



**Joint Legislative Public Hearings on
2024-2025 Executive Budget Proposal
Health**

Written Submission by

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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 Increase Funding for Community Health Advocates
(CHA) to \$5.5 million in FY25

CHA helps New Yorkers navigate today’s complex health care system by providing individual assistance, outreach, and education to communities throughout New York State. Since 2010, CHA has handled over 509,000 cases for consumers, helping them save approximately \$197 million in healthcare related costs.¹ CHA reduces or eliminates consumers’ medical debt in over 91% of its cases. Every dollar invested in CHA yields an estimated \$5.73 in savings to consumers. Empire Justice Center is grateful that the Governor’s budget includes \$3.5 million for CHA, and we urge the Legislature to allocate an additional \$2 million in funding.

Recommendation: We ask the legislature to include \$2 million in funding for CHA, and we request that the final budget include \$5.5 m for CHA

¹ Community Health Advocates, *Our Impact* available at https://communityhealthadvocates.org/who-we-are/our-impact/#success_story_full (last accessed Jan. 22, 2024).

Children in New York State Should Be Provided with Continuous Coverage from Birth to Age Six

We are delighted to see the Governor's commitment to include this issue in the 1115 waiver amendment request. Children eligible for Medicaid and Child Health Plus at birth should stay eligible for continuous comprehensive coverage until age six, without the risk of losing their health insurance during the annual renewal process. Low-income families should not have to climb over administrative hurdles in order to keep their youngest children enrolled in public health coverage. Oregon and Washington have been approved for this continued Medicaid coverage, and Oregon's data showed that fewer than 1% of children lost Medicaid coverage because their families were no longer income eligible. This means that more than 99% of children who lost their coverage did so for administrative reasons, such as problems completing the redetermination process. New York should take similar steps to protect and invest in its youngest residents, by ensuring that young children do not churn on and off coverage, which puts them at risk of missing or delaying important childhood screenings and check-ups. Empire Justice Center agrees with Governor Hochul, and echoes **Medicaid Matters NY (MMNY)** and **Health Care for All New York (HCFANY)** (both of which we are member organizations), as well as our partner organization, **New York Legal Assistance Group (NYLAG)**, that New York should offer the same continuous coverage to children from birth to age six.

Recommendation: New York State should provide continuous Medicaid and Child Health Plus coverage to children until age six.

Protect New Yorkers' Access to Medications

I. Retain Prescriber Prevails

The Executive Budget once again proposes to eliminate "prescriber prevails." This longstanding requirement (for Medicaid fee-for-service (FFS) and Managed care enrollees) ensures that an individual's medical provider has the final say in any disputes over which drug would treat their patient safely and most effectively. In 2023, most Medicaid enrollees had their pharmacy benefit moved from managed care to the FFS program, NYRx, with the goal of

improving and streamlining access to medications. The prior authorization process in NYRx, which incorporates prescriber prevails, is a clear benefit of the pharmacy transition and allows many issues to be addressed by the enrollee's prescribing physician and without the need for individuals to go through the arduous fair hearing process to receive their necessary prescriptions. If prescriber prevails is eliminated, this will result in many more denials and disruptions to Medicaid enrollees who need access to their specific medications, including those who rely on drug combinations to treat complex medical conditions. Without prescriber prevails, New York will be jeopardizing the short and long-term health outcomes for the individuals who would be impacted by this change. It is more important than ever that this important protection remains in place. Empire Justice Center endorses the positions of **MMNY** and **NYLAG**.

II. Retain Notice and Comment Period for Over-the-Counter Drug Lists

Empire Justice Center opposes the Governor's proposal to allow the Department of Health (DOH) to reduce coverage of over-the-counter (OTC) drugs and supplies without prior Notice and Comment. Allowing DOH to unilaterally remove items from the list of Medicaid-covered OTC drugs without a public comment and rulemaking process would be detrimental to Dual Eligible New Yorkers who rely on the Medicaid program for their OTC medical needs. The reasoning behind the proposal is to align NYS Medicaid coverage with the federal Medicare Part D program. However, this would have the opposite effect. Since all OTC drugs are explicitly excluded from the federal Part D benefit, Medicaid is only aligned with Part D when it covers all OTC drugs excluded from Part D. This means that products such as allergy medications, laxatives, head lice treatments, and more, are at risk of being unilaterally removed without public input. Many, if not all, Medicaid recipients lack the disposable income to pay for these medically necessary items out of pocket. Empire Justice Center fully endorses the statements of **MMNY** and **NYLAG**.

Recommendation: New York needs to keep Prescriber Prevails, as well as prevent the removal of a Notice and Comment period for OTC drug lists.

New York Should Provide Medicaid Eligibility Equity for People with Disabilities and Older
Adults by Increasing the Asset Limit

Empire Justice Center was delighted that last year's enacted budget included Medicaid income eligibility expansion for people with disabilities and older adults, raising their eligibility from 84% of the Federal poverty level (FPL) to 138%, the same as the level for other adults. Income eligibility was also increased for the Medicare Savings Program. Both of these increases are already making a difference to so many New Yorkers.

We commended the Governor for including in her 2022-23 budget repeal of the Medicaid asset test for older people and people with disabilities, but that provision fell out during budget negotiations. This means that currently, people who are over 65 years old or who have a disability are the only people whose assets are scrutinized when enrolling in Medicaid. As the basic costs of living continue to spiral, and we see only nominal increases to the Social Security Cost of Living Adjustments (COLAs), all New Yorkers should be encouraged to set aside what they can for the future. More than ever, lower income seniors should not be unduly penalized for having modest savings. We fully endorse the position of **MMNY** and **NYLAG** and urge you to consider increasing the asset limit this year for this group of people. Short of full repeal, increasing the liquid asset limit will make access to health care more equitable. California has already eliminated the asset test, following a two-phased approach. In 2022, the asset limit was increased to \$130,000, and then eliminated in 2024. New York can follow a similar approach, by passing A.5940A Kim/S.4881A Cleare, and raising the asset limit and then eliminating it thereafter.

Recommendation: Provide equity in New York State's Medicaid Program by increasing the Medicaid asset limit to 600% FPL for those who are elderly, blind, and disabled.

New York Should Promote Community-Based Services and Supports

I. New York Should Prioritize Fair Pay for Home Care Workers

The staffing shortage in the home care workforce continues to negatively impact New Yorkers who rely on the services to live safely in the community. The lack of available aides across many regions – urban, suburban and rural – jeopardizes the rights of people with disabilities and older adults to live independently in their own homes. This problem will not fix itself. The home care workforce will not grow without adequate pay for its workers. Empire Justice Center fully endorses the position of **MMNY** and **NYLAG** that the State must invest in community-based services by raising wages for home care workers. In addition, we urge the Legislature to maintain Wage Parity for workers in the Consumer Directed Personal Assistance Program (CDPAP).

II. New York Should Repeal the Activities of Daily Living (ADL) Restrictions

Currently, Personal Care Services (PCS) and CDPAP are available for those needing assistance with one ADL. In 2020, the budget included a provision that 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.

This provision has not yet been implemented and Empire Justice Center echoes **MMNY** and **NYLAG** in strongly urging the Legislature to repeal it by passing S.328/A.6346.

III. New York Should Repeal the Look-Back Period for Community-Based Long-Term Care Medicaid Services

In 2020, the budget included a provision that added a look-back period for eligibility for community-based long-term Medicaid services. The proposed 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. This provision has not yet been implemented and Empire Justice Center agrees with **MMNY** and **NYLAG** that the Legislature should repeal it. We are already seeing longer delays at local districts as understaffed offices process full Medicaid renewals for the first time since the public health emergency. If the new lookback is implemented, and districts are forced to process even more paperwork, this will undoubtedly have a detrimental effect on the system that is already stretched too thin. As a result, New York's most vulnerable populations will bear the brunt of the consequences.

Recommendation: New York needs to support those who receive Medicaid home-based care through the fair pay of workers and retaining wage parity for CDPAP aides, repeal restrictions on activities on daily living, and repeal the look-back period.

New York Should Take Steps to Reduce Medical Debt

I. New York Should Adopt and Expand the Governor's Budget Proposal to Improve the Hospital Financial Assistance Law

Empire Justice Center echoes the position of **HCFANY**, and fully urges the Legislature to improve upon Hospital Financial Assistance Law (HFAL) by adopting provisions from the Ounce of Prevention Act (S.1366A/A.6027A). Modernizing HFAL is an immediate and concrete step that New York can take toward addressing the devastating financial harm that too many individuals and families face as a result of needing medical care. Between 2015-2020, over 54,000 New Yorkers were sued by non-profit hospitals. We applaud the Governor for proposing an increase in the income eligibility limit for HFAL from 300% to 400% of the federal poverty level (FPL), and for eliminating the 90-day application timeframe. But there is still much more

that can be done. These hospitals receive \$1 billion annually in Indigent Care Pool funds to support their uncompensated care losses. However, most patients are never told about New York's HFAL. The Ounce of Prevention Act would increase the income eligibility cut off from 300% to 600% FPL, simplify and improve the discount schedule,² eliminate the 90-day application time frame (many patients do not even receive medical bills within this time frame), and eliminate the resource test for low-income patients. Additionally, the final HFAL should incorporate last year's budget provision that requires hospitals to use a uniform application form provided by the Department of Health.

We support the appointment of a director of patient advocacy to work on (among other things) the important issue of patient's rights related to hospital financial assistance.

II. New York Should Pass the Prohibition on State-Operated Hospitals Suing Patients for Medical Debt Act

Empire Justice Center supports the position of **HCFANY** and fully supports the Prohibition on State-Operated Hospitals Suing Patients for Medical Debt (S.7778/A.8170). Among the five state-funded hospitals, it was found that patients are sued at higher rates than non-state hospitals, and that over 50 percent were in zip codes where predominantly people of color. 77% of those who were sued lived in zip codes with incomes that would have made them eligible for hospital financial assistance, for which these hospitals already receive substantial funding to cover the cost of care.

III. New York Should Eliminate Insurance Copayments for Insulin

By supporting Governor Hochul's proposal for Zero-Cost Insulin, New York can lead the way for the 738,000 New Yorkers living with diabetes who use insulin. Although New York State has capped the cost at \$100 per month, the cost is still \$1200 per year for diabetes medicine alone. It is shown that diabetes impacts communities of color at higher rates than their white counterparts. Diabetes-related complications such as blindness, limb-loss, and

² The current discount schedule hardly offers any discount at all. A New Yorker earning \$45,000 per year would be asked to pay 91% of their income on their hospital bill.

kidney failure impact people of color at higher rates, and Black New Yorkers are twice as likely to die from diabetes-related issues than those who are white. By eliminating cost-sharing, medication adherence increases, which improves health outcomes for all communities. In doing so, health plans will save money. One study, led by Blue Cross Blue Shield of Louisiana in 2021, found that eliminating co-pays for prescription medications that treat chronic conditions, including insulin, increased medication adherence for most enrollees, especially those with the lowest incomes. The follow-up evaluation of the program found a *10 percent decrease in medical spending*, leading to an average net savings of \$63 per member per month.³

Empire Justice Center fully endorses the position of **HCFANY**.

Recommendation: New York needs to reduce the burden of medical debt on families by adopting and updating provisions from the Ounce of Prevention Act, passing the Prohibition on State-Operated Hospitals Suing Patients Act, and by eliminating copayments for insulin.

New York Should Expand Eligibility for and Improve Access to Public Health Insurance Programs

We support the budget provisions that improve healthcare affordability and access for all lower income New Yorkers – the increased premium subsidies for Qualified Health Plans will help consumers who are over the income limit for Essential Plan but who cannot afford high deductibles and coinsurance.

In 2023, we applauded Governor Hochul for expanding the Essential Plan eligibility from 200 – 250% of the federal poverty level. Once again, we applaud the Governor for the planned expansion of the Essential Plan through the updated 1332 Waiver which now includes Deferred Action Childhood Arrival (DACA) recipients. However, this leaves New Yorkers between the ages of 19 and 64 uninsured due to their immigration status. Despite this shortfall, the Governor’s

³ Cong et al., “Association of co-pay elimination with medication adherence and total cost,” *AJMC*, June 2021, 249-254. doi: 10.37765/ajmc.2021.88664.

proposed budget excludes affordable and comprehensive health care for people who do not have immigration documentation.

Empire Justice Center joins with **MMNY**, **HCFANY**, and **NYLAG**, in calling for access to affordable health coverage for all New Yorkers, regardless of immigration status. This can be achieved with S.2237B Rivera/A.3020B Gonzalez-Rojas, using federal funds to cover the cost of expanding the Essential Plan.

Recommendation: New York should pass S.2237B Rivera/A.3020B Gonzalez-Rojas to expand Essential Plan coverage to immigrants aged 19-64.

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 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.

Recommendations:

- We ask the legislature to include \$2 million in funding for CHA, and we request that the final budget include \$5.5 m for CHA
- New York State should provide continuous Medicaid and Child Health Plus coverage to children until age six.
- New York needs to keep Prescriber Prevails, as well as prevent the removal of a Notice and Comment period for OTC drug lists.
- Provide equity in New York State's Medicaid Program by increasing the Medicaid asset limit to 600% FPL for those who are elderly, blind, and disabled.
- New York needs to support those who receive Medicaid home-based care through the fair pay of workers and retaining wage parity for CDPAP aides, repeal restrictions on activities on daily living, and repeal the look-back period.
- New York needs to reduce the burden of medical debt on families by adopting and updating provisions from the Ounce of Prevention Act, passing the Prohibition on State-Operated Hospitals Suing Patients Act, and by eliminating copayments for insulin.
- New York should pass S.2237B Rivera/A.3020B Gonzalez-Rojas to expand Essential Plan coverage to immigrants aged 19-64.

Thank you for this opportunity.