



Empire Justice Center

Making the law work for all New Yorkers

Albany ♦ Rochester ♦ White Plains ♦ Long Island

**Testimony of Empire Justice Center
Town Hall Budget Meeting
Utica, NY November 27, 2007**

Presented by Anne Erickson, President & CEO

Good evening, my name is Anne Erickson and I am President and CEO of Empire Justice Center, the support center for civil legal services programs outside New York City. As a multi-service organization, we provide a comprehensive mix of training, policy advocacy and legal assistance in a broad range of poverty law issues. In our role as a legal services support center, we provide training to local programs, act as an informational clearinghouse, and provide advice and assistance in order to keep the community as informed as possible on any changes in laws, rules or regulations that might impact the rights of their clients. We engage in legislative and administrative advocacy and undertake policy analysis and research in areas of poverty law in order to keep policy-makers informed about the needs of our clients and the impact their policy actions will have on those who are poor, disabled or otherwise disenfranchised. We also provide direct legal assistance in specific areas of law from our offices in Rochester, Albany, White Plains and Long Island, and we undertake impact litigation where needed to protect and enforce the rights of those in need. Our current areas of focus include public benefits, housing, consumer, domestic violence, child care, food stamps, disability, immigrant rights, education, employment, civil rights, and public health programs, including Medicaid, Child Health Plus, Family Health Plus and Medicare Part D.

Before I begin, I would like to take the opportunity to thank you for travelling across the state to hear the people's priorities. Organizationally, we have worked on state budget issues for over twenty years and I believe this is the first time we have had a public opportunity provide input on the Executive Budget before it is finalized. Our thanks and appreciation to Governor Spitzer for launching this new effort.

We are in the process of developing our full 2008 Legislative agenda; my testimony today will focus on a number of budgetary issues including:

- Funding for Civil Legal Services
- Funding for the Disability Advocacy Program
- Raising the Welfare Grant
- A Proposal to Respond to the Mortgage Foreclosure Crisis
- Embracing Universal Health Care
- Streamlining the Health Care System
- Continuation of Primary Prevention Plans to Stop Childhood Lead Poisoning in Health Budget
- Child Care Funding

Continue to Invest in Infrastructure and Funding for Civil Legal Services

Let me begin by noting that Empire Justice coordinates the Civil Legal Services Advisory Committee, a coalition of 21 civil legal services programs outside of New York City that make up the civil legal services delivery system. As the "upstate" or "rest of state" community we work closely with our colleagues in New York City to speak with a single voice on issues related to state funding whenever possible. For our purposes today, I will speak about the need for civil legal services funding for civil legal services, but my recommendations reflect only the positions held by our Civil Legal Services Advisory Committee.

Providing access to legal assistance is critical to the core fabric of any state's human services delivery system. As noted by the New York State Bar Association in its seminal report of the legal needs of the poor:

"American society today is complex and the judicial system mirrors that complexity... few middle class Americans would represent themselves in court if their access to shelter, income, food or clothing were at issue... yes, the poor are confronted by such problems repeatedly and are often defeated due to the lack of counsel..."¹

The issues confronting the poor and those living on low incomes are, if anything, even more complex today. Whether it's the ever-changing landscape governing access to public assistance or health care or the newly emerging legal needs of consumers and financially strapped homeowners, the legal needs of our state's most vulnerable populations remain critical and all too often unmet. Nationally, according to the Legal Services Corporation (LSC), less than 20 percent of the legal needs of the poor are being met.²

In order to meet these needs, legal aid programs across the nation rely on three core funding streams: federal funding, Interest on Lawyer Account (IOLA) funds, and state funding. In New York, those funding streams include:

- Federal Legal Services Corporation (LSC) – federal funding received by seven (7) LSC grantees in New York State. Launched in the 1960s, the federal Legal Services Corporation (LSC) is the national construct for funding civil legal services. These funds are distributed on a per-poor-person basis and support the general delivery of legal services based on local needs assessments.
- Interest on Lawyers Account (IOLA) – received by many legal services, but not all. Modeled after programs in Canada and Australia, IOLA is now a model of funding used throughout the country to tap into what had been non-interest bearing accounts held in escrow by attorneys and law firms. Seventy-five percent (75%) of the annual funding must be designated for the direct delivery of services to individuals, while 25% are designated for efforts to advance the Administration of Justice.
- State Funding - the 2007- 08 State budget provided funding for legal services through the Office of Court Administration (OCA), the Department of State (DOS), and the Division of Criminal Justice Services (DCJS) as part of the Legal Services Assistance Fund (LSAF) – again, not all programs receive funding from all of the state funding streams:
 - **Department of State** - In the early 1990s, the Assembly majority secured the first general appropriation for legal services in New York, setting aside \$3 million targeted to programs across the state. From that point on, the Assembly maintained their commitment to what quickly became core funding. The funding

¹ *The New York Legal Needs Study*, New York State Bar Association Committee on Legal Aid, June 1990, revised and reprinted December 1993.

² *Documenting the Justice Gap in America*, Legal Services Corporation, September 2005.

level rose steadily to \$7.5 million – and then dropped and stayed at \$4.6 million after 9/11.

- **Office of Court Administration** – Thanks to the vision of Chief Judge Judith Kaye and the leadership of Judge Juanita Bing Newton, \$5 million was included in the Judiciary budget for the provision of civil legal assistance for the first time last year. Ultimately, through the efforts of Governor Spitzer, a total of \$8 million in new funding was appropriated in last year's budget, nearly doubling the funding that had been available through the Legislature alone.
- **Legal Services Assistance Fund.** Created in 2003 when the state was raising fees to cover the cost of increased reimbursement for mandated representation on the criminal side, the LSAF is supported by a set-aside of a portion of each criminal history search fee. Rather than dedicate the funds to civil legal services, the LSAF is available for both criminal and civil legal assistance and is allocated based on Memoranda of Understanding between and among the Governor and Legislative Leaders. We estimate that last year, approximately \$2 million went to civil legal services providers statewide.

Combined, these funding streams support a full range of services needed to ensure a vibrant civil legal services delivery system. From front-line organizations that provide direct legal assistance through staff model programs, to organizations providing targeted assistance to special populations, to programs organizing the pro bono efforts of the private bar, to support centers providing the coordination and overarching statewide services, the delivery system in each state should strive to meet the new standards adopted by the American Bar Association last year.³

Here in New York we have all the components of a comprehensive delivery system. It is just severely overwhelmed and underfunded.

State Funding and Governor Spitzer's Leadership

The 2007-08 budget was historic in its treatment of civil legal services. Since 1993, when the state first provided general support for the delivery of legal services, this funding had always been a last-minute "member item" add carried by the Assembly Majority and, in the 2006-07 budget these funds totaled \$4.6 million.

Even prior to taking the oath of office last January, then Governor-elect Spitzer indicated his support for a more stable, more structured approach to funding the delivery of civil legal services in New York. He clearly understood that these are vital services – that ensuring access to legal assistance means protecting access to justice and supporting the rule of law. Providing legal services to those in need can mean the difference between a family being housed and being homeless, between providing legal protection for victims of domestic violence and turning a blind eye, between ensuring access to health care and unchallenged denials of critical care. These are core, stabilizing services and yet, as a nation, we fail to meet 80% of the legal needs of the poor.

³ See: Standards for the Provision of Civil Legal Aid and ABA Principles of a State System for the Delivery of Civil Legal Aid, both adopted by the ABA House of Delegates August 2007.

Given this backdrop it was nothing short of stunning to see that through the combined efforts of the Executive, the Judiciary and the Legislature, state funding for the general delivery of civil legal services in New York rose from \$6.8 million⁴ to \$14.6 million in Governor Spitzer's very first budget.

While we clearly understand the extremely tight financial constraints the state is facing, we believe we must continue to build on the momentum the Governor created in last year's budget.

Our 2008 Budget Request

We are asking the Governor to not only maintain last year's commitment but to increase the \$14.6 million in state funding for legal services to \$25 million in next year's budget. This will put New York on track to secure a state investment of \$50 million by 2010.

Creating an Office for Civil Justice

As noted above, the state's general operating support for legal assistance is currently made available through three separate agencies and is distributed with three different methodologies. We strongly support the maintenance of the three core funds for the delivery of legal assistance: Federal LSC, IOLA and the State. In terms of the state's funding commitment, we believe that the general operating funds provided by the state should be brought together under one agency through the creation of an "Office for Civil Justice" in the Executive Branch.

We believe this could be a relatively small office which would create substantial administrative efficiencies for the state by taking responsibility for the coordination, contracting oversight and data collection for all general support dollars New York makes available for the provision of civil legal assistance. Such an office would also create efficiencies for providers by affording a single point of entry for state general operating dollars, potentially standardizing the application and reporting processes, and being responsible for ensuring that state funding is included in the Executive Budget each year. Such an office would play a key role in coordinating with the other core funding sources to help ensure that funding is not duplicative and critical or emerging needs are being met. We envision the "office" working closely with IOLA to help ensure stability and broad access to services in every region of the state.

IOLA Comparability and Governor Spitzer's Leadership

Not only did Governor Spitzer include desperately needed state funding in his inaugural budget, he also worked to tackle the issue of "IOLA comparability." This summer the administration worked with the leadership at the IOLA Fund to revise the IOLA regulations to require banks that hold IOLA accounts to provide interest rates comparable to the rates paid on similar accounts. These changes are already having a dramatic impact, allowing IOLA to consider making grants of \$25 million for 2008, up from approximately \$14 million in 2007.

New York now joins a growing number of states that have tackled the interest rate comparability issue. Among the ten (10) states that have adopted comparability rules in the past few years, at least four

– five if you include New York - also increased state funding for civil legal assistance in their 2007 state budgets.

We urge the Governor to maintain his leadership in this area by continuing to invest in legal assistance through the state budget, creating a focal point for civil legal assistance within the executive, and maintaining his support for IOLA's continued growth. Together these efforts will ensure that New York moves closer to the promise of equal access to justice.

Office of Temporary and Disability Assistance Recommendations:

1. An Increased Investment in the Disability Advocacy Program Will Pay for Itself

The Disability Advocacy Program (DAP) helps low income disabled individuals who have been inappropriately denied or terminated from federal Supplemental Security Income (SSI) or Social Security Disability benefits (SSD) access the benefits they are entitled to. By helping individuals on public assistance obtain disability benefits, DAP generates more funds in federal retroactive benefits and interim assistance reimbursements to the State than the State invests in the program. Unfortunately, despite the successes of the program, funding has remained for the most part stagnant since 1996. Without an increase in funding the savings DAP reaps for the state will be placed at risk.

• **DAP successes:**

- A program that more than pays for itself - In addition to helping disabled individuals obtain disability benefits, each successful case results in the State and local districts being reimbursed for benefits that were provided from the time of initial application to award of benefits. In 2005 DAP secured a total of almost \$11 million federal reimbursements for public assistance expenditures, for an initial investment of \$6.74 million statewide. According to the Office of Temporary and Disability Assistance's most recent Biennial Report to the Legislature, DAP also generated \$10.5 million in public assistance cost reduction, resulting in a net gain of \$14.6 million for the state and localities, more than twice the initial investment.
- Extremely high success rate - New York's success rate is consistently well above the national average. In 2005, 81% of all DAP cases resulted in receipt of federal benefits.
- Helping to meet federal work participation rates – As noted above, each successful appeal for a public assistance recipient moves a disabled individual off of welfare, and out of their local district's work participation rate calculation. In 2005, DAP was responsible for moving 2424 individuals off of the public assistance caseload and onto federally funded disability benefits.

2005 State and Local Dollars Invested	2005 Recouped PA Dollars for State and Localities	2005 Public Assistance Cost Reduction	2005 Total Retroactive Awards Clients
\$6.74 million	\$10.8 million	\$10.5 million	\$34.5 million

- **Increased investment is needed just to keep pace.**

Many DAP programs are unable to meet the need for their services. In a 2006 survey of DAP service providers conducted by the Empire Justice Center:

- 27% of responding programs reported that they were not able to operate at full capacity, primarily because of funding shortages,
- 63% of programs reported having supplemented state funding for DAP using in kind support or outside funding sources,
- Even with supplemental funding the demand for service is not met. Almost 75% of DAP service providers reported a waiting list for services and turning clients away.
- Some service providers turned away as many as 25 clients per month, while others responded that they were not running a waiting list because they were unable to accept any new cases.

Clearly there are more people DAP can help, more reimbursements for the state and retroactive awards for the clients the program can obtain, given adequate funding.

- **To help the program do this, we urge the Governor to include \$10.74 million in the Executive Budget for DAP services.**

2. Give the Neediest New Yorkers a Raise

At a time when too many public officials consider this topic to be politically off limits, or no longer relevant, it is critical that we recognize that throughout this state there are thousands of households in urgent need of assistance. They include families with disabled household members, families where domestic violence temporarily precludes employment, working families whose earnings are so low that they still qualify for welfare and people whose education, skills and literacy levels bar the door to decent jobs. While welfare reform resulted in massive reductions in the rolls, there are still more than half a million people receiving assistance at any given point during the year.⁵ It should be noted that as individuals move off an on the rolls, a substantially higher number of people actually receive public assistance over the course of a year. Furthermore, it is our belief that thousands more New Yorkers do not receive assistance, despite their need and eligibility, only because of the highly restrictive nature in which the program is administered.

Current grant levels bear no relationship whatsoever to the cost of living in New York. The basic allowance, including the two "home energy allowances" that were added in the 1980s, should theoretically enable a household to cover its basic, recurring needs other than rent and fuel for heating. In the 17 years since the basic allowance was last increased, the cost of living in New York has increased by nearly 70%.⁶ One other measure highlights the shameful inadequacy of the grant. The Federal Poverty Level seriously understates the cost of living particularly in expensive states like New York. Nevertheless, the changing relation between the FPL and the public assistance grant in New York is telling. In 1975, the typical welfare grant for a family of three in New York would bring the family to roughly 110% of the FPL. In 1990, the last

⁵ "Temporary and Disability Statistics," June 2007, published by the Office of Temporary and Disability Assistance (OTDA).

⁶ U.S. Department of Labor, Bureau of Labor Statistics, www.bls.org, similar data for the metropolitan New York City area and the Northeast U.S. region.

time the basic allowance was increased, the grant brought the family to 66% of the FPL. Seventeen years later, in 2007, the grant leaves that family at 51% of the FPL.

- **There are several options for increasing assistance**

Once it is determined that the grant is insufficient to fulfill its fundamental objective, we have to ask what form should an increase in aid to the poor take? A variety of concerns come into play: What form of assistance will most meaningfully enhance the standard of living of needy households? What type of increase will help the largest number of needy New Yorkers? What might be the collateral consequences of the designated approach? And might one course of action be more politically viable than another? We consider here a few of the available options.

- **Increase the non-shelter portion of the grant, the basic allowance.** We support the position adopted by the Empire State Economic Security Campaign, the increase should at least parallel the change in the cost of living since the last increase in the basic allowance.
- **A Section 8-style housing subsidy.** The appeal of such a program would be enhanced if the subsidy were available to both public assistance recipients and other low-income households. In addition, as a direct payment to the landlord, this subsidy would not count as income for federally funded Food Stamps purposes, and would therefore have no impact on those benefits.
- **The increase as a food supplement.** Most direct increases in financial assistance to welfare households result in a reduction in Food Stamps benefits, which are calculated based on household income. In order to avoid such Food Stamps consequences, and in recognition of the many poor families experiencing food insecurity or hunger, an increase in assistance might best be designated as a supplement for the purchase of food. Under current law, this portion of the grant would not be countable as income for Food Stamps purposes and therefore would not affect Food Stamps benefit levels. New York State adopted just such a strategy when it created the Home Energy and Supplemental Home Energy Allowances in the 1980s.
- **Aid to households without dependent children.** To New York's credit, it has historically been committed to providing basically equal assistance to needy New Yorkers, whether or not there were dependent children in the household. In 2003, New York, for the first time, deviated from its historical commitment to providing basically equal assistance to needy New Yorkers by establishing different shelter allowance schedules for households with and without dependent children. Households without children have, as a result, received the same shelter grant without change for nearly 20 years. Any increase in aid to the needy should equalize benefits.

- **How do we pay for an increase in assistance to the needy?**

- **An informal group calling itself the Revenue Forum has focused on how to pay for needed programs.** Leading organizational participants include the Fiscal Policy Institute, New Yorkers for Fiscal Fairness and the Hunger Action Network for New York State. Their proposals include restoring fairness and progressivity to the tax system, closing unfair loopholes in corporate taxes and bringing accountability to state and local economic development programs. Clearly these are ambitious proposals, but in light of the urgent

need for increased aid to the neediest New Yorkers, such undertakings must not be dismissed lightly.

- **The cost of a grant increase will be compensated for to some degree by savings that will be realized as fewer families are evicted**, thereby reducing the massive cost of emergency housing. In addition, there should also be some diminution of costs from other crises that result from recipients' lack of resources, including food and utility emergencies. The enhanced stability in people's lives may well have favorable consequences in terms of health costs as well.
- **We would also ask the Governor to review the various uses to which the TANF block grant is being put**, and to determine whether it is time to restore more of that block grant to the most fundamental purpose of helping poor families to survive. For starters, we urge the Governor to make a commitment to shifting the cost of the State Earned Income Tax Credit to the General Fund over the next three years. This would make more TANF dollars available not only for a grant increase but also for critical education and training services and work supports that are essential to welfare participant's ability to attain financial stability.

Banking Department and Division of Housing and Community Renewal Recommendations:

1. Responding to the Mortgage Foreclosure Crisis

There is no doubt that foreclosures are on the rise in New York. According to Realtytrac.com, 72,339 foreclosures have been filed in New York between January and August of this year; and 13,246 were filed in August, compared to 10,531 in June.⁷ While foreclosure filings were down nationally in September, they were still double the number of filings in September 2006. Moreover, analysts are saying that it's still too soon to say that foreclosures are peaking.⁸ According to FDIC Chair Sheila Bair, "Merrill Lynch estimates that if home prices decline by just 5 percent, a quarter of subprime loans may enter default, resulting in losses of almost \$150 billion."⁹

- **Invest in Existing Models that Work**

Across the state there is an existing network of housing default counselors that already work with homeowners at risk of foreclosure. By working with the homeowner, the lender and, in more difficult cases, with a legal services or private attorney, housing counselors have a history of helping borrowers regain control of their household finances, maintain their property and help stave off the decline of local neighborhoods.

After intense one-on-one financial analysis and counseling, a successful home rescue allows the housing default counselor to provide one of the following three services:

- Negotiation directly with the borrower's lender to seek a reasonable and affordable solution to allow the borrower to stay in their home.

⁷ <http://www.realtytrac.com/states/New%20York.html>

⁸ <http://www.msnbc.msn.com/id/21229057/>

⁹ <http://www.nytimes.com/2007/10/19/opinion/19bair.html>

- Referral of the borrower to a consumer attorney when the affordable solution is outside of the options the lender is willing to provide or when the borrower needs legal intervention.
- Referral of the borrower to a refinance program when option one and two are not feasible.

Including a substantial new investment in the housing counselor/legal services attorney model, we see four critical steps to position New York State to respond to the foreclosure crisis now and in the future. They include:

- Fund Housing Counseling and Education. *Provide \$5 million in funding to the New York State Banking Department for distribution to HUD-approved housing counseling agencies with demonstrated capacity to deliver post-purchase, foreclosure prevention counseling; legal services attorneys; and not-for-profit organizations that provide foreclosure preventive outreach and education.* The Banking Department would establish RFP guidelines and encourage organizations in areas with high foreclosure rates to apply for funding.

I'd like to take the opportunity to thank Governor Spitzer and Attorney General Cuomo for their recent decision to provide \$2 million in funds to match private grants to not-for-profit counselors and civil legal services organizations providing foreclosure prevention counseling and legal assistance to homeowners facing delinquency and foreclosure. We believe this money will help build on an existing model that works in New York.

We urge the Governor to get this program off the ground as soon as possible using the guidelines described above and to work to encourage banks, community foundations and other grant making entities to make private grants are available to these agencies.

- We also urge the Governor to increase the funding so that the total available is at least \$5 million.

- **Helping Other Agencies Work with Homeowners**

While there are several counseling agencies in New York State with the demonstrated capacity to provide foreclosure prevention counseling and legal assistance, Empire Justice's work on Rochester's Foreclosure Task Force suggests there are several areas in New York State where homeowners in default and foreclosure will not be able to find the quality assistance they need. Therefore, our second recommendation is to:

- Fund Training and Technical Assistance Around Foreclosure Prevention and Legal Assistance. *Provide \$2 million in funding to non-profit housing counseling agencies and civil legal services providers to provide critical training and technical assistance to housing counselors and legal services programs.* Training in best practices and effective techniques in combination with direct individual assistance with difficult cases will result in dramatically more efficient advocacy on behalf of homeowners. Providing statewide training and support to local legal services programs and housing counseling agencies will also help to keep advocates up to date on changes in the law, industry practices and new opportunities for homeowners at risk of losing their homes. The Division of Housing and Community Renewal would develop an RFP process to ensure that the organizations

providing the training and individual technical assistance have demonstrated success in working with and representing clients in default, in foreclosure and/or with predatory loans.

- **Helping Homeowners Not Eligible for Assistance**

When the default counseling and legal assistance is not sufficient to help a borrower keep their home because either the lender is not willing to negotiate affordable mortgage payments, the loan does not have illegal loan terms for a lawyer to litigate, or the homeowner is not eligible for other loan assistance, such as the SONYMA "Keep the Dream" program, the borrower must have other options that will allow them to refinance out of the unaffordable loan terms. The Governor can provide such an option by including in the budget a:

- Creating a State Foreclosure Fund. *Provide \$100 million to establish a foreclosure remediation fund to assist individuals facing foreclosure and not eligible for public or private loan assistance, such as the "Keep the Dream" program. The fund would be implemented using sound eligibility criteria, and serve individuals who received an unaffordable loan on their primary residence and now face foreclosure.*

- **Addressing Foreclosures in the Future**

The current foreclosure crisis makes it clear that New Yorkers, the New York State Banking Department and the Attorney General need a better understanding of the extent of foreclosures in communities across the state. In New York, foreclosure data are currently available only at the county level, and for most counties are unavailable online. One must either purchase the data from private vendors, or undergo laborious data collection at county clerks' offices. There is no state repository for this data, which should be gathered and made available for analysis and use by state officials and the public. Therefore, we urge the Governor to include in the budget:

- Funding for Foreclosure Data Collection. *Require the Banking Department to collect foreclosure data from counties throughout the state, create a public repository for this data, and adequately fund this process. This would help the Banking Department and Attorney General identify communities and mortgage originators that might be disproportionately represented in the foreclosure data and act swiftly to address the problem.*

Department of Health Recommendations:

1. Continue to Invest in Expansion of Public Health Programs

In the area of health, we hope to see the Governor stand firm in his commitment to a patient centered health care system, a system in which more low-income New Yorkers are able to access and maintain stable health insurance; providers have incentives to keep patients healthy and out of expensive institutions; and public spending is transparent and accountable.

Specifically, we hope to see proposals to:

- **Expand eligibility for adults as well as children and reduce administrative burdens by consolidating eligibility categories.**

The expansion of Child Health Plus that was enacted last legislative session was extremely promising in terms of the potential for New York to finally bring all children into the health care system. It is our position that the Governor should include the funding in this year's budget that is necessary to implement the expansion with state dollars during the fight to ensure federal contributions.

In conjunction with the expansion for children, and in recognition of the fact that children function within a family unit, we urge expansion of adult coverage as well. All New Yorkers living at or below 200% of the poverty level should be eligible for free or subsidized health insurance.

We also need to reduce the administrative burdens in the public health insurance programs by making the rules for measuring income and resources consistent across different groups. This year's budget legislation should begin the process of consolidating categories and eliminating unnecessary distinctions based on age, marital or parental status and disability that cause interruptions in public health insurance coverage as people move through life's cycles.

- **Streamline the application and renewal processes for public health insurance programs, and coordinate them with the processes for other benefit programs whenever possible.**

Studies have shown that close to 50% of Medicaid and Family Health Plus recipients lose program eligibility each year because they are unable to navigate the annual renewal process.¹⁰ Most of these recipients remain eligible for public coverage. A recent study found that less than seven percent of children who failed to renew coverage had actually become ineligible for enrollment in Child Health Plus.¹¹

This year's budget should include meaningful reforms aimed at eliminating administrative churning in the Medicaid program, including:

- instituting a biennial renewal system that requires full renewal only every two years and relies on data matches and self-reporting on alternating years;
- eliminating the face-to-face application requirement and allowing facilitated enrollers and other deputized agencies to attest to viewing original citizenship and identity documentation required by federal law;
- eliminating the asset tests in Family Health Plus and Medicaid programs (including the Medicare Savings Programs funded by Medicaid), and instead using a model similar to that being piloted in the Food Stamp program to maintain program integrity;
- Eliminating unnecessary, often work-related eligibility requirements that are holdovers from cash benefit programs, and are applied only to single and childless couples. These

¹⁰ Bachrach, Deborah; Tassi, Anthony. Coverage Gaps: The Problem of Enrollee Churning in Medicaid Managed Care and Child Health Plus. NYS Coalition of Prepaid Health Services Plans, New York, June 2000; Boozang, Patricia; Braslow, Laura; Fiori, Anthony. Enrollment Churning in Medicaid. NYS Coalition of Prepaid Health Services Plans, New York December 2006.

¹¹ Lipson, Karen; Fishman, Eliot; Boozang, Patricia; Bachrach, Deborah. Rethinking Recertification: Keeping Eligible Individuals Enrolled in New York's Public Health Insurance Program. The Commonwealth Fund, New York, August 2003.

include case closings based on interruptions in drug or alcohol screening and treatment, the one year loss of community Medicaid coverage following asset transfers for less than fair market value, the standard of need test for income eligibility, and finger-imaging requirements.

Ultimately, those eligibility requirements and administrative processes that are truly necessary and remain part of qualifying for Medicaid need to be coordinated as closely as possible with other benefit programs, like food stamps, child support and public assistance. We urge Commissioner Daines to head up a collaborative effort that will produce serious proposals for cross-agency coordination and simplification of benefit programs.

- **Provide a state portal for enrollment and recertification of Medicaid eligibility.**

The county administered Medicaid program in New York results in a patchwork of policies for determining eligibility and makes it very difficult for low-income New Yorkers to maintain insurance coverage when the move from one New York county to another. We would like to see a pilot program for a state-run Medicaid system, with state workers making eligibility determinations, monitoring service delivery and conducting outreach and education to providers and consumers. Experience gained from such a program could then inform efforts to increase uniformity in the statewide administration of the Medicaid program.

- **Reform Medicaid's reimbursement rates.**

Medicaid rates for ambulatory care need to be increased relative to in-patient hospital rates in order to reflect the importance of primary and preventive care and decrease our reliance on expensive institutional services. We also recommend rate revisions to reflect the intensity of the services provided, including the added expense for interpreter services encountered by providers serving patients with limited English proficiency.

- **Establish state-wide navigational assistance for low-income New Yorkers mandated into managed care plans.**

New York needs to explore which organizational models are best suited to educating consumers and helping them overcome the barriers to accessing care that can arise in a world where services providers are under contract with private health maintenance organizations. Funding for such an entity should be set aside in this year's budget.

- **Require Medicaid managed care plans to provide case meaningful case management services to enrollees with special needs.**

Medicaid recipients who receive Supplemental Security Income (SSI) and those with serious and persistent mental illness are now required to enroll in Medicaid managed care in New York City and an increasing number of upstate counties. These individuals are particularly vulnerable when faced with complex and challenging service delivery systems. Plans need to develop screening tools to identify qualified individuals and provide uniformly defined case management and care coordination which can be publicly monitored.

- **Extend Medicaid's Cap on Co-Payments for Prescription Drugs to dual eligible enrollees in Medicare Part D.**

Individuals who are eligible for Medicaid and Medicare (dual eligibles) include some of New York's most frail and disabled persons. However, upon enrollment in Medicare Part D, these individuals lose the protection against mounting out of pocket costs provided under Medicaid through a \$200 annual cap on co-payments. The \$200 cap on prescription drug costs should be extended to dual eligibles who receive prescription drug benefits under Medicare Part D.

- **Reform our current system for distributing funds from the Indigent Care Pools.**

Empire Justice Center was a member of the Technical Advisory Committee on Indigent Care, convened by Health Commissioner Daines, with the assistance of Senator Hannon and Assemblyman Gottfried. The Committee conducted a meaningful review of the complicated and inscrutable accounting system that hospitals currently use to report charity care.

Action should be taken in this budget session to act on the report produced as a result of that committee process and reform. Specifically, providers should be reimbursed for providing charity care to the uninsured on a service or claim basis that can be effectively monitored. Consistent with the legislative charge to the Technical Advisory Committee, reform proposals should cross-walk pool distributions with the new Financial Assistance Law, PHL § 2807(k)(9), by reimbursing hospitals only for services provided to patients who are actually enrolled in the financial assistance programs.

2. Maintain and Expand Funding for Targeted Lead Poisoning Primary Prevention Programs

Our mission is to make the law work for all New Yorkers. But the failure of our state to implement successfully its lead poisoning prevention laws is a failure that has been borne disproportionately by our poorest children -- and by minorities in particular. In fact, this has become a matter of racial justice. On our website, at <http://www.empirejustice.org/content.asp?ContentID=2469>, we analyzed the racial demographics of these high risk areas. Out of the 36 zip codes identified by the state in 2001, *nine* were in Buffalo; *six* were in Rochester; *five* were in Syracuse; and five were in Albany. According to the 2000 census data, these 36 high risk areas are home to over 91% of the Black children under age 5 living in the city of Buffalo; over 87% of those in Albany; nearly 80% of those in Rochester and over 65 % of those in Syracuse. Almost unbelievably, over 33% of ALL of the Black children under age five in New York State (outside of New York City) lived in one of the 36 zip codes identified by the Department of Health as a high incidence rate zip code, and the numbers are nearly as high for Latino children. Lead poisoning has had a devastating social and economic impact upon these cities, imposing overwhelming burdens on their schools and criminal justice systems.

"Primary Prevention Plans" are essential to insure that housing gets inspected for lead-paint hazards *before* children are poisoned. Recognizing this, in the 2007-08 State Budget, the Spitzer Administration began a lead poisoning "Primary Prevention" *pilot* program in the eight areas of the state where children are at very highest risk for lead poisoning. While this was a new initiative, the

Administration was acting on information identified by the Department of Health had identified over a decade ago – targeting these areas, and other high risk areas in the state. By 2001, a report from the NYS Health Department described that only 36 of the state's nearly 1700 zip codes accounted for over 41% of the new incidents of lead poisoning in children outside of New York City. As a result, we know that we don't need to inspect seven million housing units in the state in order to protect children. We know where to look for the hazards and we know where to use our limited resources in order to achieve a highly effective lead poisoning prevention program. Putting primary prevention plans in place where they are most needed is not only common sense, it is critical. More importantly, however, it is LONG OVERDUE.

It is critical that the funding for these pilot programs be not only maintained, but expanded to respond to the anticipated increase in resources needed to implement the plans that have been developed over the past year. The programs, funded at slightly more than \$3 million in the 2007-08 budget, will be a wasted initiative and wasted funding unless the *next* budget includes sufficient funding for the state to follow through on the lessons learned and to *finally* implement Lead Poisoning Primary Prevention Programs at the scale needed to really address the problem, particularly given that the state has adopted the national goal to eliminate lead poisoning by 2010. After years of study -- literally decades -- we know what we need to do. And we know how to do it. New York must move forward and invest in fully implementing primary prevention plans immediately if we are to make our 2010 deadline. More importantly, if we fail to include sufficient funding in the 2008-09 budget to proceed, thousands of children will be permanently injured by lead each year we delay, children who could instead have been assured healthy, productive lives.

- **We strongly urge the Governor to provide sufficient funding in the 2008-09 Executive Budget to continue with implementation of the pilot primary prevention plans and to immediately expand the program to additional areas identified as "highest risk".**

Office of Children and Family Services Recommendations

1. Increase Child Care Funding to Get us back to 2004 Levels

Lack of financial assistance leaves many working families scrambling for child care. Some use a patchwork of caregivers to cover work schedules and many use unregulated care situations about whose safety and quality we know very little. These makeshift solutions can leave parents stressed and concerned about the well-being of their children and employers are impacted as well when unreliable child care situations result in absenteeism and sub-standard work performance.

Funding for child care subsidies in NYS has decreased from a high of \$929 million in FY2004-05 to this year's \$879 million, a decrease of \$50 million. This has dramatically affected the ability of low-income families to access care. In 2006, child care block grant funding supported a monthly average of approximately 70,000 families with an unduplicated count of 118,013 children under five receiving subsidized child care. This is a substantial drop from those served in 2003 and 2004 when more than 83,000 families with over 140,000 children received subsidy assistance for child care.

- **As a member of Winning Beginning NY, the Empire Justice Center joins in their request that \$140 million in new child care funding be added to next year's budget to restore subsidies to the more than 14,000 children who have lost care since 2004 and to expand**

subsidies to the thousands of eligible families with children who are in need of such care.

Civil Legal Services (Outside New York City)

Empire Justice Center—*Statewide backing and training center with offices in Albany, Islip, Rochester and White Plains*

Erie County Bar—Volunteer Lawyers Project—*Serving Erie County with an office in Buffalo*

Farmworker Legal Services—*Serving all counties in New York State with an office in Rochester*

Frank H. Hiscock Legal Aid Society—*Serving Onondaga County with an office in Syracuse*

Legal Aid Bureau of Buffalo—*Serving Erie County with an office in Buffalo*

Legal Aid of the Chautauqua Region—*Serving Chautauqua County with offices in Dunkirk and Jamestown*

Legal Aid Society of Mid-New York—*Serving Broome, Cayuga, Chanango, Cortland, Delaware, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego and Otsego Counties with offices in Oneonta, Binghamton, Cortland, Oswego, Utica, Watertown, New Paltz, Syracuse*

Legal Aid Society of Northeastern New York—*Serving Albany, Clinton, Columbia, Essex, Fulton, Greene, Hamilton, Franklin, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, St. Lawrence, St. Regis Mohawk Reservation, Warren and Washington Counties with offices in Albany, Amsterdam, Canton, Plattsburgh and Saratoga Springs*

Legal Aid Society of Rochester—*Serving Genesee, Livingston, Monroe, Orleans and Wayne Counties with offices in Batavia, Genesee, Rochester and Wayne*

Legal Aid Society of Rockland County—*Serving Rockland County with an office in New City*

Legal Aid of Western New York—*Serving Allegany, Cattaraugus, Chautauqua, Chemung, Monroe, Schuyler, Steuben, Tioga, Tompkins, Wayne and Yates Counties with offices in Bath, Elmira, Geneva, Ithaca, Jamestown, Olean and Rochester*

Legal Services of Central New York—*Serving Broome, Cayuga, Chemung, Chenango, Cortland, Delaware, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Otsego, Oswego Schuyler, Tioga and Tompkins Counties with offices in Syracuse and Watertown*

Legal Services for the Elderly, Disabled or Disadvantaged—*Serving Allegany, Cattaraugus, Chautauqua and Erie Counties and the Seneca Nation of Indians with offices in Buffalo, Dunkirk, Jamestown and Olean*

Legal Services of the Hudson Valley—*Serving Dutchess, Orange, Sullivan, Ulster and Westchester Counties with offices in Kingston, Mount Vernon, Newburgh, Poughkeepsie, White Plains and Yonkers*

Nassau/Suffolk Law Services—*Serving Nassau and Suffolk Counties with offices in Hempstead, Islandia and Riverhead*

Neighborhood Legal Services—*Serving Erie, Genesee, Orleans, Niagara and Wyoming Counties with offices in Batavia, Buffalo and Niagara Falls*

Rural Law Center—*Serving rural counties in New York State with offices in Lake Placid, Massena, Malone, Plattsburgh and Speculator*

The Legal Project—*Serving Albany, Rensselaer, Schenectady and Saratoga Counties with an office in Albany*

Volunteer Legal Services of Monroe—*Serving Monroe County with an office in Rochester*

Western New York Law Center—*Serving Allegheny, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Niagara, Orleans, Schuyler, Steuben, Tioga, Tompkins, Wyoming, Counties and providing statewide technology support with an office in Buffalo*

