**Introduction**

Empire Justice Center is a statewide legal services organization with offices in Albany, Rochester, White Plains, Yonkers, Mount Vernon and Central Islip (Long Island). Empire Justice provides support and training to legal services and other community based organizations, undertakes policy research and analysis, and engages in legislative and administrative advocacy. We also represent low income individuals, as well as classes of New Yorkers, in a wide range of poverty law areas including health, public assistance, domestic violence and SSI/SSD benefits.

Empire Justice has had the opportunity to serve on numerous advisory committees for New York State during Medicaid Redesign and the implementation of the Affordable Care Act. We have had an advisory role as a member of the Finger Lakes Regional Advisory Committee for the Health Benefit Exchange and the statewide Medicaid Managed Care Advisory Review Committee. We have also worked directly with the New York State Department of Health, serving on workgroups for the Basic Health Program, Managed Long-Term Care Plan quality measures, and Managed Long-Term Care implementation. We serve on the steering committee of the Coalition to Protect the Rights of New York’s Dually Eligible, and co-facilitate Health Care For All New York’s Public Programs Group, which meets regularly with the Department of Health on Exchange implementation. These experiences, along with our day to day work with low income New Yorkers and their advocates, have helped to shape the perspective we provide today.

**Testimony**

Thank you for the opportunity to submit this testimony commenting on the 2015-2016 Health and Medicaid Budget.

Through this testimony Empire Justice Center will urge the legislature to:

1. Expand and strengthen health insurance navigation advocacy and assistance for New Yorkers by supporting the Community Health Advocates (CHA) appropriation with an additional legislative investment.
2. Ensure an affordable health care option for low income New Yorkers by supporting funding for the administration of the Basic Health Program.
3. Provide state funding to expand the Basic Health Program to all income eligible immigrants.
4. Ensure that sick and disabled children, New Yorkers with disabilities and seniors continue to have access to medically necessary care by preserving spousal and parental refusal in the Medicaid program.
5. Ensure that New York’s most vulnerable Medicaid recipients are able to access the medications prescribed by their doctors by preserving prescriber prevails in fee-for-service Medicaid.
6. Allow Medicaid applicants to access urgently needed medical care by keeping immediate needs Medicaid available.
7. Help move New York closer to realizing the *Olmstead* goal of community integration by supporting the creation of a new class of homecare worker: advanced home health aides.

**Consumer Health Advocates (CHA)**

**Recommendation:** Invest a total of $5 million in Community Health Advocates.

We are grateful that the Executive Budget provides funding for CHA at its current level, $2.5 million. However, we are asking the Legislature to provide additional funds to bring CHA to $5 million, the level at which it was funded in 2011-2012.

Community Health Advocates (CHA) is a statewide network of organizations that assist individuals and small businesses in New York so that they are able to effectively use health insurance coverage and access quality health care. These services are critical. The success of the New York State of Health Marketplace depends on the ability of individuals to not only enroll in, but to be able to use their newly-acquired health coverage.

The health care system is notoriously challenging to navigate. Most consumers have difficulty grasping even basic terms associated with health insurance coverage such as premiums, co-insurance and co-pays. Understanding how to utilize health insurance coverage to access care, particularly when the insurer places restrictions on that care, is even more difficult.

The CHA program focuses on assisting individuals who encounter problems once they have enrolled in health insurance. CHA is administered by the Community Service Society of New York and consists of a statewide network of community based organizations and specialists offering services ranging from community outreach and education to appeals of service denials. CHA also operates a live-answer, toll-free consumer hotline and supports efforts to improve the health care system by analyzing trends in its statewide database and providing valuable feedback to policy makers.

Since 2010, the CHA program has helped nearly 200,000 individuals navigate and keep their health coverage, saving over $14 million for consumers across the state. CHA provides critical assistance to all New Yorkers, regardless of insurance coverage type, including commercial insurance available through the Marketplace, employer coverage and public insurance products, like Medicaid.

Empire Justice Center urges the legislature to increase funding for CHA from the $2.5 million in the Executive Budget to $5 million total. The additional investment will allow CHA to meet increased demand for health insurance navigation and advocacy assistance brought about by the enrollment of more than 2 million people in the New York State of Health Marketplace since its launch, many of whom are newly insured. It will also allow CHA to redeploy small business-serving groups in its network, which numbered 34 at the height of CHA’s funding,
but which now number only four. Moreover, additional funding will allow CHA to reach counties that are not currently served and increase services in rural and remote communities.

More information on CHA is available online at www.communityhealthadvocates.org.

**Basic Health Program (BHP)**

**Recommendation:** Support funding for the administration of the Basic Health Program and expand the Basic Health Program to cover all income eligible immigrants.

Empire Justice Center supports the Executive Budget’s inclusion of funding for the administration of the Basic Health Program (BHP). The BHP will make health insurance more affordable for lower income New Yorkers and will allow the state to realize substantial savings its first year, and ongoing savings in years to come. While the federal government will provide the majority of the funding for the BHP program, federal funds cannot be used to administer the BHP; therefore the allocation of funding for administrative costs is critical to operationalizing the program.

Although the BHP promises affordable health insurance to low income New Yorkers below 200% of the federal poverty level, including most people who are Permanently Residing Under Color of Law (PRUCOL) who currently receive state-only Medicaid, there are some New Yorkers who will be left without any health coverage. Some PRUCOL individuals with incomes between 138% and 200% of the federal poverty level are excluded from the BHP and other Marketplace products under federal rules. Yet their incomes are too high to qualify for state-only Medicaid, leaving them with no insurance options. We therefore urge the legislature to extend the Basic Health Program to all PRUCOL immigrants using state funds. Additionally, we request that the legislature consider extending a state-funded BHP to undocumented immigrants.

**Spousal and Parental Refusal**

**Recommendation:** Oppose the proposed elimination of the spousal and parental refusal option for low income Medicaid applicants and recipients.

We strongly oppose the Executive Budget’s wholesale elimination of the spousal and parental refusal provisions currently available to help children and adults with disabilities and seniors receive medically necessary Medicaid services that would otherwise be unavailable to them due to a spouse’s or parent’s income.

The Executive Budget would eliminate the longstanding right to utilize spousal refusal for community Medicaid eligibility, and would also abolish parental refusal which allows severely disabled children to access Medicaid. Under the Governor’s proposal, “refusal” will only be allowed if a parent lives apart from a sick or disabled child, or a well spouse either lives apart from or divorces the spouse in need of Medicaid coverage. Severely disabled children will lose access to Medicaid under this provision, and low income seniors and people with
disabilities will lose access to both Medicaid and the ability to obtain assistance with Medicare cost-sharing expenses. While the Affordable Care Act and the Marketplace now make access to affordable care more feasible, many of New York’s most vulnerable residents are not eligible for Marketplace coverage, or the coverage is not sufficient to meet their medical needs. These individuals will be left without access to vital Medicaid services, like homecare, should the legislature adopt the proposal to restrict the right of spousal or parental refusal.

Situations continue to arise where parental or spousal refusal is necessary to ensure access to medical care. For example, we recently advised parental refusal where a mother’s income from a new job made her severely disabled two year old ineligible for Medicaid and the services only Medicaid provides. A government official suggested that the mother quit her job to preserve her two year old’s Medicaid. The parental refusal permits the mother to keep working and allow for maintenance of Medicaid services and continuity of care for the child while the child is considered for Medicaid waiver programs that disregard the mother’s income.

Almost always, individuals who end up using spousal and parental refusals are in desperate straits when they contact us – they have no Medicare Part B coverage at all, cannot afford their drug co-pays, need homecare in order to avoid nursing home placement, or have significant disabilities and can’t access the medical care they or their children need. Spousal or parental refusal affords these individuals a vital lifeline to obtain and retain necessary medical coverage and services. Empire Justice Center therefore strongly opposes the Governor’s proposal to limit spousal and parental refusal and urges the legislature to reject it.

Prescriber Prevails

**Recommendation:** Preserve prescriber prevails in fee-for-service Medicaid.

Empire Justice Center opposes the Governor’s proposed elimination of important prescriber prevails protections for prescription medications not on the preferred drug list from fee-for-service Medicaid. Eliminating prescriber prevails would create new barriers to individuals obtaining medications prescribed by their doctors, including medications on which they have been stabilized. It will also leave individuals in fee-for-service Medicaid worse off than their counterparts in managed care, who at least have some prescriber prevails protections for certain classes of drugs, including atypical antipsychotics, anti-depressants and seizure drugs.

While the number of people on fee-for-service Medicaid is shrinking, those who do obtain their prescriptions through fee-for-service Medicaid are some of New York’s most vulnerable Medicaid recipients. They include children in foster care, children and adults with developmental disabilities on OPWDD waivers, medically fragile children in the Care at Home waivers, and individuals on the Traumatic Brain Injury (TBI) and nursing home transition and diversion waivers. The doctors who treat these individuals’ multiple, chronic, and complex medical and behavioral needs should have final say over what medications are necessary
and appropriate, and the state should not seek to save money on the backs of the most medically needy New Yorkers.

Immediate Needs Medicaid

Recommendation: Reject the Governor’s proposed elimination of immediate needs Medicaid.

The Executive Budget seeks to amend the Social Services law to block the temporary provision of Medicaid services to Medicaid applicants with an immediate need for such services. Under the proposal, only people already determined eligible for Medicaid, or who qualify for presumptive Medicaid coverage, could obtain urgently needed medical services, including services like home care, that are the difference between remaining in the community and being confined to a nursing home, hospital or other institution.

Applying for Medicaid can be a very lengthy process, particularly for seniors and people with disabilities who cannot use the Marketplace, but instead must apply at their local department of social services. In most cases, a Medicaid eligibility determination must be made within 45 days of application. But that month and a half wait for medical services can mean the difference between a person obtaining medication to stabilize a life-threatening condition and being hospitalized; it can mean the difference between an individual being discharged home from a hospital with home care and languishing in a hospital or a nursing home for months. Furthermore, in our experience, many individuals wait longer than 45 days to be approved for Medicaid so that they can access services. Since 2008, Empire Justice Center and other legal services organizations have brought nine lawsuits against local social services districts regarding delays in processing new applications for public benefits, including Medicaid. In all of these cases, the local social services districts have submitted to ongoing monitoring of their application processing systems to achieve compliance with federal eligibility determination deadlines. However, delays persist throughout the state, and other lawsuits to compel timely processing of applications are anticipated.

For individuals whose immediate need is for home care services so that they can remain in the community, the application time period and application delays are compounded by the lengthy process of getting approved for home care and enrolled in a Managed Long Term Care plan even after a Medicaid eligibility determination. This process frequently leaves people waiting an additional month, and often more, to obtain home care services even after a Medicaid eligibility determination.

Without the ability to access temporary Medicaid to get prescriptions filled, see a medical provider, or obtain home care services, applicants facing delays are at risk of decompensation and institutionalization. Blocking access to temporary Medicaid not only jeopardizes the health of applicants, it risks costing Medicaid more money in the long run since, as conditions worsen, expensive acute and nursing home care becomes more likely.
**Advanced Home Health Aides**

**Recommendation:** Support amendments to the Nurse Practices Act to create advanced home health aides.

Empire Justice Center supports the Executive Budget proposal to allow for the training, supervision and hiring of a new class of home care worker, advanced home health aides. Under the proposal, advanced home health aides would be able to perform in a patient’s home certain health care tasks, including administering medications that currently require a nurse visit. The use of advanced home health aides will help keep individuals in the community who otherwise might face institutionalization. The creation of the advanced home health aide workforce is also necessary to realize the Community First Choice option in New York State, as well as to respond to the shortage of nurses, especially in rural areas, and the expense of providing nursing services in the home.

Thank you for the opportunity to submit this testimony. Please feel free to contact me with any questions.

**For more information:**
Amy Lowenstein, Senior Attorney
alowenstein@empirejustice.org
(518) 935-2857