new minimum requirements for eligibility for Personal Care Services (PCS), Consumer Directed Personal Assistance Services (CDPAS), 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 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.

Support the ability of people to remain in their homes and communities by funding the homecare work force.

New York's home health worker shortage is well documented. There is significant agreement that the primary reason for this shortage is the low wage paid for this challenging work. The COVID-19 pandemic has exacerbated the problem with these frontline workers, who are overwhelmingly immigrant women of color, being overlooked in New York health policy. The shortage has resulted in many people with disabilities experiencing delays in receiving the services they depend on or not receiving services at all, thereby forcing them into hospitals and nursing homes. The Legal Aid Society has numerous clients who are not consistently receiving the hours of care for which they have been authorized because of the lack of availability of aides. We are well aware that the problem is even worse outside New York City. New York must address this urgent problem. Unfortunately, the Governor's budget, which includes investment in wages for some health care workers, again deprioritizes home health care workers. New York must meaningfully invest in the home care workforce by raising wages substantially. The Legal Aid Society urges the Legislature to include Fair Pay for Home Care in this year's budget, which would increase wages to 150% of the regional minimum wage.

Prioritize DOH oversight of plans rather than procurement.

The Legal Aid Society appreciates the Executive Budget's focus on managed care plan performance and accountability as reflected in the proposal to procure all Medicaid managed care plans.

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However, we have concerns about the implementation of this proposal and believe that this type of significant revamping of the managed care program should not be necessary to accomplish improved oversight of the plans.

We are concerned about the massive impact on consumers of involuntary plan transitions of potentially millions of Medicaid managed care enrollees. At The Legal Aid Society, we have represented numerous clients who faced disruption of care and other difficulties after plan changes resulting from closures. Even changes that are technically not denials of care can have severe impacts on quality of life. For example, several clients have found that their new plan insisted on frequent deliveries of very small quantities of medical supplies rather than supplying several months of supplies at a time, causing them to run out and to spend significant time advocating with their plan for adequate deliveries. Though this is not technically a denial of services, it causes undue stress and potentially harm to a consumer. In addition, many transitions (which involved a small fraction of the number of individuals who could be impacted in procurement) resulted in widespread confusion, especially when plan closures were reported informally or through aides or employees before official notice was sent out.

The Legal Aid Society frequently files complaints to the managed care and Managed Long Term Care complaints lines on behalf of clients. Although in certain situations, these cases are resolved in our clients' favor, in many other cases the complaint unit simply reports back the plan's version of events as its conclusion. There is virtually never any indication that the situation is being investigated as a systemic problem even when there is evidence as such. There are minimal consequences for plans that violate the model contract. At the present time, we are representing a minor child with disabilities whose managed care plan has refused to speak to his mother on his behalf as well as an elderly woman whose plan stopped providing home care at night without notice. Though we are hopeful that both situations will be resolved by the complaint lines, both of these egregious situations should trigger investigations into why this happened and whether other clients have been similarly impacted. If the current oversight mechanism does not provide for that, then the priority for reform should be to ramp up surveillance and oversight so that situations like these become much less common.

We would strongly support budget provisions to strengthen enforcement mechanisms against plans that violate law, regulations, or contracts and believe that the state should prioritize the investment of resources for this purpose.

Elimination of the uniform task based assessment tool is a missed opportunity for transparency and consumer participation.

The 2020-21 budget required DOH to develop or procure a uniform "task based assessment tool" by which home care needs would be assessed by all managed care plans. The Governor's budget would amend this requirement and instead direct the Commissioner to develop guidelines and standards for plans and local districts to use their own tasking tools. We are disappointed in this retreat from the opportunity to bring meaningful oversight and transparency to the underlying algorithms that

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determine managed care plans' home care authorizations. DOH had begun to engage managed care plans, but did not seek input as promised from consumers and their representatives who are the people with most intimate understanding of the shortcomings of the existing tools and the severe harm that occurs when the tool fails to accurately assess needs.

Additionally, guidance to plans will not address the shortcomings of the current state mandated Uniform Assessment System (UAS), which DOH acknowledges does not account for frequency and duration of tasks, night-time needs, or the availability of sleeping accommodations for personal assistants or home health aides. At Legal Aid, we routinely represent clients whose night time or unscheduled needs, such as toileting, are not captured by the plans' assessment. As a result, they are not authorized to receive care at night. Some of our clients avoid drinking liquids in the afternoon and evening in an effort to minimize their need to toilet without assistance, or they are left in soiled diapers or sheets until an aide or family member arrives in the morning. This not only puts them at serious risk of infection and illness, it robs them of dignity. It also threatens the wellbeing and employment of family members who lose sleep and work in order to care for loved ones. Without improving the UAS, overseeing the plans tasking tools and creating transparency around the algorithm-based decision making, these types of problems will continue. Guidelines on a tasking tool will only serve as window dressing in place of meaningful oversight and reform.

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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