

Testimony of The Legal Aid Society
On
THE 2009-2010 EXECUTIVE BUDGET
TOPIC: HEALTH/MEDICAID

Presented before:

**The Senate Finance Committee
and
The Assembly Committee on Ways and Means**



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The Legal Aid Society appreciates the opportunity to testify at this hearing on funding for critical Health and Medicaid services in the 2009-2010 Executive Budget.

The Society's Health Law Unit operates a State-wide Helpline that assists New Yorkers in need of health care services or health insurance coverage, and those mired in medical debt. As the economy has worsened, the number of calls to our helpline has increased steadily. Although our current capacity only allows us to operate this helpline one day each week, during the last six months we have received more than 400 calls for help.

In addition to providing direct client assistance, our unit provides technical assistance and training to advocates throughout the state. We are active members of coalitions raising beneficiaries' concerns including Medicaid Matters New York and the Statewide Consumer Coalition on Medicare Part D. We also participate in workgroups on Medicaid streamlining and simplification, Medicaid managed care, and Charity Care.

The Legal Aid Society recognizes the gravity of the fiscal crisis facing our state and we greatly appreciate the commitment on the part of the Governor and the Legislature to maintain, and where possible to increase, access to both health insurance and health care services. We are here today to alert you to several proposals in the Executive budget that we support because they remove barriers and increase access to health care. We are also here today to highlight our concerns regarding proposals in the Governor's budget that diminish access to health care coverage and services.

Streamlining and Simplification

In these very difficult times, when holding a job is more important than ever, the Executive budget proposes the removal of several important barriers to accessing Medicaid for low-income New Yorkers. Low-wage workers often work more than one job even in good economic times. Many of these jobs are hourly and do not have such benefits as sick or vacation leave time. As a result, when these individuals are not at work, they are not paid. Because Medicaid currently requires a face-to-face interview, many applicants must make the devastating choice between losing pay or possibly their job and submitting an application for Medicaid. We strongly support the following proposals to simplify the application process in the Governor's budget:

- Elimination of the face-to-face interview requirement for Medicaid and Family Health Plus
- Elimination of the asset test for adults in Medicaid and Family Health Plus
- Elimination of fingerprinting for Medicaid
- Creation of one Medicaid eligibility level for children of all ages

Elderly Pharmaceutical Insurance Coverage (EPIC)

EPIC currently provides vital protection to low-income seniors enrolled in Medicare Part D. It is no secret that navigating Medicare Part D has been difficult for enrollees across the nation. Consequently, the current EPIC program which wraps around Part D is

critical to ensuring that seniors do not leave the pharmacy without their prescriptions. The Executive budget proposes to eliminate this protection by removing the EPIC wraparound benefit. We think that this is a mistake.

To prevent Medicare Part D plans from shifting costs to EPIC, the Legislature gave the EPIC program authority to file appeals of denials by Part D plans on behalf of EPIC enrollees. Although EPIC has only been filing appeals for three months, since October it has already recovered \$500,000 in costs based on incorrect denials by Part D plans. EPIC has won more than 50% of the appeals filed and a significant number of appeals are still outstanding. Instead of eliminating EPIC's wraparound benefit, EPIC should continue to maximize Medicare Part D by recovering funds expended based on incorrect denials by the Part D plans.

Medicaid Wrap-around benefit to Medicare Part D

The Executive budget proposes to eliminate the limited wrap-around benefit for Medicaid beneficiaries who also have Medicare Part D. In last year's budget, Medicaid wrap-around coverage for Medicare Part D was limited to four classes of medications – 1) atypical anti-psychotics for treatment of psychiatric conditions like schizophrenia, acute mania and psychotic agitation, 2) anti-depressants, 3) anti-retrovirals for the treatment of HIV/AIDS and 4) anti-rejection medications for recipients of organ and tissue transplants. Maintaining a treatment regimen and access to these medications is critical to the health of the recipients who receive them. The cost-savings associated with eliminating this small program are insubstantial compared to the cost of emergency medical care that will be required by a transplant recipient whose body rejects their new organ because they cannot access their medication. Rather than risk the health of beneficiaries requiring these four classes of critical medications, Medicaid should act on beneficiaries' behalf in the same manner as the EPIC program and recover the costs by appealing incorrect denials by Part D plans.

Restore Funding to the Managed Care Consumer Assistance Program (MCCAP)

Seven organizations – Community Service Society, Empire Justice Center, The Legal Aid Society, Medicare Rights Center, New York Legal Assistance Group, New York State Wide Senior Action Council and Selfhelp Community Services, Inc. - are funded under MCCAP to provide assistance to seniors and individuals with disabilities who are unable to navigate Medicare Part D. Our organizations assist the lowest income New Yorkers obtain the Low Income Subsidy for Medicare Part D. We also ensure that these individuals obtain other vital assistance they may be entitled to such as Medicaid, the Medicare Savings Program, and EPIC. In 2008, our organizations provided individual assistance to more than 6,500 beneficiaries across the state and conducted outreach and training to nearly 61,000 beneficiaries and 3,200 advocates.

We urge the Legislature to reject the Governor's proposal to reduce MCCAP funding by 50%

Medicaid Prescription Drug Program

We are extremely concerned about the Governor's proposal to remove vital consumer protections carefully negotiated in prior legislation. It is important that the State Department of Health (DOH) have the authority to negotiate effectively with prescription drug companies. We support enhancing this authority through the Supplemental Rebate program, but we are concerned by the proposals 1) to impose prior authorization requirements on prescriptions outside of Medicaid's Clinical Drug Review Program (CDRP) or the Preferred Drug Program (PDP), 2) to remove the physician override in the CDRP and 3) to impose step therapy. In essence these impositions will allow agency employees to override the treating physician's order.

Medicaid Managed Care

We urge the Legislature to support the Governor's Medical Home proposal and to reject the proposal to add personal care services to the Medicaid managed care benefit package.

Medical Home Program

Care coordination is a serious problem for many Medicaid managed care enrollees. We strongly support the Governor's proposal to create a medical home program. Similarly, we agree with the Governor's proposal to offer primary care case management to individuals in rural areas that do not have health plans is a move in the right direction. We would urge further use of primary care case management, ideally as an option for individuals who are currently unable to navigate Medicaid managed care. Finally, we support the budget language that would help contain health plan administrative and marketing costs.

Based on the experiences of our clients, we continue to have serious concerns about the DOH's plans to expand the mandatory Medicaid managed care program. In the past two years, we have received more than 90 calls regarding individuals with disabilities who are unable to navigate the managed care exemption process or their managed care plans after being mandatorily enrolled. Many of these beneficiaries have lost access to critical services upon their enrollment. Mandatory enrollment has been especially difficult for individuals with autism and mental retardation. Many of these enrollees have lost access to clinics that specialize in treating individuals with developmental disabilities because these clinics do not participate in the managed care plans networks.

Personal Care Services should remain under fee-for-service

Personal care services should not be part of the Medicaid managed care benefits package until the problems that beneficiaries are currently experiencing accessing other long term care services within the benefit package are remedied. Currently, Certified Home Health Aide (CHHA) Services are included in the managed care benefit. For Medicaid beneficiaries with chronic illnesses and disabilities who are mandatorily enrolled into Medicaid managed care plans, the inclusion of these benefits in managed

care has created great hardship. Many beneficiaries who have had CHHA services in place have lost these critical services upon being mandatorily enrolled in managed care. One example of the types of problems our clients have faced is a five year old with developmental and behavioral disabilities who was committed to a hospital's psychiatric ward after losing his private duty nursing and home health aide services because the plan did not authorize them.

Child Health Plus

We are proud of our State for its commitment to providing health insurance coverage for all of New York's children, but are concerned by the proposal to increase cost sharing for children in families with incomes between 160% and 400% of the federal poverty level (FPL). Since parents at these levels are generally not covered by public health insurance, requiring increased cost-sharing for their children may result in loss of coverage. New York has recognized how important it is to children's health, education and long-term development to have ongoing health coverage and has worked very hard to reduce the number of uninsured children. Increasing premiums during these difficult economic times could negate these efforts and compromise children's access to health care. We ask that the Legislature reject this proposal.

Family Health Plus Expansion

We appreciate the Governor's commitment to expanding Family Health Plus (FHP) to 200% of the FPL for adults, but strongly believe that this expansion should be implemented statewide. At present, FHP is uniformly offered statewide. The current proposal contemplates a funding mechanism that would be based on counties opting in to this expansion. This could mean that people in adjoining counties may not have the same access to this vital health coverage.

From the calls we receive on our helpline, we know that families are often required to navigate the complex coordination of health care services and insurance programs. Often members of the same family are not all eligible for the same public health insurance program. While children with incomes up to 400% of the FPL are eligible for subsidized coverage under Child Health Plus, their parents are not eligible for any public coverage if their incomes are more than 150% of the FPL. This situation is even more dire for adults without children. They are only eligible for public health insurance with incomes at or below 100% of the FPL (currently \$903/month for single adults and \$1215/month for couples). Since these income thresholds are very low, adults are often left negotiating sliding fee scale programs or relying on charity care for vital health care services.

While we applaud the Governor's proposal to expand FHP, we urge the Legislature to require that the expansion of this program be statewide so that New Yorkers below 200% of the FPL have equal access to public health insurance coverage.

Conclusion

We are extremely grateful to the members of the Assembly and Senate for your leadership and ongoing commitment to expand access to health insurance coverage and access to health care services. As the economic crisis worsens, we look forward to working with you to ensure that New Yorkers are able to obtain medical services.