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Empire Justice Center ☞ Institute for Puerto Rican and Hispanic Elderly  
Make the Road New York ☞ Medicare Rights Center  
Metro New York Health Care for All Campaign ☞ New Yorkers for Accessible Health Coverage ☞  
New York Immigration Coalition ☞ Project CHARGE  
Public Policy and Education Fund of New York/Citizen Action of New York  
Raising Women's Voices-New York ☞ Schuyler Center for Analysis and Advocacy ☞ Small Business Majority

## HCFANY Testimony for Public Hearing on Health/Medicaid Budget 2015-2016 NYS Executive Budget

February 2, 2015

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 2015-2016 New York State Executive Budget. HCFANY is a statewide coalition of over 170 organizations dedicated to securing quality, affordable health coverage for all New Yorkers. We bring consumer voices to the policy conversation, ensuring that the concerns of real New Yorkers are heard and reflected. We also provide expert 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](http://www.hcfany.org).

This testimony outlines HCFANY's position on several provisions within the Executive Budget. New York has successfully implemented the Affordable Care Act. Since its launch in October 2013, over 1.6 million New Yorkers have enrolled in private and public coverage through the NY State of Health Marketplace. These numbers will continue to grow as outreach and enrollment efforts continue and the State offers even more affordable health coverage through the Basic Health Program.

In general, HCFANY supports proposals in the Executive Budget that help more New Yorkers enroll and successfully use their health insurance. We applaud the Governor's proposal



to fund consumer assistance services through the Community Health Advocates Program, which helps New Yorkers understand, keep, and use their insurance. We are also pleased that the Governor's budget continues to support efforts to expand affordable coverage for New Yorkers, by proposing a fair funding mechanism for the NY State of Health Marketplace and support for the Basic Health Program. Finally, we support two provisions that will strengthen public coverage for children and youth: (1) bringing CHIP behavioral care reimbursement rates into parity with Medicaid reimbursement rates; and (2) providing funding to support the transition of foster youth to managed care.

However, HCFANY is concerned about several provisions that would potentially harm low-income New Yorkers. First, HCFANY opposes allowing an additional three years for hospitals to fully transition to the new distribution policy for indigent care funding required by the ACA. Second, HCFANY opposes the proposals to eliminate prescriber prevails and spousal refusal, as we have in prior years. Third, HCFANY urges the Legislature to allow for certain expansions in Medicaid coverage to be made outside of the global cap. Finally, we strongly urge the Legislature and the State to ensure robust consumer engagement in the development of a value-based payment system in health care.

**HCFANY supports an increase in funding for Community Health Advocates, the state's health care consumer assistance program.**

HCFANY applauds the Cuomo Administration for including \$2.5 million for the Community Health Advocates (CHA) program. This appropriation will fund a statewide network of groups that have already helped nearly 200,000 of New York's health consumers and small businesses to use and keep their health insurance coverage. Since 2010, the CHA program has saved approximately \$14 million for consumers across the State, addressing the pernicious issue of consumer medical debt. CHA services are needed now more than ever, with more than 1.6 million New Yorkers enrolled in the NY State of Health Marketplace since its launch in 2013.

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 community and business-serving groups by providing training and technical assistance, and handling complex cases and appeals. CHA operates a central, toll-free helpline and provides local services through 21 community-based organizations and small business-serving groups throughout New York. More information on CHA can be found online at [www.communityhealthadvocates.org](http://www.communityhealthadvocates.org).



HCFANY urges the Legislature to increase the Administration's \$2.5 million to \$5 million to support CHA in more localities and to increase its small business services. While we applaud the Governor for including \$2.5 million, additional funds are needed to meet the needs of New York's consumers. At its height, CHA provided services through 27 community-based groups and 34 small business serving groups. Due to funding cuts in recent years, fewer community-based groups have been funded and small business services have been drastically reduced. The popular toll-free helpline is overburdened and under-resourced. Currently, there is no funding for community presentations and public education, critical to helping New Yorkers, especially the newly insured, understand the complex world of health insurance. An appropriation of \$5 million will restore the CHA program to its original capacity, and allow it to better serve hundreds of thousands of New Yorkers and small business owners and employees who are newly insured through the NY State of Health.

**HCFANY supports funding for the NY State of Health Marketplace, which will ensure New Yorkers access to quality, affordable health insurance.**

HCFANY applauds Governor Cuomo for proposing a broad-based insurance financing mechanism for NY State of Health, the State's highly successful insurance Marketplace. This fair and balanced financing mechanism will ensure a level playing field for New York consumers. Under the budget proposal, those who gain coverage through the Marketplace – many of whom rely on financial assistance to make insurance affordable - will not disproportionately shoulder the burden of guaranteeing affordable, quality coverage for New Yorkers. In addition, HCFANY urges the Legislature to consider other ways to strengthen the Marketplace by requiring all plans to offer an option for out-of-network coverage at the Silver and Platinum levels.

**HCFANY supports (1) administrative funding for the Basic Health Program, which will offer more affordable coverage to lower-income New Yorkers; and (2) urges the State to cover immigrants under the program.**

HCFANY supports the inclusion of funding for administrative operations of the new Basic Health Program (BHP) in the Executive Budget, which was initially authorized in last year's enacted budget. The BHP will bring in significant federal funding to offer quality coverage for lower-income working New Yorkers, generating approximately \$300 million in annual fiscal savings for the State. Administrative funding will ensure efficient operations for a program that will help thousands of New Yorkers afford health insurance.

While the BHP promises to open more affordable coverage to New Yorkers below 200 percent of the federal poverty level, as currently drafted a significant number of immigrant New



Yorkers will be excluded. HCFANY therefore urges the Legislature to ensure all New Yorkers who are income-eligible can enroll in the BHP. Specifically, New York should continue to be a leader in covering immigrants by using state funds to offer BHP coverage to those ineligible for federal matching funds.

New York’s landmark *Aliessa v. Novello* case guarantees state-funded Medicaid coverage for certain groups of legal immigrants, even when no federal match is available.<sup>[1]</sup> These immigrants were also deemed eligible for state-funded coverage through New York’s Family Health Plus program (up to 150% of the Federal Poverty Level), which is being replaced by the BHP. Nearly all of these immigrants are now eligible for federal funding under the BHP, and moving them to the new program will result in significant state savings. However, a subset of these immigrants—including those who have benefited from President Obama’s Executive Orders for childhood entrants and their families—are unfairly barred from the new insurance marketplaces and consequently ineligible for the federal BHP. It is palpably unfair that people who have similarly situated immigrant status would be eligible for New York State Medicaid, but not our State Basic Health Program.

The Legislature should remedy this problem by providing state funding to cover this relatively small number of higher-income PRUCOL immigrants in the BHP, consistent with past practices under the Family Health Plus program.

Finally, the State should consider taking the additional step to cover undocumented immigrants in the program, as all New Yorkers deserve affordable, quality health coverage.

**HCFANY supports provisions that would strengthen Medicaid and other public health insurance options for young New Yorkers.**

HCFANY supports two budget provisions that help to ensure strong public coverage for children and youth. First, HCFANY supports the proposed funding to assist voluntary foster care agencies in transitioning foster care youth to managed care plans. Voluntary foster care agencies are responsible for assuring children and youth in their care receive medical, dental, and behavioral health services, and the transition to Medicaid managed care requires substantial systemic changes. This funding is critical to ensure voluntary foster care agencies have the training and infrastructure needed for an effective transition. Second, HCFANY supports the provision to bring behavioral care reimbursement rates in the Child Health Plus (CHPlus)

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<sup>[1]</sup> Pursuant to *Aliessa v. Novello*, 96 N.Y.2d 418 (2001), the New York State and federal Constitutions mandate the state to provide state-only Medicaid funding to Legal Permanent Residents (“green card holders”) with less than five years and those immigrants who are Permanently Residing Under Color of Law (PRUCOL), or who are in the process of having their immigration status regularized.



program in line with Medicaid ambulatory care rates, which will help to ensure parity between CHIP and Medicaid services for children.

**HCFANY opposes provisions that would weaken public coverage options or otherwise harm low-income New Yorkers, including proposals related to indigent care funding, spousal refusal and prescriber prevails.**

*Indigent Care*

HCFANY opposes the Executive Budget’s proposal to provide an *additional* three year transition of the Indigent Care Payment methodology. Consumers have long expressed concerns that New York’s allocation of Indigent Care funding is neither transparent nor fair to those hospitals that serve the most in need. *See, e.g.* Community Service Society of NY, “Incentivizing Patient Financial Assistance,” (2012). In addition, it is unclear the proposed methodology complies with the new Disproportionate Share Hospital (DSH) requirements, outlined in the Affordable Care Act (ACA). The ACA requires that DSH funding prioritizes states with high levels of uninsurance and targets funds to hospitals with high Medicaid inpatient rates and high levels of uncompensated care (excluding bad debt). The DSH funding is a scarce source of federal funding that is slated for reduction over the next decade.

In 2013, New York made changes to the distribution of Indigent Care Pool funds to comply with the ACA, and gave hospitals three years to transition to the new system, over consumer opposition. The Governor’s 2015-2016 Executive Budget extends this transition period for an additional three years. We believe this additional transition period is unnecessary, and benefits hospitals that do not prioritize the uninsured and Medicaid populations. Accordingly, we urge the legislature to eliminate it.

*Spousal refusal*

The budget would eliminate the longstanding right of “spousal/parental refusal” for children with severe illness, low-income seniors who need Medicaid to help with Medicare out-of-pocket costs, and other vulnerable populations. The “refusal” will be honored and Medicaid granted only if a parent lives apart from his or her sick child, or a “well” spouse lives apart from or divorces his or her ill spouse. HCFANY opposes denying Medicaid to these vulnerable groups and therefore urges the legislature to preserve spousal/parental refusal.



### *Prescriber prevails*

HCFANY opposes the Governor’s proposal to repeal “prescriber prevails” in fee-for-service Medicaid. A prescriber, with clinical expertise and knowledge of his or her individual patient, should be able to override a formulary or preferred drug for atypical anti-psychotics, as well as other classes of drugs.<sup>1</sup> Individuals may have varied responses to different drugs in the same class. Sometimes only a specific drug is effective or alternative drugs may have unacceptable side effects. Prescribers are in the best position to make decisions about what drug therapies are best for their patients. Without this provision, consumers are left with no other option but to appeal drug denials, which unnecessarily burdens both consumers and State administrative systems.

### **HCFANY urges the Legislature to allow for certain expansions to Medicaid outside of the global cap.**

HCFANY recommends that certain expansions to Medicaid coverage be kept outside of the global cap. For example, President Obama’s recent Executive Order on immigration extends legal status to additional New Yorkers. Those who take up the new legal status will likewise be eligible for Medicaid due to the *Aliessa v. Novello* case referenced above. New York should hold any additional Medicaid costs due to the Executive Order outside of its existing Medicaid cap, as the expansion was initiated by the federal government and was not considered when the cap was instituted.

### **HCFANY urges the state to ensure robust consumer engagement in the design and implementation of Value Based Payment.**

HCFANY is watching with great interest New York’s efforts to implement value-based health care payments that reimburse providers based on outcomes, not volume. However, we are concerned that the State’s plans do not currently guarantee appropriate consumer disclosures about their provider’s participation in this new system and the potential impacts on their care. The State should make all efforts to ensure payment reforms are patient-centered and consumer-informed. To that end, HCFANY urges the Legislature to closely monitor the implementation of value-based payments, to ensure that consumers and their advocates are engaged in all aspects of planning and implementation, to require the development of meaningful quality metrics to measure success, and to guarantee robust consumer disclosure about the nature and extent of these value-based payments by their providers and health plans. This will help to

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<sup>1</sup> These include: anti-depressants, anti-retroviral, anti-rejection, seizure, epilepsy, endocrine, hematologic and immunologic therapeutic classes



ensure a transparent process and hold payment and delivery system reforms accountable to consumers.

Thank you for your consideration of our recommendations and concerns. Should you have any questions, please do not hesitate to contact Elisabeth Benjamin at (212) 614-5461, or at [ebenjamin@cssny.org](mailto:ebenjamin@cssny.org), or Mark Scherzer at (212) 406-9606, or at [mark.scherzer@verizon.net](mailto:mark.scherzer@verizon.net).

Very truly yours,

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