



**Joint Legislative Public Hearings on
2023-2024 Executive Budget Proposal
Health**

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 Maintain Funding for Community Health Advocates at \$5.234 million in FY24

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 470,000 cases for consumers, helping them save approximately \$154 million in healthcare related costs. CHA reduces or eliminates consumers’

medical debt in over 90% of its cases. Every dollar invested in CHA yields an estimated \$5.10 in savings to consumers.

New York Should Expand Eligibility for Public Programs to Include Immigrants

I. New York Should Pass Coverage 4 All

We applaud Governor Hochul for expanding the Essential Plan eligibility from 200 – 250% of the federal poverty level. However, an estimated 245,000 New Yorkers between the ages of 19 and 64 are uninsured due to their immigration status. Despite this shortfall, the Governor’s proposed budget excludes affordable and comprehensive health care for people who do not have immigration documentation.

Empire Justice Center joins with **Medicaid Matters NY (MMNY)** and **Health Care For All New York (HCFANY)** (both of which we are member organizations) in supporting the Coverage 4 All campaign, calling for access to affordable health coverage for all New Yorkers, regardless of immigration status. This can be achieved with the Coverage4All legislation (S.2237, Rivera/A.3020, Gonzalez-Rojas), providing authorization to include immigrants with low income between the ages of 19 and 64 in the application to the federal government to expand the Essential Plan.

II. New York Should Provide Continuous Medicaid Coverage for Children from Birth to Age Six.

Children eligible for Medicaid at birth should stay eligible until age six if their families earn under 200% of the federal poverty level. Families should not have to climb over administrative hurdles in order to keep their children enrolled in public health coverage. Oregon was approved for this coverage expansion in September 2022, 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 ensure 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 **MMNY** and **HCFANY** that New York should offer the same continuous coverage to children from birth to age six.

New York Should Provide Medicaid Eligibility Equity for People With Disabilities and Older
Adults

- I. *Increase the Medicaid Asset Limit for the Disabled, 65+, Blind populations from 150% of the federal poverty level to 600%*

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 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 urge you to consider increasing the asset limit this year from 150% to 600% of the federal poverty level for this group of people. Short of full repeal, increasing the liquid asset limit will make access to health care more equitable. An asset limit of six times the annual income limit would be \$112,536 in 2022 (single person). This is lower than California's asset limit, which has now increased to \$130,000 as California phases in full repeal of the asset test.

- II. *New York Should Expand the Medicaid Buy-In for Working People with Disabilities (MBI-WPD).*

Empire Justice Center applauds the Governor for including expansion of the MBI-WPD in this year's proposed budget. The MBI-WPD increases the income limit to allow people with disabilities to earn above the mainstream threshold. This is important because Medicaid covers long term services and supports that are not covered by Medicare and other coverage. The budget proposes to increase the income limit and eliminate the age limit and spousal income limit. We fully endorse the positions of **MMNY** and **HCFANY** and urge the Legislature to enhance the Governor's proposal by eliminating premiums and the proposal to cap the program at 30,000 people.

Additionally, the asset test calculation should not be limited to a household of two. People with disabilities have families too, and the asset test should reflect the actual number of people who live in the home.

New York Should Promote Community-Based Services and Supports

I. *New York Should Include Fair Pay for Home Care*

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 - is jeopardizing 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** that the State must invest in community-based services by raising wages for home care workers and including Fair Pay for Home Care in the budget.

In addition, Empire Justice Center urges the Legislature to restore Wage Parity for workers in the Consumer Directed Personal Assistance Program.

II. *New York Should Repeal the 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. 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** in strongly urging the Legislature to repeal it.

III. *New York Should Repeal the Look-Back Period for Community-Based Managed Long-Term Care (MLTC) Eligibility*

In 2020, the budget included a provision that added a look-back period for income eligibility for community-based MLTC. 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** that the Legislature should repeal it.

New York Should Protect Safety-Net Hospitals

The Indigent Care Pool (ICP) provides over \$1 billion to hospitals to support them for caring for people without insurance or with Medicaid. Unlike other states, New York distributes funds from this pool to almost all hospitals, instead of reserving it for safety-net hospitals that care for the most uninsured people. Over the years, this resulted in an unfair distribution of funds, without prioritization of improved access to health care for medically underserved people and communities. The proposed budget includes a \$235 million cut to the ICP for hospitals other than safety-net hospitals.

Empire Justice Center joins with **HCFANY** and **MMNY** in seeking that the ICP funding should be redirected and specifically targeted to hospitals that qualify as Enhanced Safety Net Providers.

New York Should Pass S1366 & S4907 to Reduce Medical Debt

Empire Justice Center echoes the position of **HCFANY**, and fully supports the passing of the Ounce of Prevention Act (S.1366/A.8441 (2022 version)), as well as the Fair Medical Debt Reporting Act (S.4907). Modernizing the hospital financial assistance law and prohibiting adverse reports to credit agencies related to medical debt are immediate and concrete steps 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.

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 restored.

New York Should Remove the Medicaid Global Cap

New York's Medicaid spending cap has been in place since 2011. The cap was presented as a mechanism to limit growth in Medicaid spending and instill discipline in Medicaid budgeting. The cap was set indiscriminately, and it was not designed to keep pace with the growth of the program.

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

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.

Thank you for this opportunity.

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