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## Testimony on the Executive's Proposed Health/Medicaid 2019-2020 Budget

February 11, 2019

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 and the Senate Finance Committees for providing the public an opportunity to weigh in on the state budget. HCFANY is a statewide coalition of over 170 organizations dedicated to achieving quality, affordable health coverage for all New Yorkers.

HCFANY supports proposals in the executive budget that would increase access to mental health and substance abuse treatment, codify the Affordable Care Act's consumer protections into state law, license pharmacy benefit managers, and create a review board to investigate New York's intolerably high maternal mortality rate. **However, the proposed budget invests next to nothing in expanding or improving health coverage for the average New Yorker and does little to promote consumer protections in the health care system.**

The budget's silence on the coverage problem is hugely disappointing. New York has made great strides at reducing the number of uninsured people through its laudable implementation of the Affordable Care Act. However, one million New Yorkers still remain without coverage and millions of others find coverage to be unaffordable or inadequate.<sup>1</sup>

Instead of concrete action, the budget offers a "coverage commission" to explore ideas for universal health care in New York. **HCFANY cannot support another health care commission in place of actual funding for health coverage.** New York has a coverage and cost crisis that needs to be addressed now. Other states are already moving forward with measures to expand coverage to immigrants and make coverage more affordable for everybody. Uninsured and under-insured New Yorkers cannot wait another year or longer just because these issues are challenging — we expect and call on our elected leaders to take action, and we stand ready to work with them. The time is now for our state leaders to lead on coverage.

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<sup>1</sup> Amy Neff Roth, "New York's uninsured rate drops," Times-Telegram, October 5, 2018, <https://www.timestelegram.com/news/20181005/new-yorks-uninsured-rate-drops>.



HCFANY does not accept that there are no resources available to invest in the health of New Yorkers. Health coverage reduces mortality and morbidity and greatly reduces poverty.<sup>2</sup> Because of those benefits, other states are choosing to prioritize health coverage and raise the revenue needed to do so. For example, unlike New York, several states are implementing their own individual mandate to raise funding for coverage expansions. Even when New York receives financial windfalls, such as the \$2 billion it extracted from the sale of Fidelis, the benefits accrue to powerful, well-resourced industry stakeholders instead of consumers. The current system encourages out-of-control health care costs – the proposed budget does little to improve this and provides no relief for consumers.

HCFANY calls on the Legislature to act on behalf of everyday people who are struggling to afford health care, not just the industry stakeholders that too often dominate New York’s health policy choices. We ask that the following policies be enacted in the FY2019-2020 budget:

**1. New York should allocate \$532 million to expand the Essential Plan to all income-eligible New Yorkers regardless of immigration status.**

HCFANY estimates that over 400,000 New Yorkers are uninsured because of their immigration status. New York could use state money to cover many people in this position through the Essential Plan, which is available for other New Yorkers earning up to 200 percent of the federal poverty level. Essential Plan funding comes from redirecting the federal premium subsidies enrollees would have used if they bought a qualified health plan in the private market. This federal funding can be used to cover lawfully present, but not undocumented, immigrants. HCFANY urges the Legislature to use state-only funding to expand the program to the undocumented New Yorkers who are unfairly excluded. Based on typical take-up rates, an estimated 110,000 people could get health insurance this way.

The Essential Plan is a good option for covering undocumented New Yorkers because it is cost-effective for the state and is a good deal for enrollees. The program has saved the State hundreds of millions of dollars by providing a federal funding source for immigrants who were previously covered using state-only Medicaid funding.<sup>3</sup> These savings should be used to provide coverage to more people instead of as giveaways to powerful industry stakeholders. Additionally, for the past three years the Essential Plan has accumulated hundreds of millions of

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<sup>2</sup> Benjamin D. Sommers, Atul A. Gawande, and Katherine Baicker, “Health Insurance Coverage and Health – What Recent Evidence Tells Us,” *New England Journal of Medicine*, August 10, 2017, 377: 585-593, DOI: [10.1056/NEJMs1706645](https://doi.org/10.1056/NEJMs1706645); Laura R. Wherry, Genevieve M. Kenney, and Benjamin D. Sommers, “The Role of Public Health Insurance in Reducing Child Poverty,” *Academic Pediatrics*, April 2016, 16 (3): S98-S104, <https://doi.org/10.1016/j.acap.2015.12.011> and Sanders Korenman, Dahlia K. Remler, and Rosemary T. Hyson, “The Impact of Health Insurance and Other Social Benefits on Poverty in New York State: Final Report to the Howard J. Samuels State and City Policy Center,” July 18, 2018, [http://www2.cuny.edu/wp-content/uploads/sites/4/page-assets/about/centers-and-institutes/demographic-research/New-York-HIPM\\_2018-08-06.pdf](http://www2.cuny.edu/wp-content/uploads/sites/4/page-assets/about/centers-and-institutes/demographic-research/New-York-HIPM_2018-08-06.pdf)

<sup>3</sup> Elisabeth R. Benjamin, “How Can New York Provide Health Insurance Coverage to its Uninsured Immigrant Residents?,” January 2016, <http://lghhttp.58547.nexcesscdn.net/803F44A/images/nycss/images/uploads/pubs/Immigrant%20Health%20Report%20Web%202.pdf>.



dollars in surplus because the federal funding it receives has outpaced the cost of running the program.<sup>4</sup> That should have been used as another opportunity to fund coverage expansions. Doing nothing instead leaves a large group of New Yorkers uninsured, straining the health care system and driving up costs for everyone.

**2. New York should pass A3316/S1809 so that immigrants being threatened by the Trump Administration maintain their health coverage.**

When the Trump Administration announced the cancellation of Deferred Action for Childhood Arrivals (DACA) in 2017, Governor Cuomo said “New York State believes it has a legal and moral obligation to exhaust every available avenue to protect immigrants and their families by providing comprehensive access to health care, regardless of circumstance.” The state then continued to provide state-funded Medicaid for immigrants even after their DACA expired.

New York should do the same for immigrants who have Temporary Protected Status (TPS) now the Trump Administration is eliminating it for most countries as they come up for renewal. TPS allows people living in the U.S to work with authorization, and to be protected from deportation, if it would be unsafe or inhumane for them to have to return to their country because of a crisis like a war or a hurricane. New Yorkers who lose TPS will also lose their ability to access health insurance unless New York authorizes the continuation of eligibility for state-only funded Medicaid by enacting A3316/S1809.

**3. New York should allocate \$132 million to create an Essential Plan buy-in for people earning 200-250 percent of the federal poverty level.**

New Yorkers face a stiff affordability cliff once they earn over 200 percent of the federal poverty level and must purchase a private plan if they do not have employer-sponsored coverage. For an individual, 200 percent of the federal poverty level is only about \$25,000 a year. Below that, the Essential Plan provides coverage for at most \$20 a month with no deductible. Above that income, New Yorkers turn to the New York State of Health (NYSOH), where even with plans can cost \$150 a month and have deductibles of over \$1,350 even with federal financial assistance.

New York could ease this affordability cliff by allowing people just over the income cutoff to buy into the Essential Plan. This option could be limited to New Yorkers earning between 200 and 250 percent of the federal poverty level to avoid disrupting the individual market and allow full use of the Affordable Care Act’s cost-sharing assistance as funding. New York could subsidize this purchase so that enrollees contribute \$50 a month for their premium, without adding a deductible. HCFANY estimates that this would provide affordable coverage for around 116,000 people, about half of whom are currently uninsured. The other half would likely leave the individual market.

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<sup>4</sup> Bill Hammond, “An Essential windfall,” July 13, 2018, <https://www.empirecenter.org/publications/an-essential-windfall/>.



HCFANY urges the Legislature to create this option for the lowest-income people in the NYSOH Marketplace. Those who prefer to keep private plans could do so, but those who find themselves struggling to afford their health insurance would have a comprehensive, affordable alternative.

**4. New York should provide relief to people struggling to afford private plans by providing state-funded premium assistance.**

Federal premium subsidies limit the percentage of income spent on health care premiums for those who earn up to 400 percent of the federal poverty level (for an individual, about \$49,000 a year). However, high deductibles and other out-of-pocket costs often mean that people cannot afford to use their plans even with lowered premiums. New York could add additional premium subsidies on top of the federal subsidies to help further reduce monthly spending on health insurance. New York could also add premiums for people earning between 400 and 600 percent of the federal poverty level, as Governor Newsom has proposed to do in California.

A benefit of this approach is that if New York subsidizes plans enough, it could lower prices in the individual market even for people who are not receiving the subsidies. Targeting the subsidies so that they bring the most people into the market would improve the risk pool, which would drive down premiums for everyone.

**5. HCFANY supports the proposed budget allocation of \$2.5 million for the Community Health Advocates program and urges the Legislature to provide additional funds to reach \$6.5 million.**

Since 2010, the Community Health Advocates program (CHA) has provided free, independent assistance to over 330,000 consumers trying to make the most of their health insurance coverage. CHA helps New Yorkers resolve billing issues and coverage denials, get prior authorizations, respond to out-of-network and surprise bills, and locate health services no matter what type of insurance they have. CHA has saved New Yorkers over \$37 million since it started. Services are provided through a central helpline and community-based organizations that can provide in-person assistance throughout the state.

HCFANY supports the Governor's efforts to codify the Affordable Care Act in State law, but is dismayed that this effort failed to include consumers' rights to an independent consumer assistance program (article 1002). The State has supported CHA's work financially over the years, but it is time to make access to CHA's services a legal right in New York.

This right to independence assistance with insurance problems extends to all New Yorkers, and it is important that all New Yorkers have access to information about using the program. CHA's information is already on all commercial Explanations of Benefits and claims denials. However, it is missing from denials sent to the four million New Yorkers enrolled in Medicaid Managed Care plans. HCFANY urges the State to add CHA's information to those denials so that managed care enrollees know where to turn for help.



HCFANY also urges the Legislature to increase overall funding for CHA this year. Last year, the executive budget provided \$2.5 million while the Assembly provided an additional \$1.4 million, for a total of \$3.9 million. At its height, CHA was funded at \$7 million and funded many more community-based organizations than it does now. HCFANY urges the Assembly and the Senate to contribute \$2 million each for a total of \$6.5 million in FY2020.

**6. New York should increase enrollment in existing health coverage programs by fully funding the Navigator program at \$32 million and allocating an additional \$2 million so that community-based organizations can conduct outreach in hard-to-reach communities.**

Approximately 300,000 New Yorkers are uninsured because they are unaware that they are eligible for help affording health insurance, have reservations about enrolling, or are not sure how to enroll. The Navigator program provides independent, in-person assistance to consumers who want help shopping for and enrolling in health coverage. Navigators have helped enroll more than 300,000 people since the program started in 2013. The Navigator program has received flat funding of \$27.2 million since 2013, with no cost of living increases. Agencies have lost trained and experienced staff because this funding limitation means they cannot reward experience or strong job performance with raises. HCFANY urges the Legislature to fund the Navigator program at \$32 million to make up for increased costs over time.

Additionally, New York should allocate \$2 million to community-based organizations to conduct outreach in communities that have low coverage rates. An example is immigrants, who have heard many confusing and frightening things about enrolling in public programs. These communities are more likely to trust the organizations that are already working in their communities. Those New Yorkers who are eligible for existing programs but are still uninsured are among the most challenging to reach and enroll in coverage. Broad-stroke marketing measures currently undertaken by NYSOH can best be augmented by a robust grassroots program.

**7. New York should ensure that funding distributed through the Indigent Care Pool goes to the safety net hospitals that provide the most care to low-income New Yorkers.**

Disproportionate Share Hospital (DSH) funds are intended to support hospitals that serve the most uninsured and Medicaid patients. However, in New York, this funding often subsidizes profitable hospital systems that serve less than their fair share of low-income patients.

New York distributes \$3.6 billion in DSH funds, \$1.1 billion of which are distributed through the Indigent Care Pool. New York State developed a new funding formula several years ago to make hospitals more accountable. The new formula more fairly links ICP funding to units of care provided to low-income patients, but the State instituted a three-year transition period to limit hospitals' immediate losses. That temporary transition period has since been renewed for an additional five years. HCFANY urges the Legislature to end the transition collar.



Additionally, the Legislature should improve the system of distributing DSH funds to target true safety net hospitals. During 2018, a workgroup convened by the Governor met to develop recommendations for achieving this. The workgroup never released its findings. However, it did result in a proposal (developed by New York City's Health + Hospitals) that would more fairly distribute the funds. HCFANY supports the Health + Hospitals Community Proposal and urges the Legislature to support it.

#### **8. HCFANY opposes strategies to cut spending by making it harder for people to enroll in Medicaid or harder for Medicaid enrollees to access health care.**

Medicaid is by definition a program for economically vulnerable people. Barriers to enrolling in Medicaid or seeking care after enrollment may save money in the state budget, but those savings come at the expense of people who are already financially insecure.

New York's Medicaid program allows spouses and parents to protect their own income by separating it from the income counted towards their loved ones' Medicaid eligibility. Families that are supporting a vulnerable person, such as an elderly person or a child with a serious illness or disability, cannot typically afford the medical care needed to grant that person the best quality of life on their own. If New York stops them from enrolling in the Medicaid program they will either go without care or be forced to split up their households to become eligible for Medicaid. HCFANY urges the Legislature to protect this right instead of asking families in difficult situations to take such drastic steps to qualify.

The budget also proposes removing another important consumer protection, that of prescriber prevails. The "prescriber prevails" principle means that clinicians (prescribers) have the final say over insurance companies in what medications their patient takes. Sometimes this means clinicians have to override the Medicaid program's preferred drug list to make sure that their patient is getting the right treatment. HCFANY urges the Legislature to preserve the prescriber prevails principle in New York's Medicaid program.

Another proposal meant to save money could result in restricting access to the Consumer Directed Personal Assistance Program (CDPAP). CDPAP allows people with disabilities to hire and supervise their own caretakers. Fiscal intermediaries help participating individuals manage human resource requirements. The budget proposal would eliminate most fiscal intermediaries in favor of a more centralized approach, and HCFANY is very concerned that this will make participating in the program harder. People with disabilities deserve control over such an important part of their lives, and HCFANY opposes changes to the program that would reduce that control.

Finally, the budget includes concerning language about providing greater "flexibility" to managed care plans to review prior authorizations for service hours and reduce them. The individuals receiving these services are extremely vulnerable and rely on these services to stay in their own home. It is highly unlikely that most will experience such an improvement that a previous prior authorization would need revision to include less care. HCFANY strongly opposes any reduction in their right to due process (notice and hearings) or any requirement that





would increase their responsibility to participate in hearings and back-and-forth with their insurance companies.

#### **9. HCFANY supports action to increase access to care for mental health or substance abuse disorders.**

The proposed executive budget includes measures that will remove insurance barriers for New Yorkers seeking mental health or substance abuse treatment. Insurance issues are one of the biggest barriers for people experiencing these health problems, despite federal parity legislation. The proposed budget eliminates common insurance practices that place undue burden on New Yorkers seeking care, including prior authorization requirements for medication-assisted treatment for addiction and inpatient psychiatric care for children. The proposed budget also limits co-payments for outpatient substance abuse treatment to one per day. These changes will mean more New Yorkers get desperately needed medical care.

#### **10. HCFANY supports efforts to reduce overall health care spending by bringing down health care prices, through strategies including a prescription drug affordability board, greater public engagement in the certificate of need process, and data tools that would allow consumers to compare prices before receiving medical services.**

Even though many efforts to control health care spending focus on reducing inappropriate utilization, most economists argue that prices are a far bigger problem than excessive utilization.<sup>5</sup> Efforts to control prices would mean greater State regulation and oversight of industry stakeholders like hospitals, insurance plans, and pharmaceutical and device manufacturers. It is often easier for state governments to focus on utilization, for example by removing consumer protections like prescriber prevails, than to take on these powerful industry stakeholders. However, New York cannot continue to limit health care spending by denying people coverage or limiting their access to care. HCFANY offers the following proposals to mitigate unreasonably high health care prices.

- **Control Prescription Drug Prices:** HCFANY supports the Governor’s proposal to license pharmacy benefit managers. However, HCFANY urges the Legislature to go further. Several states have developed proposals that would give them the power to set rates for prescription drugs or cap rates across their entire market. The National Academy for State Health Policy (NASHP) has even developed model legislation for creating a Drug Cost Review Commission with some rate-setting power.<sup>6</sup> New York should implement its own commission, perhaps modeled on the Drug Utilization Review Board (DRUB) used in the Medicaid program. The advantage of the model proposed by NASHP and the model used by the DRUB is that both include public, transparent processes in which consumers can participate.

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<sup>5</sup> Irene Papanicolas, Liana R. Woskie, and Ashish K. Jha, “Health Care Spending in the United States and Other High-Income Countries,” *JAMA*, March 13, 2018;319(10):1024-1039. doi:10.1001/jama.2018.1150.

<sup>6</sup> [https://nashp.org/wp-content/uploads/2017/07/Prescription-Drugs-Rate-Setting\\_Model-Legislation.pdf](https://nashp.org/wp-content/uploads/2017/07/Prescription-Drugs-Rate-Setting_Model-Legislation.pdf)



- **Improve the Certificate of Need Process:** Hospital consolidation contributes to large price increases and often results in reduced services in directly-affected communities.<sup>7</sup> The certificate of need process is one mechanism New York has to track and manage consolidation, but it is too hard for affected communities to participate. The Public Health and Planning Council, which approves certificate of need applications, has left its consumer representative seat empty for years. That spot should be filled, and more spots for consumers should be created to create balance between New Yorkers and the industry stakeholders that currently dominate the Council. The Council should be required to hold public hearings when hospitals are changing ownership, terminating or transferring services, or closing, and the hearings should be held in the affected community during weekend and evening hours when more working people can attend. The Council should also incorporate market analysis into its approval process and examine the possible impact ownership changes would have on prices and the availability of services.
- **Make Health Care Prices Comparable and Shoppable:** Consumers and regulators should have access to the prices charged by providers and accepted by plans. Price transparency would allow all parties to identify outliers who charge far too much and encourage providers to converge towards average prices. New York has been working on an All Payer Database for years that would aggregate claims data. The State should ensure that the information collected by the All Payer Database is available to consumers in user-friendly ways that allow them to make informed choices about their care.

Thank you again for providing this opportunity to testify and your consideration of our concerns. Please contact Amanda Dunker ([adunker@cssny.org](mailto:adunker@cssny.org), 212-614-5312) with any questions. We stand ready to work with the Legislature to move forward on our recommendations.

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<sup>7</sup> The Advisory Board, “When hospitals merge, prices can increase by more than 50%, according to a new analysis,” November 15, 2018, <https://www.advisory.com/daily-briefing/2018/11/15/hospital-mergers>.