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Metro New York Health Care for All Campaign ☞ New Yorkers for Accessible Health Coverage
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Small Business Majority ☞ Young Invincibles

Testimony on the Health/Medicaid 2018-2019 Budget

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Submitted by:
Health Care For All New York

Health Care For All New York (HCFANY) would like to thank the chairs and members of the Assembly Ways and Means Committee and the Senate Finance Committee for the opportunity to submit our testimony on the 2018-2019 New York State Executive Budget. HCFANY is a statewide coalition of over 170 organizations dedicated to achieving quality, affordable health coverage for all New Yorkers. We strive to bring consumer voices to the policy conversation, ensuring that the concerns of real New Yorkers are heard and reflected. We also provide policy analysis, advocacy, and education on important health policy and coverage issues that affect New Yorkers around the state. For more information on HCFANY, visit us on the web at www.hcfany.org.

This testimony outlines HCFANY's position on several provisions within the Executive Budget. HCFANY supports proposals in the Executive Budget that help more New Yorkers enroll in and successfully use their health insurance. We applaud the Governor's proposal to fund consumer assistance services through the Community Health Advocates program (CHA), which helps New Yorkers understand, keep, and use their insurance, and urge the Legislature to provide additional funding for CHA. HCFANY also supports the proposal to increase the cap on physical therapy visits from 20 to 40, and we encourage the Legislature to increase the cap on speech and occupational therapy visits as well. We also urge the Legislature to decrease our uninsured rate by extending the age of eligibility for the Child Health Plus program for immigrant youth who are otherwise ineligible for coverage.

HCFANY is concerned about several proposals that would make health care less accessible for low-income New Yorkers. HCFANY opposes the proposals to: eliminate prescriber prevails; abolish spousal refusal or reduce the resource limits for spousal impoverishment; increase cost-sharing for people who have insurance through Medicaid; and extend the transition collar for the Indigent Care Pool. HCFANY is also concerned about the budget's proposal to require consumers enrolled in managed long term care (MLTC) to remain in the same plan for a 12-month period.



1. HCFANY supports the proposed budget allocation of \$2.5 million in funding for the Community Health Advocates (CHA), the State’s health care consumer assistance program, and urges the Legislature to increase it for a total appropriation of \$4.75 million.

CHA is a statewide network of community-based organizations (CBOs) that helps New York’s health consumers and small businesses obtain, use, and keep health insurance coverage. The CHA program is administered by the Community Service Society of New York in partnership with three specialist agencies, the Empire Justice Center, The Legal Aid Society, and the Medicare Rights Center. Together, these agencies have developed a strong, statewide learning community of service providers at 25 community and business-serving groups by providing training and technical assistance and handling complex cases and appeals. Since 2010, CHA has handled over 300,000 cases and saved consumers over \$27 million, addressing the pernicious issue of consumer medical debt. CHA’s services are available for free to consumers regardless of how they get insurance. They are available in-person in every county in New York and through a toll-free helpline (888-614-5400). More information on CHA can be found online at: www.communityhealthadvocates.org.

CHA services are needed now more than ever because federal policy proposals threaten to disrupt both the private and public insurance markets, for individuals and employers. CHA has already experienced an increased demand for services from people who are confused and anxious about their ability to get health insurance, or fearful of using their insurance to get care because of uncertainty about federal health policy changes. Additionally, more people than ever have enrolled in coverage through the NY State of Health Marketplace. For the first time, over 95 percent of New Yorkers have insurance coverage. CHA is there to make sure that these New Yorkers not only have coverage, but know how to use it to get the health care they need.

While we applaud the Governor for including \$2.5 million for CHA, additional funds are needed to prevent a reduction in services and to respond to increased need. CHA was initially a federally-funded program that at its height received \$6.1 million. After federal funding ended, the Governor and Legislature provided CHA with funding that has increased to \$3.5 million (\$2.5 million from the Executive branch and \$1 million from the Assembly). This year, CHA needs a total of \$4.75 million just to respond to increased consumer demand on the Helpline and at the statewide network of local CBOs. In addition to the \$4.75 million, HCFANY is seeking \$2 million from the New York State Senate to increase CHA’s capacity to serve the specialized needs of small businesses.

2. HCFANY supports funding for the Navigator program and urges the Legislature to increase it for a total appropriation of \$32 million.

Funding for the State’s Navigator program ends in 2018. Navigators are local, in-person assistors that help consumers and small businesses shop for and enroll in health insurance through the Marketplace. Since 2013, Navigators have helped enroll more than 300,000 New Yorkers in health insurance coverage. Furthermore, consumers who get health insurance through Medicaid, Child Health Plus, and the Essential Plan, who are disproportionately people of color, are more likely to enroll in coverage with the help of an in-person assistor.



New York's Navigator program has not received a cost of living adjustment in more than 5 years, forcing many agencies to consider or institute staff reductions or other steps that reduce the effectiveness of the program. We are grateful that the Executive Budget proposes to continue the Navigator program at \$27.2 million. We urge the Legislature to allocate an additional \$4.8 million annually to ensure that Navigators are provided adequate funds for cost of living increases in order to continue to provide high quality and reliable in-person enrollment assistance to New Yorkers.

3. HCFANY supports the budget proposal to develop the First 1,000 days of Medicaid initiative, but opposes the proposal to allow the Department of Health to contract with entities in pursuit of estate recovery or any other recovery pursuant to Section 104 of the social services law for services rendered in the Child Health Plus program.

HCFANY applauds the Governor's budget proposal to develop the First 1000 Days of Medicaid initiative. This proposal recognizes the critical developmental milestones that occur in the first three years of a child's life, and it strategically targets funding for programs to help our youngest New Yorkers remain healthy and ready to learn when they arrive in kindergarten. Specific programs that are a part of the initiative include: a new pediatric clinical advisory group; group-based models of prenatal care to support pregnant women living in neighborhoods with the poorest birth outcomes in the State; home visiting services in three high-risk communities; new peer-navigator services in non-healthcare settings to ensure at-risk families get needed services recommended by a health care provider; and evidence-based parent-child therapy models.

However, HCFANY opposes allowing the Department of Health to contract with entities in pursuit of estate recovery or any other forms of financial recovery pursuant to Section 104 of the social services law for services provided in the Child Health Plus program. Section 104 of the social services law contains a draconian 10-year look-back provision that permits estate recovery or other financial recovery in the event that it is discovered that any person financially responsible for the health care of another, such as a parent, has real or personal property in an amount up to the value of the cost of assistance or care provided. The 10-year look-back provision in the law explicitly allows the state to look-back at the services provided during the 10 year period preceding any action, and execute recovery against the responsible party, even if the responsible party was unable to pay for the assistance or care at the time the services were rendered.

This provision creates an enormous disincentive for individuals to break cycles of poverty, become increasingly self-sufficient, accept pay raises and job promotions, and pay for their family's health insurance on their own. For example, take the scenario where the parents in a family of four at 200 percent of the federal poverty level enrolled their children in Child Health Plus. Should one of those children require several surgeries in addition to various well-care visits and prescription drugs over the years, then the cost of care could be tens of thousands of dollars, if not more. Then, if seven years after enrolling in Child Health Plus, one of the parents is offered a new job and the other parent's income has increased over the years so that the family is now at 410 percent of the federal poverty level, the family would no longer be eligible for Child Health Plus. This would trigger Section 104, and entitle the state to seek recovery against the assets of the family up to the amount of the cost of care and services over the preceding 7 years, in this case tens of thousands of dollars or more, as it falls within the 10 year look-back period.



The operation of this section creates a disincentive for families to enroll their children in Child Health Plus initially, or if they enroll, to seek higher paying jobs or pay raises that will improve their financial well-being. Accordingly, HCFANY opposes the proposal, and urges the legislature to eliminate the 10 year look-back provision entirely so that recipients of other public assistance programs, including Medicaid, are not similarly discouraged.

4. HCFANY urges the State to increase the age limit for Child Health Plus to 29, from its current 19. This would create a young adult option for people who are not eligible for subsidized health insurance because of their immigration status.

Child Health Plus (CHP) provides affordable health coverage for anyone below the age of 19 who resides in New York State. This coverage is available regardless of immigration status. Families pay premiums on a sliding scale. Expanding the age limit for CHP to immigrant youth up to the age of 29 who are not otherwise eligible for coverage will allow New York State to continue the coverage gains of the past few years.

The Community Service Society examined this proposal in 2016, in the context of providing coverage for people who are not eligible for Medicaid, the Essential Plan, or subsidized Qualified Health Plans because of their immigration status, including many young adult immigrants without legal status who were brought to this country by their parents, known as “DREAMers.”¹ That analysis found that raising the upper age limit of CHP would make an additional 90,000 people eligible for subsidized health coverage. Based on previous enrollment rates, it would likely result in extending health coverage to 27,900 young adult immigrants at a cost of \$78 million, an increase of less than one percent of New York’s health budget. CSS believes the updated costs of this proposal for 2018 would be \$83 million.

The benefits of increased coverage for both the individuals gaining coverage and society at large are well documented. People without insurance coverage are more likely than their insured counterparts to delay seeking care, incur medical debt or file for bankruptcy, and experience high rates of morbidity and mortality because of their inability to access preventive care or services needed to manage serious and chronic health conditions.² It is inevitable that some people without coverage will fall ill or need health services. When this happens, the losses experienced by the health care system are offset through higher prices for everyone.

We urge the Legislature to expand the age of the CHP program in order to fund CHP coverage for immigrant youth who are otherwise ineligible for health insurance coverage.

5. HCFANY urges the State to expand the Essential Plan using State-only funds to all New Yorkers regardless of immigration status.

¹ Elisabeth R. Benjamin, “How Can New York Provide Health Insurance Coverage to its Uninsured Immigrant Residents? An Analysis of Three Coverage Options,” January 2016, <http://lghhttp.58547.nexcesscdn.net/803F44A/images/nycss/images/uploads/pubs/Immigrant%20Health%20Report%20Web%202.pdf>.

² Ibid.



New York State should create a state-funded Essential Plan for all New Yorkers up to 200 percent of the federal poverty level, regardless of immigration status, with particular urgency for immigrants who will be losing Temporary Protected Status (TPS) and thus their current health insurance eligibility.

Temporary Protected Status is a designation for nationals of countries experiencing humanitarian crises such as violent conflict, environmental disasters, or epidemics. TPS holders receive work authorizations and many have been in their communities for 20 or more years. There are an estimated 325,000 TPS holders in the U.S., with nearly 300,000 U.S.-born children. There are 33,600 people with TPS in New York who are from one of the 10 TPS-designated countries.

The current Administration is aggressively moving to end TPS and has already announced the end of the program for citizens of 7 countries. Citizens of Guinea, Liberia, and Sierra Leone have already lost TPS. Citizens of Sudan, Nicaragua, Haiti, and El Salvador will lose TPS between November 2018 and September 2019. The termination of TPS has devastating effects on communities. People who have lived in New York for 20 years and raised children here are forced to choose between uprooting their families to return to an unfamiliar place, or remaining in the U.S. undocumented and without authorization to work and provide for themselves and their families. They also lose access to employer-sponsored health insurance if they are unable to work and will become ineligible for the Essential Plan or qualified health plans.

The state already has a commitment to health coverage for certain groups excluded from federal coverage, including low-income TPS holders. Retaining existing health coverage should also be part of the state's commitment to its immigrant communities. We urge the State not to allow federal action to deprive immigrant New Yorkers of access to life-saving health coverage.

6. HCFANY opposes proposals that cut spending by increasing the financial burdens experienced by low-income New Yorkers. This includes increased over the counter drug co-pays for Medicaid beneficiaries.

HCFANY opposes asking Medicaid beneficiaries to pay higher co-pays for over the counter drugs. Medication adherence is a costly issue for our health care system. A literature review conducted in 2012 identified 136 different peer-reviewed articles that found that a major reason people go without medications is cost.³ Co-pays that may seem insignificant within the context of New York's budget can mean hard, even dangerous, choices for people with limited means.

Drug costs are a serious and rising expense for the state – but efforts to manage that problem should not adversely affect consumers. Accordingly, we urge the Legislature to reject any increase to prescription or over the counter drug co-pays for Medicaid beneficiaries.

³ Michael T. Eaddy et al., "How Patient Cost-Sharing Trends Affect Adherence and Outcomes: A Literature Review," *Pharmacy & Therapeutics*, 37(1): 45-55 (January 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3278192/>.



7. HCFANY opposes the proposal to extend the Indigent Care Pool transition collar for one year.

New York distributes \$1.13 billion in state and federal disproportionate share hospital (DSH) funding to public and non-profit hospitals each year through the Indigent Care Pool (ICP). DSH funds are intended to support hospitals that serve more than their share of patients who are uninsured or insured through Medicaid. In 2012, New York made changes to the distribution of ICP funds to increase accountability and comply with the Affordable Care Act (ACA), but gave hospitals three years to transition to the new system by implementing a transition collar that limits the amount of funding a hospital can gain or lose year-to-year under the new formula. In 2015, over consumer opposition, this transition collar was extended for an additional three years.

A recent study by the Community Service Society of New York, *Unintended Consequences: How New York State Patients and Safety-Net Hospitals are Shortchanged*, found that the transition collar results in significant windfalls for some hospitals. Between 2013 and 2016, hospitals received windfalls of over \$558 million. A close review of transition winners and losers shows that hospitals that received windfalls, on average, provided about half as much financial assistance to eligible patients as hospitals that lost funding under the collar. Moreover, the collar extends ICP reliance on bad debt, which is no longer permitted under federal DSH regulations.

Several other recent reports also urge the state to end the transition collar, including: *Funding Charity Care in New York: An Examination of Indigent Care Pool Allocations*, by the New York State Health Foundation; and *Hooked on HCRA: New York's 20-Year Health Tax Habit and Indigent Carelessness: How not to subsidize hospital charity care* by the Empire Center.

Federal cuts to DSH funding increase the need for New York to target scarce DSH dollars to the hospitals that provide the most care to uninsured and Medicaid patients. These cuts, mandated in the ACA, were delayed for several years but took effect in October 2017 and will increase each year through 2025. Recent federal legislation delays these cuts again, but for only two years. Under current law, the entire first year's cut of \$329 million will come from New York City's public health system, Health + Hospitals.

The Legislature should allow the ICP "transition collar" to sunset once and for all. The ICP program should ensure the ICP funding methodology is re-calibrated so that it more equitably supports *true* safety net hospitals who are providing meaningful amounts of financial assistance to needy patients.

8. HCFANY strongly supports the proposed budget reallocation of \$20 million to adopt safety net funding for hospitals so that it fairly allocates precious resources to those providers that do the most for uninsured and low-income New Yorkers.

HCFANY strongly supports the proposed budget reallocation of \$20 million to provide enhanced reimbursement for safety net hospitals. (As a reallocation, this is not a proposed budget increase.) New York's safety net hospitals provide a disproportionate amount of care to people who use Medicaid, who are uninsured, and/or are people of color than academic medical centers. As explained earlier in this testimony, these crucial providers face cuts in DSH payments from the



federal government. HCFANY supported the Enhanced Safety Net Hospital Reimbursement Bill (A.9476A/S.69486A) that passed both houses unanimously in 2016 but was vetoed by Governor Cuomo. We urge the Legislature to continue to support this provision in this year's budget to ensure adequate funding streams for hospitals that:

- Have at least 50 percent patients enrolled in Medicaid or are uninsured;
- Have at least 40 percent of inpatient discharges covered by Medicaid;
- Have no more than 25 percent of patients commercially ensured; and
- Are facilities that are part of one of the state's five public health systems or federally designated as critical access or sole community hospital.

With the dual threats of diminishing DSH funding and federal attacks on the Affordable Care Act, our safety net institutions are all the more important. Recent reports have underscored the need for New York to more fairly target our illogical health care funding streams to those entities which do the most for our uninsured residents.⁴

HCFANY urges the Legislature to adopt the Executive Budget proposal to reallocate \$20 million to safety net hospitals.

9. HCFANY opposes provisions that would make it more difficult for low-income New Yorkers to enroll in Medicaid and use their coverage to get the health care they need, including proposals to eliminate the right of spousal refusal, reduce the resource limits for spousal impoverishment, and eliminate prescriber prevails protections.

Spouses and parents of vulnerable people, including children with severe illnesses and low-income seniors, have long been allowed to inform the Department of Health that their income is necessary for their own care and living costs and thus stop that income from being used to deny Medicaid coverage to their loved ones. Without this right, many families who on their own cannot reasonably be expected to pay for the care needed by a member would have to split up or forgo that care. For example, a healthy spouse would have to divorce a sick spouse. New Yorkers should not be expected to make such drastic choices in the face of health problems. Therefore, HCFANY urges the legislature to preserve the right of spousal and parental refusal in our Medicaid program.

Additionally, healthy spouses who remain in the community are able to keep a certain amount of the couple's assets, called the Community Spouse Allowance (CSRA), when the other spouse receives Medicaid coverage for nursing home care, MLTC, or waiver services. Since 1995, this amount has been \$74,820. The executive budget proposes to reduce the CSRA by 67 percent from \$74,820 to \$24,180. Because of an interaction between Federal and New York State law, this change would primarily affect New Yorkers with fewer resources, while wealthier New Yorkers could potentially preserve resources up to \$123,600. This drastic reduction in CSRA may lead couples to forego needed long term care services, which could result in preventable emergency

⁴ See, e.g., Roosa S. Tikkanen et al., "Hospital Payer and Racial/Ethnic Mix at Private Academic Medical Centers in Boston and New York City, *International Journal of Health Services*, 0(0): 1-17 (February 2017); Bill Hammond, "Hooked on HCRA," *The Empire Center*, (January 2017).



department use and hospitalization, which Medicaid would ultimately pay for. For these reasons, HCFANY urges the Legislature to maintain CSRA at the current level.

The Governor's budget also eliminates the "prescriber prevails" protection within the Medicaid program. "Prescriber prevails" is a rule that gives clinicians final say above insurance companies as to what medications a patient should take. There are many reasons why one particular drug might work differently from patient to patient. Prescribers should be able to override formularies or preferred drugs in those situations without forcing consumers to go through lengthy appeals with their insurance companies.

HCFANY urges the Legislature to reject this series of cuts to health care for low-income New Yorkers.

10. HCFANY opposes the provision that would require consumers enrolled in MLTC to remain in the same plan for a 12 month period.

The Executive Budget includes a provision that would prevent consumers enrolled in MLTC from changing plans after 30 days of notification of enrollment or effective date of enrollment for consumers who were not automatically assigned to a plan, or 45 days for those who were auto-assigned. The ability to switch MLTC plans is an important consumer protection. Many MLTC enrollees are not able to obtain relief through the existing grievance and appeals processes. Consumers enrolled in MLTC should retain the ability to switch plans in the event that their plan fails to comply with fair hearing decisions, make reasonable accommodations, or otherwise fail to meet their needs.

Furthermore, increased member mobility between MLTC plans promotes competition for quality and consumer satisfaction. If a plan knows that they are essentially guaranteed 12 months of payments for an MLTC enrollee, they will have reduced incentive to provide quality care and service. Consumers need more than 30 or 45 days to determine if they want to remain enrolled in their current plans.

HCFANY urges the Legislature to reject the proposed 12-month enrollment lock-in for MLTC beneficiaries.

11. HCFANY opposes requiring a Uniform Assessment System score of 9 to qualify for Managed Long Term Care.

Since the state started its managed care for all campaign, most people who need Long Term Services and Supports have been transitioned into MLTC plans or other managed care models. Confusingly, the Executive Budget now seeks to limit enrollment in MLTC by changing the eligibility threshold and requiring a significant number of people who are at or above the nursing facility level of care (NFLOC) into fee for service (FFS). The NFLOC requires a Uniform Assessment System (UAS) score of 5 or greater. Directing new applicants with a UAS score between 5 and 8 to FFS will result in a huge influx of Medicaid participants at the local Departments of Social Services (LDSS). Most LDSS offices no longer have the infrastructure to



handle these cases. In addition, MLTC is intended to provide a certain level of care coordination and requires a person-centered service plan, which is absent in the FFS model. While some of these individuals may qualify for mainstream managed care, that system is not designed to serve those with higher needs and the current rate structure is not sufficient to deliver the level of home care service this population would require.

Further, the population that will no longer be eligible for MLTC under the proposal will lose an important benefit of MLTC: the availability of spousal impoverishment budgeting for married couples. Outside of MLTC and the waiver programs, a couple with a spouse in need of home care must spend down their joint income and assets to below the federal poverty level in order to obtain services through Medicaid. MLTC, however, allows couples to use spousal impoverishment protections, allowing the spouse in need of care to get that care while making sure that the family is not impoverished in the process. Without spousal impoverishment protections, couples excluded from MLTC may find themselves having to choose divorce or poverty in order to ensure that needed care is available. It also could result in unwanted and unnecessary institutionalization.

HCFANY urges that the requirement for MLTC participation remain at a UAS score of 5.

12. HCFANY opposes carving nursing facilities out of Managed Long Term Care.

Carving nursing facilities out of MLTC will incentivize plans to push consumers with the most significant needs, and require the most expensive care, into nursing facilities. In the Governor's *Olmstead* Plan, he prioritized reducing the long-term stay nursing facility population in New York State. This proposal would have the opposite effect as it will undoubtedly make it more difficult for those with the most significant needs to remain in the community. This is particularly true absent a high needs community rate cell.

HCFANY calls on the legislature to reject the proposal to carve nursing facilities out of MLTC.

13. HCFANY supports the proposal to increase the limit on physical therapy visits for Medicaid enrollees from 20 visits to 40 visits per year. HCFANY recommends that the limit on speech therapy and occupational therapy also be increased to 40 visits per year.

HCFANY supports the proposal in the executive budget to increase the limit on physical therapy visits for Medicaid enrollees from 20 to 40 visits per year. We also support the exclusion of people with developmental disabilities and traumatic brain injury from this limitation.

HCFANY recommends that the Legislature adopt the physical therapy increase and extend it to speech therapy and occupational therapy as well.



Thank you for your consideration of our recommendations and concerns. Please do not hesitate to contact Carrie Tracy (ctracy@cssny.org, 212.614.5401) or Taylor Frazier (tfrazier@cssny.org, 212.614.5541) with any questions.