



November 22, 2022

Honorable Kathleen C. Hochul
Governor of New York
Executive Chamber
State Capitol Building
Albany, New York 12224

Dear Governor Hochul,

Our organizations thank you for your leadership in enacting significant increases in health care access in the 2022-23 State Budget, particularly the expansion of the Medicaid income limit for people Age 65, Blind, and Disabled (ABD), and for the Medicare Savings Program. Unfortunately, although your proposed FY 2022 Budget championed total repeal of the Medicaid asset test, that change was not enacted. Repeal of the asset test is necessary to meaningfully address racial disparities in access to health care, exposed so vividly by COVID-19. Repeal of the asset test also would ease administrative burdens and ensure continuity of coverage when people receiving Medicaid under the Affordable Care Act – which has *no asset limit* – become eligible for Medicare based on turning 65 or disability and are now subject to strict asset limits that solely apply to the ABD.

Older New Yorkers and people with disabilities with monthly incomes below 138% of the Federal Poverty Line (FPL) (\$1563/month) are disproportionately people of color.¹ The savings people at this income level have are typically minimal and tend to be in cash rather than in a home or in retirement accounts. When reviewing assets, however, Medicaid counts cash but does not consider an applicant’s home and retirement accounts. Given the disparities in homeownership² and retirement savings³ between New Yorkers of color and white New Yorkers, this leads to racial inequities, as well as disparities for people with disabilities. The asset poverty rate in New York varies dramatically by race.⁴

- New York has the highest asset poverty rate for Latinx households nationally – 53.4% compared to 17.2% for white households in New York State.
- New York has the sixth highest asset poverty rate nationally for households of color – 40.8% compared to 17.2% for white households.
- New York has the sixth highest rate for households with an adult with a disability – 47.4% compared to 25.3% for non-disabled households.

We recognize political and fiscal realities may make it difficult to repeal the asset limit this year as California has done, so we suggest an incremental approach this year, while maintaining our goal for full repeal of the asset test in a later year. We ask you to include in your upcoming budget an increase in the asset limit for the Aged, Blind and Disabled generally and to repeal the asset limit for a special program that incentivizes younger people with disabilities to work.

1. Increase the asset test from 150% to 600% of the annual income limit.

Short of full repeal, increasing the liquid asset limit will make access to health care more equitable. A home worth \$995,000 is exempt from Medicaid, but a tenant who cannot afford to buy a home, and saves \$100,000, is disqualified from Medicaid. An asset limit of six times the annual income limit would be \$112,536 in 2022 (single person). This is lower than California's asset limit, now increased to \$130,000 as California phases in full repeal of the asset test.

Alternately, a higher asset limit could be set for those who do not own their own home or do not have retirement funds. They should be permitted savings up to the homestead exemption (\$995,000 in 2022).

2. Repeal the asset test for the Medicaid Buy-In for Working People with Disabilities (MBI-WPD) as a work incentive. CMS has urged States to “[s]treamline, increase levels for, or eliminate asset requirements for some or all non-MAGI populations.”⁵ We urge you to repeal the MBI-WPD asset test to enable people with disabilities to join or remain in the workforce. New York has always set the asset test for this program at a higher level than the regular asset level applicable to others who are ABD, as a work incentive. As DOH said in its 2011 Administrative Directive implementing a statutory increase in the asset limit for this program so that it would continue to be higher than the regular Medicaid limit:

...The higher resource level provided an incentive to individuals with disabilities to join or rejoin the work force and to remain in the work force without the fear of losing Medicaid coverage. In April, 2008, the Medicaid resource standard was increased to [the same levels as] the MBI-WPD resource standard. This eliminated the work incentive aspect of the program previously provided by the higher resource level. Chapter 59 of the Laws of 2011 restores the work incentive by raising the resource standard to a level that is higher than the Medicaid resource level....⁶

Now, just as in 2011, the regular asset test for non-MAGI individuals has not only caught up to but will exceed the MBI-WPD asset test in 2023. In order to preserve this important work incentive for people with disabilities, we urge that the asset limit for the MBI-WPD program be repealed altogether.

Given the urgency of the potential Medicaid coverage losses next year when the federal Public Health Emergency ends, which will disproportionately impact older New Yorkers and individuals with disabilities, we hope that you will consider these two proposals as you develop your Executive Budget. We welcome the opportunity to meet with your staff to discuss these issues in more detail and to assist in any way we can as you define your

Administration's policy agenda to reduce poverty, expand access to health care and ameliorate racial and economic injustice.

Please contact Lara Kassel at lkassel@medicaidmattersny.org for more information.

Thank you.

Sincerely,

Maria Alvarez, Executive Director
New York StateWide Senior Action Council

Elisabeth Ryden Benjamin, Vice President of Health Initiatives
Community Service Society of New York

Valerie Bogart, Director and Rebecca Wallach, Associate Director
New York Legal Assistance Group - Evelyn Frank Legal Resources Program

Kristin Brown, President & CEO and Fiona Wolfe, Managing Attorney
Empire Justice Center

Karen Nicolson, CEO and Lindsay Heckler, Supervising Attorney
Center for Elder Law & Justice, Buffalo, NY

Lara Kassel, Coordinator
Medicaid Matters New York

Lindsay Miller, Executive Director
NY Association on Independent Living

Rebecca Antar Novick, Director
The Legal Aid Society - Health Law Unit

Frederic Riccardi, President
Medicare Rights Center

¹ Among older New Yorkers, the highest rate of poverty is for U.S.-born Latino New Yorkers at 26 percent, followed by Asian seniors at 22 percent, then Black older adults at 19 percent, and older immigrants at 20 percent. These rates compare to a 14 percent poverty rate for all older New Yorkers, with higher rates in some areas such as Buffalo, Rochester, the Bronx, and others. Center for an Urban Future, *New York's Older Adult Population is Booming Statewide*, Feb. 2019, available at <https://nycfuture.org/research/new-yorks-older-adult-population-is-booming-statewide> (data from U.S. Census American Community Survey).

² Stefanos Chen, *The Resiliency of New York's Black Homeowners*, New York Times, Aug. 17, 2021, available at <https://www.nytimes.com/2021/08/17/realestate/new-york-black-homeowners.html?referringSource=articleShare>. "From 2002 to 2008, the number of Black homeowners in the city dropped 10 percent... and there is evidence that the share dropped another 3 percent by 2017."

³ Kelly Anne Smith, *America's Racial Wealth Gap In Retirement Savings*, Forbes, 9/1/2020, available at <https://www.forbes.com/advisor/retirement/retirement-racial-wealth-gap/> is defined as having three months' of living expenses saved at the poverty level.³

⁴ Asset poverty rate is defined as having three months of living expenses saved at the poverty level. Prosperity Now Scorecard, available at <https://scorecard.prosperitynow.org/data-by-issue#finance/outcome/asset-poverty-rate>. New York's asset poverty rate, including the equity in a home, is 26.9 % higher than the national average of 24.1%, based on 2016 data. Id.

⁵ CMS, *Strategies States and the U.S. Territories Can Adopt to Maintain Coverage of Eligible Individuals as They Return to Normal Operations*, Nov. 2021, available at <https://www.medicaid.gov/state-resource-center/downloads/strategies-for-covrg-of-indiv.pdf>.

⁶ NYS Dept. of Health, [11 OHIP/ADM-7](#) - *Medicaid Buy-In Program for Working People with Disabilities: Disregard Retirement Accounts in Determining Resource Eligibility and Increased Resource Standards* (emphasis added).