

## **NYS SFY 2024-25 BUDGET – Heath Access Priorities**

- 1. REPEAL MRT II CUTS - HOME CARE RESTRICTIONS AND “LOOKBACK”**
- 2. MEDICAID ELIGIBILITY EXPANSION – ASSET TEST, HEALTHCARE4ALL -- COVER UNDOCUMENTED IMMIGRANTS, CONTINUOUS COVERAGE FOR CHILDREN THRU AGE 6**
- 3. SUPPORT THE "HOME CARE SAVINGS & REINVESTMENT ACT" (\$7800) TO REPLACE THE MLTC PROGRAM WITH A COST-EFFECTIVE & CONSUMER-ORIENTED HOME CARE MODEL**
- 4. EXPAND MCCAP PROGRAM – MEDICARE COUNSELING & ADVOCACY**

### **I. Repeal MRT II Home Care Restrictions and “Lookback” enacted in SFY 2021:**

- 1. Repeal the restrictive minimum of three Activities of Daily Living (ADL) required for eligibility for Medicaid personal care and consumer-directed services (\$328 Rivera) --** These ADL thresholds discriminate against people with developmental disabilities, traumatic brain injury, visual, and other impairments. These individuals qualify for home care only if they need *physical* assistance with 3 ADLs, such as bathing, dressing, and ambulating, even though the nature of their impairments causes them to need *cueing and supervisory* rather than hands-on physical assistance. Yet people with dementia will qualify if they need *cueing and supervisory* assistance with 2 ADLs. Such blatant discrimination based on the type of diagnosis is unlawful.
  - The minimum ADL requirements will also eliminate the longstanding “**Housekeeping**” program entirely. “Housekeeping” is a type of Personal Care service that provides an aide for a maximum of 8 hours/week for those who can bathe and dress themselves but need help shopping, cleaning, or doing laundry because of their disability. Since personal care eligibility will now require two or three ADLs, this service will no longer be available – putting a person with a disability at risk from a fall or other injury that would lead to higher cost care.
- 2. Repeal the lookback and transfer penalty for home care (\$6414).** NYS enacted a 30-month lookback and transfer penalty for community-based care in 2020, in the dark early days of COVID. Implementation was not allowed because of the Public Health Emergency – and it should be repealed. Wealthy people will use trusts and other Medicaid planning techniques to circumvent these rules. However, low-income people will be denied home care if they transfer modest amounts to family. Even those with no assets to transfer will be harmed by long application delays from the added paperwork.

### **II. MEDICAID ELIGIBILITY EXPANSION**

- 1. Include All Immigrants in the Essential Plan –** We applaud last year’s expansion of the Essential Plan (EP) to include those up to 250% FPL, but this should include undocumented immigrants. (S.2237, Rivera/A.3020, Gonzalez-Rojas). Just as Gov. Hochul championed coverage for undocumented individuals age 65 and over, which will begin in 2024, there are nearly one

million younger NYS residents who do not have any form of health insurance coverage -- the "last mile" of achieving universal coverage that has significantly shrunk in the last decade.

NYLAG's LegalHealth unit, a medical-legal partnership, helped 96 undocumented immigrants successfully attain Medicaid eligibility in 2023. In addition, to these clients LegalHealth opened new legal matters in the areas of Medicaid or immigration assistance for 2,624 clients who were undocumented and under the age of 65 – all of whom would benefit from expanded health insurance coverage in New York State. Here are examples of people who were fortunate to get our legal help to obtain Medicaid through establishing PRUCOL status, such as by obtaining Medical Deferred Action.

*“Maria is a 61-year-old woman whose only chance for survival following a serious medical event was a heart transplant. However, she could not access that care as she was an immigrant from Latin America who overstayed her tourist visa several years ago. Her cardiac medical team referred her to LegalHealth’s clinic at NYC H+H Bellevue in hopes she would have some means of regularizing her immigration status and obtaining Medicaid health insurance. Her LegalHealth attorney conducted a full investigation into immigration remedies that may be available to Maria and determined that the only option for her to receive the lifesaving care she needed was to draft a complex application to USCIS for deferred action for medical reasons. The application was well-supported by a client affidavit, physician medical letter, research on the country conditions and inability to receive the needed care in Maria’s home country. The dedicated resources provided through IHI funding and the collaboration with NYC H+H Bellevue medical team allowed the LegalHealth attorney to work quickly and file the application within weeks of first meeting Maria. With a receipt of the deferred action filing, the attorney was able to advocate for Medicaid eligibility. Within four weeks of meeting her LegalHealth attorney, Maria received a successful heart transplant from which she is now recovering.*

*Roberto, a young man in his 20s and father of a 3-year-old son, lacked health insurance that would cover a stem cell transplant for leukemia. His social worker at Montefiore Hospital referred him to LegalHealth to see if there were options for him to become insured. The LegalHealth attorney met with Roberto and his wife and determined that since she was a U.S. citizen, she could file a family relative petition for him. Money was tight since he juggled work and cancer treatment, but they were finally able to afford the \$585.00 filing fee for the I-130. The LegalHealth attorney prepared the filing and supporting documentation and once the acknowledgement of receipt was received from USCIS, worked with the hospital to ensure he was enrolled in Essential Plan. Now Roberto is being worked up for the life-saving stem cell transplant.*

## **2. INCREASE ASSET TEST FOR AGE 65, BLIND & DISABLED – S4881A**

We applaud the Governor’s initiative last year that increased the income limit for those Age 65+, Blind or Disabled. However, the asset limit remained at 1.5 times the annual income limit. We support S4881a that would increase the asset test in 2025 to \$300,000 and then repeal it the following year. Repeal of the asset test is *essential to eliminate racial disparities* in health care access. The current asset rules are biased against people of color; statistics show people of color are less likely to own homes and retirement funds, assets that are given special treatment as exempt from the asset limit, while cash assets count. See letter

[here](#). NYS should follow California’s lead, which, with federal approval phased in total repeal of the asset limit.

### 3. Guarantee continuous Medicaid eligibility for Children from birth to Age Six

Build on New York’s existing one-year of continuous eligibility for those under age 65 to ensure that young children keep Medicaid during their critical developmental years. Both Oregon and Washington were approved for this waiver, which will ensure substantial matching federal funds for a low-cost policy option that will reap many benefits for our state, including:

- **Greater health equity.** Continuous coverage protections advance health equity by ensuring continuity of treatment for low-income children and children of color, who disproportionately experience health disparities.
- **Better child and family health.** Continuity of coverage supports proven pediatric interventions, including developmental screening, prevention, and family-oriented two-generation services.
- **Reduced costs for families and lower administrative costs.** Cycling on and off Medicaid/CHP burdens families with out-of-pocket expenses and stressful deadlines; it also results in higher administrative costs for the state, insurers, and providers.
- **Stabilized preventive and pediatric health care systems.** Gaps in children’s coverage strain the finances of the primary care and pediatric infrastructure of our state. These providers already work long hours for lower reimbursement rates. Ensuring that their patients have continuous coverage will mean this vital component of our healthcare system will flourish.

The loss of coverage—even for a short period of time—disrupts care, increases family expenses, and costs government, providers, and insurance companies money. Most very young children lose their coverage because of clerical errors in processing or because a parent couldn’t be notified. Very few lose coverage because they are no longer eligible. See letter [here](#).

### III. SUPPORT THE "HOME CARE SAVINGS & REINVESTMENT ACT" (S7800) TO REPLACE THE MLTC PROGRAM WITH A COST-EFFECTIVE & CONSUMER-ORIENTED HOME CARE MODEL

NYLAG supports the "HOME CARE SAVINGS & REINVESTMENT ACT" (S7800/A8470) based on its experience of representing thousands of consumers fighting lengthy appeals against MLTC plans for home care services needed to live safely at home. Additionally, NYLAG launched the *MLTC Data Transparency Project*, which issued a Report in 2022. See <https://nylag.org/MLTCdatatransparency/> and full report at <https://nylag.org/wp-content/uploads/2022/09/MMCOR-Report-FINAL.3.pdf>. Based on this combined experience, the MLTC model is a failure. Paying plans a fixed “capitation” premium for each member gives the plans a perverse incentive to deny needed home care to those who need high hours, and to abandon them in nursing homes, thus relieving the plans of high-cost members. Principles of insurance dictate that an insurer must be able to spread the risk of high-cost claims across a large pool of people, most of whom will never make a claim. In MLTC, however, every enrollee *has been determined* to need long-term care *now*. It is like selling fire insurance only to people whose home is now burning. As a result, the MLTC plans:

- **Delay and deny claims** – rarely approving a request without forcing the member through a long series of appeals, which consumers need an expert to fight.
- **Recruit low-need members** through their own marketing and by incentivizing their home care agency contractors to bring in low-need members. This has caused MLTC enrollment and costs to skyrocket.

- **Approve very minimal hours of home care for the vast majority of members**, at a cost far below the monthly premium paid by the State. In the Table on the following page, using 2018 statewide data, the percentage of members receiving more than 480 hours/month of home care is shown by the gray and black blocks on the far left of the bars. The red blocks on the far right represent the percentage of members receiving under 80 hours/month – or 20 hours/week.
- **Deny high-hour claims** – forcing some members into nursing homes or refusing to bring them home from a nursing home. Members get disenrolled from the plan after 3 months in a nursing home.
- **Fail to pay home care agencies** enough to recruit enough workers. Some plans have not passed through state funding of the \$2 per hour wage increase approved in a recent State budget.



### Distribution of Hours of Home Care Service by Plan

Show Numbers or Percenta... Home Care Type Show Plans or Plan Groups Plans Year Region Filter by Total Member Years with Home Care  
 Percentages of Member Y... All Plan Groups All 2018 Statewide 0.416666667 to 27,863.5 and Null values

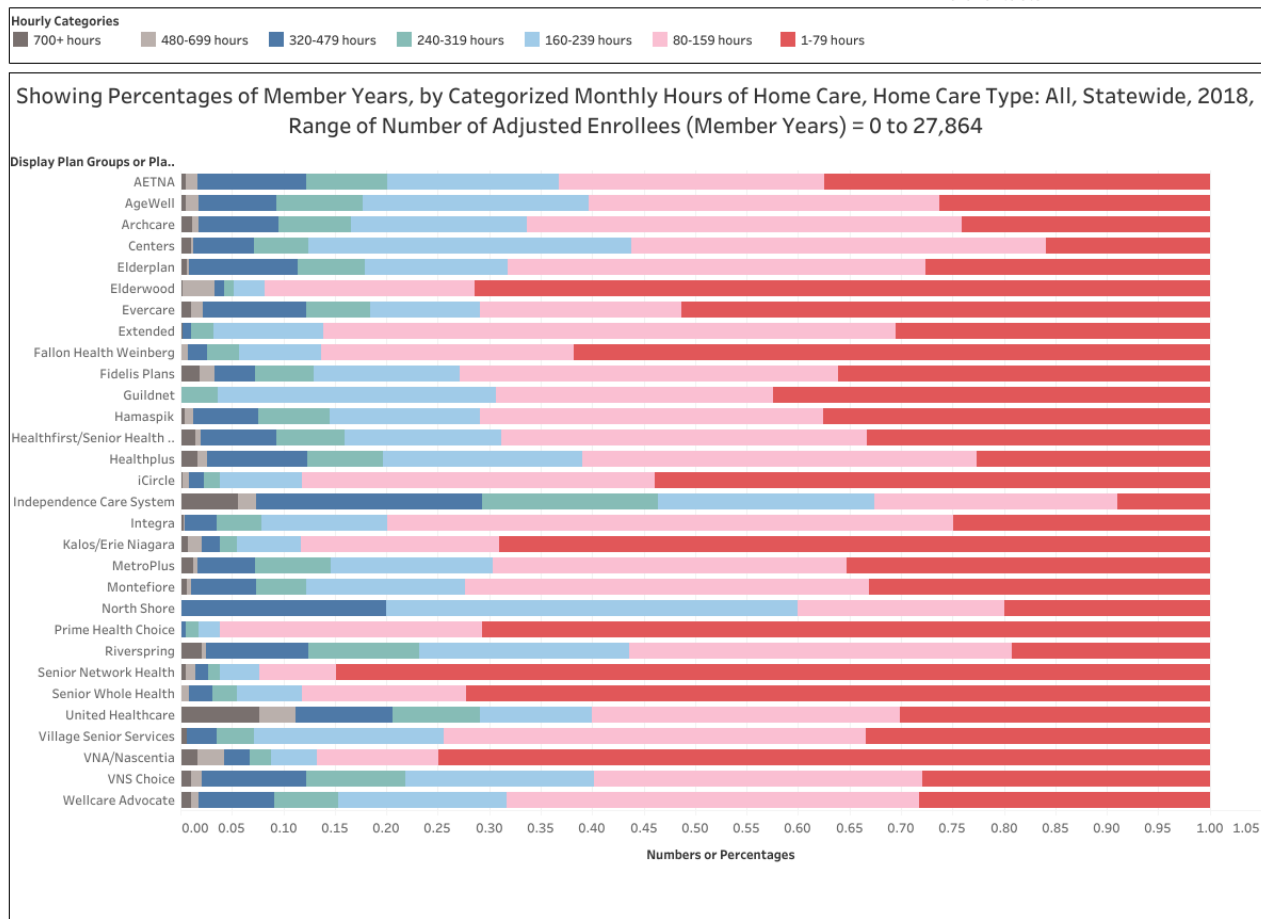


Table online is interactive, allowing user to view data by geographic region, CDPAP vs personal care, or year at <https://nylag.org/home-care-member-years-by-hourly-category/>. Source: Managed Care Cost & Operating Costs filed by plans with NYS DOH.

The proposed model would follow Connecticut’s lead, replacing managed care with a managed case management system, a smart choice that will save money for New York and help New Yorkers. This system will allow more accountability and transparency than the opaque MLTC system.

#### **IV. Expand Funding for the Managed Care Consumer Assistance Program (MCCAP)**

NYLAG is one of six organizations in the MCCAP network providing vital counseling and advocacy for low-income Medicare beneficiaries desperate to reduce their out of pocket costs. A \$1 million increase above the \$1.76 million appropriation is needed to cover rising costs and meet increased demand.

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## Human Services 2024-2025 Legislative Priorities

### Public Assistance, SNAP, Rental Supplement, and Housing Voucher Programs

- **S5270/A5500** (*Persaud/Rosenthal*): Relates to increasing the standards of monthly need (basic public assistance grant) and home energy grant amounts for persons in receipt of public assistance.
- **S2982/A5543** (*Kavanaugh/Rosenthal, L.*): requires shelter allowances to be set at up to one hundred percent of the fair market rent for the local social services district.
- **S4519/A3539** (*Gonzalez-Rojas/ Fernandez*): eliminates the asset limits when determining eligibility for public assistance and expands earned income disregard.
- **A5510** (*Rosenthal, L.*): requires the Office of Temporary and Disability Assistance (OTDA) to simplify the application for public assistance benefits.
- **S568B/A4021A** (*Kavanagh/ Rosenthal*): Housing Access Voucher Program, a state-funded rental voucher, similar to Section 8, for eligible individuals and families who are experiencing homelessness or facing eviction.
- **S2144/A5875** (*Persaud/Davila*): Exempts income earned from certain job training programs when determining eligibility for public assistance.
- **S1631/A5513** (*Kavanaugh/Rosenthal, L.*): Expanding Housing Voucher Eligibility to individuals who are otherwise eligible, regardless of immigration status.
- **S8223/A5043** (*Ramos/Hevesi*): Expands (Family Homelessness and Eviction Supplement (“FHEPS”)) eligibility to migrant youth under the age of 25 who are receiving runaway and homeless youth services.
- **S6181/A5514A** (*Kavanagh/Rosenthal*): Amends the Social Services Law to remove the requirement that rent arrears be repaid; forgive any outstanding repayment agreements for rent arrears.
- **S7991/A2488** (*Persaud/Hevesi*): Amends the Social Services Law to allow caregivers to exclude a child with unearned income from the public assistance household, when determining eligibility and grant amounts.
- **S2349/A160** (*Persaud/Cruz*): Allows for state agencies and municipalities to provide public benefits to individuals regardless of immigration status.
- **S7830/A8431** (*Persaud/Davila*): Establishes a task force to examine the fiscal cliff (“benefits cliff”) in the state’s public assistance programs.

### Shelter/Homelessness Issues

- **A5507** (*Rosenthal, L.*): increases monthly allowance for persons and families residing in shelter.
- **A206/S1872** (*Rosenthal, L/Cleare*): Requiring homeless shelters maintain opioid antagonists.
- **S4561A/A5649A** (*Reyes, Gonzalez*): Provides internet access to individuals residing in temporary housing (homeless shelters) throughout New York State.

## Preserve Veterans' Benefits

- **S5719/A7224** (*Kennedy, T/Rajkumar*): increasing income limit eligibility and preference in public housing for post veterans or families of veterans who have a military service-connected disability.
- **S2323A/ A1399A** (*Bichotte Hermelyn/Bailey*): attempting to inform more veterans seeking healthcare to the option of the VA system. (VETOED by the Governor 12/2023, but maybe other areas for advocacy exist?).
- **S6523/A7701** (*Scarcella-Spanton/Jean-Pierre*): Requiring the department of veterans' services to collaborate with other state agencies to establish and maintain a database on the department's website providing resources available in the state for veterans and their families.
- **S7201/A6992** (*Comrie/Dickens*): Requiring the department of veterans' services to provide legal and/or technical support to veterans who want to change their discharged status to honorable because such person was dishonorably or administratively discharged from the armed services due to sexual orientation.

## Elder Law

- **S9209/A10234** (*Hoylman, B/Weinstein*): This legislation was PASSED by the NYS Senate and PASSED by the NYS Assembly, but not yet presented to the Governor for signature. This is to clarify that powers of attorneys that were executed by principals prior to the new power of attorney law that passed in June 2021 can be signed by agents after June 2021.

## Disability Appeals Practice

- **S4780/A2468** (*Sanders/Hevesi*): Relates to additional state payment assistance; provides that where there is no agreement in effect for federal administration of additional state payments, the OTDA commissioner is responsible for providing assistance to applicants for or recipients of such payments as it relates to applying for, modifying or maintaining such benefits.
- **S1998/A5515** (*May/Rosenthal, L*): Defines "closed period of eligibility" for purposes of supplemental security income for aged, blind, and disabled persons; includes such time period in the eligibility requirements of such supplemental security income.

## Reform Current Predatory Public Assistance and Medicaid Overpayment Collections Processes

- **S4888A** (*Rivera*): NYLAG strongly supports this bill which would help protect benefits recipients' due process rights and economic security when they are faced with claims for overpayment of benefits.