

**TESTIMONY BEFORE THE NEW YORK CITY COUNCIL'S COMMITTEE ON
IMMIGRATION, JOINTLY WITH THE COMMITTEE ON HEALTH, COMMITTEE ON
HOSPITALS, AND SUBCOMMITTEE ON COVID RECOVERY AND RESILIENCE**

on

The Impact of the COVID-19 Pandemic on the Health of Immigrant New Yorkers

April 18, 2022

My name is Rebecca Antar Novick and I am the Director of the Health Law Unit at The Legal Aid Society. The Legal Aid Society is a private, not-for-profit legal services organization, the oldest and largest in the nation, dedicated since 1876 to providing quality legal representation to low-income New Yorkers. It is dedicated to one simple but powerful belief: that no New Yorker should be denied access to justice because of poverty. The Legal Aid Society's Health Law Unit (HLU) provides direct legal services to low-income health care consumers from all five boroughs of New York City. The HLU operates a statewide helpline and assists clients and advocates with a broad range of health-related issues. We also participate in city, state, and federal advocacy efforts on a variety of health law and policy matters.

As the COVID-19 pandemic continues, the virus' disproportionate impact on The Legal Aid Society's client communities persists, highlighting the tragic racial disparities in our health care system. Immigrant New Yorkers, while providing the fundamental supports that kept New York City functioning during the worst of the pandemic, also bore the brunt of illness and death from COVID. The pandemic has also highlighted the deadly consequences of lack of insurance coverage, with lack of insurance blamed for approximately one out of three COVID deaths, and 40 percent of COVID cases in the first year of the pandemic.¹

My testimony today will focus on the importance of protecting insurance coverage for immigrants at the end of the Public Health Emergency (PHE), and in particular, protecting immigrants from experiencing destructive and unfair overpayment collections processes when the PHE ends.

The Legal Aid Society urges the City Council to support city and state efforts to maintain coverage after the Public Health Emergency ends.

As a condition of enhanced federal Medicaid funding, no one can be disenrolled from Medicaid during the PHE, which was just extended into July of this year and which may be further

¹ Families USA, *The Catastrophic Cost of Uninsurance: COVID-19 Cases and Deaths Closely Tied to America's Health Coverage Gaps* (March 2021), https://familiesusa.org/wp-content/uploads/2021/03/COV-2021-64_Loss-of-Lives-Report_Report_v2_4-20-21.pdf.

extended.² Because of these protections, as well as new enrollments from individuals who lost income during the pandemic, the number of Medicaid enrollees has grown substantially – in New York City, from 3.4 million in April 2020 to 4.2 million in March 2022.³ The unwinding of the PHE will be a massive undertaking that could result in extensive coverage losses. The Urban Institute estimates that in New York State, more than one million non-elderly beneficiaries could lose Medicaid coverage in the year after the PHE ends.⁴

The Legal Aid Society and other advocates have closely collaborated with the Human Resources Administration (HRA) throughout the COVID-19 pandemic to help Medicaid beneficiaries get and remain insured. We are also in frequent communication with the State Department of Health about pandemic Medicaid policies and the impact on our clients, including immigrant communities. We are confident that the state and city share our goal to minimize coverage loss at the end of the PHE. However, we remain very concerned that the sheer scale of the unwinding will result in avoidable coverage loss, especially for immigrants and LEP individuals. We have represented many clients who have had coverage discontinued during the PHE because of various errors and glitches. Although HRA and NY State of Health have quickly resolved these cases when they are brought to their attention, the number of coverage errors we have seen during a time when no one should lose coverage is frightening given the scope of potential coverage loss after the PHE.

For example, we recently assisted a 12 year old child, who is disabled and has significant chronic health needs. Because he is undocumented, he receives Child Health Plus coverage. During the PHE, he was erroneously switched from Child Health Plus to Emergency Medicaid. His parents did not understand that this was an error and were in the process of trying to arrange for his continuing care with a public hospital. During this time, they were connected to the Health Law Unit because his sibling aged out of Child Health Plus and his family was trying to understand coverage options going forward. When we learned of the 12 year old's disenrollment, we worked with NY State of Health to retroactively restore it.

The City Council can:

² Noah Weiland, THE NEW YORK TIMES, *The Biden administration extends the national Covid public health emergency for another 90 days* (Apr. <https://www.nytimes.com/2022/04/13/us/politics/biden-covid-public-health-emergency-extended.html>).

³ NYS Dept. of Health, NYS Medicaid Enrollment Databook, https://www.health.ny.gov/health_care/medicaid/enrollment/.

⁴ Urban Institute, *What Will Happen to Medicaid Enrollees' Health Coverage after the Public Health Emergency? Updated Projections of Medicaid Coverage and Costs* (Mar. 2022), https://www.urban.org/sites/default/files/2022-03/what-will-happen-to-medicaid-enrollees-health-coverage-after-the-public-health-emergency_1_1.pdf.

- Encourage Council Members to distribute information to constituents about the importance of updating contact information with the Human Resources Administration or New York State of Health.
- Call on HRA to collect and report demographic data to capture disparities in loss of Medicaid after the PHE ends.

The Legal Aid Society urges the City Council to take steps to protect immigrant New Yorkers from predatory Medicaid and benefit overpayment collections practices at the end of the COVID-19 federal Public Health Emergency.

While excluded from many programs, Immigrant New Yorkers have benefited from some important economic relief measures as a result of the COVID-19 pandemic and the related federal PHE. Notably, since March 2020 – thanks to ongoing advocacy by The Legal Aid Society, other advocates, and beneficiaries – HRA has agreed to forgo collection efforts for the recovery of overpayments and repayable grants for SNAP, Cash Assistance, and Medicaid for the duration of the PHE unless HRA is “legally required to continue collection efforts and the case is approaching the Statute of Limitations.”⁵ This has provided much-needed relief from a flawed debt collection process that has created systematized discrimination against benefits recipients, trapping them, their families, and communities in a cycle of poverty. Unfortunately, if New York City and State do not act soon to reform the overpayment collections process and make some of the COVID-era protections permanent, we anticipate that not only will this progress be lost, our immigrant neighbors will be hit with an onslaught of unfair debt collection practices at the end of the PHE.

Medicaid and Public Assistance overpayment recoveries allow the State to recover for benefits that were received by individuals and families when they were ineligible. However, the current overpayment investigation and collections processes in New York State are deeply flawed and deprive benefits recipients of basic due process prior to the imposition of these debts, which are often in the thousands to tens of thousands of dollars.⁶ This is particularly true in Medicaid/Family

⁵ NYC HUMAN RESOURCES ADMIN. DEP’T OF SOC. SERVS., COVID-19 Community Updates, Suspension of the Billing Process for SNAP, Cash Assistance and Medicaid Overpayment Cases,

<https://www1.nyc.gov/site/hra/partners/covid-19-community-updates.page> (last visited October 29, 2021) (“Billings for recovery of overpayments and repayable grants for SNAP, Cash Assistance, and Medicaid remains stayed through April 16, 2022, which is the date of the current extension of the public health emergency. Where we are legally required to continue collection efforts and the case is approaching the Statute of Limitations, HRA is sending a payment request letter. Enforcement actions on judgments remains stayed until April 16, 2022.”)

⁶ The Local Departments of Social Services (LDSS) in each New York State county are responsible for investigating and recovering alleged Public Assistance and Medicaid/Family Health Plus (FHP) overpayments on behalf of the State. The most recent available data shows that in 2019, the LDSS in New York City, HRA conducted 1988 Medicaid/FHP

Health Plus (FHP) recoveries, where recipients are not entitled to fair hearing rights.⁷ The unstructured nature of these processes means that budgeting rules and protections are misapplied by public welfare officials in determining liability, claims are not properly calculated or validated, and benefits recipients are unable to challenge the claims against them. Individuals frequently are pressured into signing settlement agreements for debts for which they are not liable and/or for amounts that they cannot afford. Others who do not sign settlements are sued, and many are subject to default judgments,⁸ even in cases with little or no proof that a debt is owed. As a result, recipients are wrongfully subjected to overpayment liability and debts when they were actually eligible for benefits for all or part of the alleged overpayment time period or when they were approved for benefits in error through no fault of their own.⁹ Frequently, these settlement agreements and judgments compromise our clients' ability to pay for necessities such as food, rent, and ongoing medical care. For many of these individuals, an overpayment debt may push them and their family back into or permanently trap them in poverty.

Immigrant New Yorkers are more likely to experience living and working conditions that make them more likely to be targets of overpayment collection actions: those working in service sector jobs face a greater degree of month-to-month income volatility affecting benefit eligibility.¹⁰ These individuals are more likely to be Black and Latinx.¹¹ These are also some of the communities that have been hardest hit by the COVID-19 pandemic.¹² Moreover, in representing hundreds of clients in these overpayment investigations and cases, Legal Aid has seen that those subject to overpayment investigations are disproportionately immigrants and those with limited English proficiency. In addition to misapplying budgeting rules and beneficiary protections, such as the ACA's 12 month continuous coverage protection, HRA has improperly threatened our clients with immigration consequences and arrest if they do not sign settlement agreements and has not provided

overpayment investigations: of those, 779 ended in signed settlement agreements, averaging \$19,670; 156 were referred for civil litigation; and 10 were referred for criminal prosecution.

⁷ 18 N.Y.C.R.R. §§ 358-3.1(b)(17), (f)(6).

⁸ In New York City, only 4% of consumer debt defendants are represented by counsel and consumer firms receive default judgments in 40% of consumer debt cases. NEW YORK APPLESEED & JONES DAY, *Due Process And Consumer Debt: Eliminating Barriers To Justice In Consumer Credit Cases*, at 2, 32 (2010).

⁹ Current New York case law allows for overpayment recovery against a current or former benefits recipient, even when the recipient provided accurate information on application and the LDSS erred in approving the recipient for benefits. *Oxenhorn v. Fleet Trust Company*, 94 N.Y.2d 110 (1999).

¹⁰ See, e.g., Peter Ganong, et al., *Wealth, Race, and Consumption Smoothing of Typical Income Shocks* (Apr. 2020), https://bfi.uchicago.edu/wp-content/uploads/BFI_WP_202049.pdf.

¹¹ *Id.*

¹² See, e.g., Irene Lew, COMM. SERV. SOC., *Race and the Economic Fallout from COVID-19 in New York City* (July 30, 2020), <https://www.cssny.org/news/entry/race-and-the-economic-fallout-from-covid-19-in-new-york-city>.

translated documents or other LEP protections.¹³ This all leads to improperly assessed debt and harms our clients' overall wellbeing.

Immigrant New Yorkers will be particularly vulnerable to these predatory practices at the end of the PHE, when collection activity is allowed to resume. We are concerned that in the midst of this still-tumultuous time, beneficiaries may feel extreme pressure to agree to settlements or payments they cannot afford or worse, for debts they do not owe. Now is the perfect time to reform this broken system, to ensure that when collections are allowed to resume, liability is properly calculated, validated, and that the recipients being investigated and ultimately charged with debts are guaranteed basic due process. As we deal with the end of the federal COVID-19 PHE, we should ensure that our fellow New Yorkers do not face unfair and discriminatory added economic stress as they try to seek and retain employment, provide for their families, and attend to their health needs during this time of ongoing health and economic crisis.

We ask the City Council to take action to protect immigrant New Yorkers from the resumption of these predatory practices. The New York City Council can:

- Call on the State Legislature to pass, and the Governor to sign, A.5613A/S.4540A, to amend the social services law and the civil practice law to simplify the Public Assistance and Medicaid overpayment recovery and collections process in New York and provide much needed due process and consumer protections for benefits recipients prior to the end of the federal PHE;
- Exercise oversight over HRA's Medicaid and Public Assistance collection practices, such as conducting audits of how much money HRA spends on these practices and soliciting demographic information regarding the beneficiaries from whom it is collecting.

The Legal Aid Society Supports [Res. No. 84](#) (Hanif): Resolution calling on the State Legislature to pass, and the Governor to sign, A.880A/S.1572A, to provide coverage for health care services under the basic health program for individuals whose immigration status renders them ineligible for federal financial participation.

Finally, Immigrant New Yorkers who contribute so much to our communities and have disproportionately been harmed by COVID-19 should be able to access health insurance coverage. We support [Res. No. 84](#) (Hanif): Resolution calling on the State Legislature to pass, and the Governor to sign, A.880A/S.1572A, to provide coverage for health care services under the basic

¹³ See, e.g., Claudia Irizarry Aponte, THE CITY, *He Received Medicaid Coverage For Years. Now, the State Wants \$32,000 Back*. (Oct. 13, 2020), <https://www.thecity.nyc/health/2020/10/13/21513737/medicaid-coverage-for-years-now-the-state-wants-moneyback>; Amanda Eisenberg, POLITICO NEW YORK, *HRA Ensnaring Low-Income, Immigrant New Yorkers In Dubious Medicaid Probes* (Oct. 16, 2019), <https://www.politico.com/states/new-york/albany/story/2019/10/08/hra-ensnaring-low-income-immigrant-new-yorkers-in-dubious-medicaid-probes-1222436>.

health program for individuals whose immigration status renders them ineligible for federal financial participation. We are disappointed that these provisions were not passed in their entirety in this year's state budget, though we strongly support the extension of Medicaid coverage for undocumented individuals age 65 and older. We look forward to working with elected officials and the advocacy community to push for passage of 88A/S.1572 to extend coverage to all low-income undocumented immigrants.

We thank the City Council for holding this hearing and for its support of New York's immigrant communities.

Respectfully submitted,

Rebecca Antar Novick
Director
Health Law Unit
The Legal Aid Society