



Empire Justice Center

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Joint Legislative Public Hearings on 2018-2019 Executive Budget Proposal

Human Services

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INTRODUCTION

My name is Susan Antos and I am a Senior Attorney in the Albany office of Empire Justice Center. On behalf of my colleagues, I'd like to thank you for the opportunity to testify today about the Executive Budget as it pertains to human services.

Empire Justice Center is a statewide legal services organization with offices in Albany, Rochester, Westchester and Central Islip (Long Island). Empire Justice provides support and training to legal services and other community based organizations, undertakes policy research and analysis, and engages in legislative and administrative advocacy. We also represent low income individuals, as well as classes of New Yorkers in a wide range of poverty law areas including health, public assistance, domestic violence and SSI/SSD benefits.

Today, despite some improvement in the economy, the need for support for human services remains as urgent as ever, particularly in light of the continuing uncertainty with regard to federal support. At Empire Justice, we recognize the pressure this puts on state government – but it is state government that must ensure that the safety net for people in need is maintained and, in fact, strengthened. We urge the Legislature act to decisively affirm its Constitutional commitment to aid and support the most vulnerable New Yorkers.

My testimony today will touch on the work of the New York State Office for the Aging, the Office of Children and Family Services, the Office of Temporary and Disability Assistance, the Office of New Americans, the Department of State, and the Department of Labor. We will discuss the positions set forth below:

1. **Restore the Managed Care Consumer Assistance Program (MCCAP) to a total investment of \$1.962 million**
2. **Restore and build upon the investment in the Disability Advocacy Program (DAP)**
3. **Adopt the Home Stability Support program to reduce homelessness, reduce emergency costs and bring housing security to thousands**
4. **Protect workers and businesses and increase state revenue by addressing loopholes in existing law**
5. **Hold public hearings to examine pay rates for certain jobs and the elimination of tips as a wage subsidy**
6. **Ensure that Liberty Defense Project can provide optimal and continuous service to immigrants**
7. **Invest \$100 million for child care assistance**

INVEST A TOTAL OF \$1.962 MILLION IN THE MANAGED CARE CONSUMER ASSISTANCE PROGRAM (MCCAP)

The Managed Care Consumer Assistance Program (MCCAP), a statewide initiative run through the New York State Office for the Aging (NYSOFA), provides seniors and people with disabilities critical assistance in accessing Medicare services and reducing health care costs. We are grateful that the Executive Budget provides ongoing funding for MCCAP at its current level, \$1.767 million. However, given that the funding has been at a reduced level for several years, we are asking that the Legislature provide additional funds to return MCCAP funding to its 2008-2009 level of \$1.962 million. This additional investment will restore the program to capacity and respond to the increased demand for Medicare navigation assistance

brought about by a growing aging population and changes in the health care delivery and insurance landscape.

The six MCCAP agencies partner with the New York State Office for the Aging (NYSOFA), the New York State Department of Health (DOH) and the Center for Medicare and Medicaid Services (CMS) to provide training, technical support and assistance to local Health Insurance Information Counseling and Assistance Program (HIICAP) offices and other nonprofit organizations working directly with Medicare consumers across New York State. Additionally, MCCAP agencies work directly with consumers to provide education, navigational assistance, legal advice, informal advocacy and direct representation in administrative appeals. We serve clients in their communities and provide services in their native languages; consumers also increasingly reach us via internet and our telephone helplines, as well as through our educational materials and referrals from HIICAPs.

Now is a critical time to shore up funding for MCCAP. As the aging population increases, so does the number of Medicare beneficiaries in New York who rely on MCCAP's assistance in understanding and accessing their health benefits. In the last year, MCCAP continued its work helping individuals maximize their benefits under the highly complex Medicare Part D program, as well as assisting dual-eligible individuals and other Medicare beneficiaries with health care access issues besides Part D. In addition, MCCAP has responded to a range of new needs that have resulted from the changing health care landscape. For example, MCCAP has fielded a high volume of calls from new Medicare beneficiaries in need of assistance transitioning from other forms of insurance, including the Essential Plan, Qualified Health Plans, Marketplace Medicaid and Medicaid Managed Care plans. These transitions – necessary because Medicare beneficiaries are, for the most part, excluded from Marketplace products and Medicaid Managed Care – can seriously disrupt care continuity if not navigated carefully.

MCCAP is also ideally positioned to help Medicare beneficiaries understand and adapt to any changes to Medicare, and other health coverage programs that work with Medicare, that may arise out of the federal debates about the future of healthcare in America. In the past year, MCCAP was contacted by many Medicare recipients anxious to know what changes may lay ahead for them and what they could do to anticipate those changes. Uncertainty about changes to Medicare and Medicaid has, if anything, grown since this time last year.

Recommendation: We urge the Legislature to negotiate with the Executive to increase MCCAP funding by \$195,000 for a total investment of \$1.962 million.

RESTORE AND BUILD UPON THE INVESTMENT IN THE DISABILITY ADVOCACY PROGRAM (DAP)

For more than 33 years, the Disability Advocacy Program (DAP) has been helping low income disabled New Yorkers who were denied or cut off federal disability (SSI/SSD) benefits. Since the inception of DAP in 1983 through June 2017, DAP providers, who work in every New York county:

- Assisted over 222,000 disabled New Yorkers.
- Helped put over \$785 million in retroactive benefits in their hands to be spent in local economies.
- Generated over \$221 million in federal funds paid back to New York State and the counties.
- Saved at least \$298 million in avoided public assistance costs.

Consistently successful in about 73% of all cases, DAP services help stabilize people's incomes, which in turn helps to stabilize housing, health and quality of life overall.

For every dollar invested in DAP, at least \$3 is generated to the benefit of New York's state and local governments.

In last year's final budget, the DAP program was funded at \$8.26 million, which included an additional investment of \$3 million from the State Legislature over the Executive Budget allocation of \$5.26 million. With this continued investment, DAP providers have been able to enlarge their base of attorneys and paralegals, and adjust staffing patterns to handle more cases. The stable funding has allowed DAP providers around the state to increase the number of DAP cases opened. However, despite this progress, the demand for DAP services remains high. Providers estimate that they still turn away at least one person for every individual served. Each low income individual with a disability we cannot serve is left without assistance to navigate the complex Social Security Administration (SSA) disability benefits application process.

Thus, while DAP is once again funded in the Executive Budget at \$5.26 million, that funding level is far from what is required to respond to the ever growing demand for DAP services. Clearly, without a restoration of the \$8.26 million funding level, DAP providers will be unable to sustain the gains that have been made in staffing that resulted in the increased number of cases opened. Restoration of funding will provide stability to DAP providers and allow them to start to tackle the substantial unmet need across the state.

Recommendation: Given the continued investment from the State Legislature last year, and the evidence of increased representation, we are asking the Legislature to once again invest in DAP to restore last year's level of funding and invest a total of \$3 million to bring statewide funding to a total of \$8.26 million. The additional funding will go a long way toward further stabilizing the long term future of DAP services and will allow providers to continue to chip away at the unmet need for services.

THE HOME STABILITY SUPPORT INITIATIVE WILL REDUCE HOMELESSNESS, REDUCE COSTS AND BRING HOUSING SECURITY TO THOUSANDS OF NEW YORKERS

Empire Justice urges the Legislature to enact the Home Stability Support proposal, and take a major step forward in addressing the crisis of homelessness throughout the State. As has been widely reported, New York has reached the highest levels of homelessness since the Great Depression, with over 85,000 homeless in 2016. From 2010 to 2016, while homelessness nationwide decreased by more than 10 percent, our State saw an increase of 36 percent. It is estimated that over 150,000 children have experienced homelessness in over the past six years; and approximately 80,000 households at serious risk of homelessness.

Homelessness is deeply harmful to the well-being of families and compromises the future of New York's children. Stable housing is crucial for the overall mental and physical health of families, especially for a child's development and educational success. The Institute for Children, Poverty and Homelessness observes that education affords the "...best chance for children to break the cycle of poverty..." but that children who are currently or recently homeless struggle with "...attending school, succeeding academically, and accessing supports for their additional educational and behavioral needs."

Empire Justice fully supports proposals to expand the supply of affordable housing, supportive housing and emergency shelter. We also strongly support the expansion statewide of the cap on rent at 30% of income for individuals living with HIV/AIDS.

But we also firmly believe that immediate action must be taken to enable families and individuals to secure or retain stable housing. Most important, we must address the drastic disconnect between the cost of decent housing and the allowances provided to public assistance recipients to pay for housing.

New York State has some of the most expensive housing in the nation, but the housing portion of the public assistance grant (the “shelter allowance”) has not remotely kept pace with the relentlessly increasing cost of housing. For households that must rely on public assistance as their primary source of income, the current benefit condemns them to a constant struggle to avoid eviction and to find housing they can afford. This inevitably contributes to the trauma and chaos that low-income families face on a daily basis. And the cost of emergency shelter, of emergency medical needs, of diminished educational attainment and employment outcomes must be borne in large measure by the State and localities. Keeping families in their homes through the Home Stability Support proposal could save taxpayers millions of dollars while helping to achieve better outcomes in health, employment, and education.

A comparison of the shelter allowances provided to families on public assistance with the “Fair Market Rents” (FMR) established by the Federal Department of Housing and Urban Development reveals the inadequacy of the shelter allowance.¹ For example, in Albany County, the monthly FMR for a two-bedroom unit is \$1,032, while the maximum shelter allowance for a household of three is \$309 per month, or about 30% of the FMR. In Erie County, the two-bedroom FMR is \$799, while the shelter allowance for a household of three is \$301, or about 38% of the FMR. And the disparity is even greater in, for example, the suburban counties near New York City. There is no county in New York where the shelter allowance provides enough money to cover even half of the Fair Market Rent. A few counties do provide rent supplements, but there are significant eligibility restrictions on these grants, and even the supplements often fall far short of the actual rents. The eligibility rules for these supplements notably disadvantage those living with hazardous conditions or fleeing domestic violence.² This fact has taken on particular significance because domestic violence is now recognized as a leading cause of homelessness.

The Court of Appeals has stated that “A schedule establishing assistance levels so low that it forces large numbers of families with dependent children into homelessness does not meet the statutory standard.” *Jiggetts v. Grinker*, 75 NY.2d 411 (1990). Thus, New York State is currently failing to meet its legal obligations under the Social Services Law.

Further, for those households that pay for heat separately from their rent, which is the case in many areas outside New York City and its suburbs, the inadequacy of the additional allowance to pay for heating also contributes to housing instability. The heating allowance has not been raised since it was created in 1987, more than 30 years ago. Over that time, the cost of heating oil has quadrupled and the cost of natural gas heat has doubled. Thus, even if a family received adequate assistance to cover their rent cost, which is often not the case, they would likely be in crisis over their fuel for heating expenses.

¹ The FMR is the amount, updated annually by the Federal Department of Housing and Urban Development, that it would cost to secure modest but decent housing in every region of the country.

² These groups are disadvantaged because most of the supplements require that the person be facing a legal eviction from the home, and victims of domestic violence or those living with hazardous conditions are not technically facing eviction.

The inevitable consequence of these grossly inadequate heating and shelter allowances is that households in need in New York State struggle to retain decent housing, and are thrust into crisis by a system purported to act as their safety net. Families are often relegated to overcrowded, substandard, even illegal housing in order to keep a roof over their heads.

Paying for emergency housing and related needs is extremely expensive. Emergency shelter alone in, for example, New York City and the surrounding suburbs, ranges from \$3,000 to more than \$4,000 per month. By contrast, the cost in Dutchess County of providing a family of three with a rental allowance equal to the Fair Market Rent (FMR) would be \$1271. In other words, providing a family with sufficient rent for decent, stable housing would cost roughly a third of the cost of placing them in emergency housing. It is startling to consider the cost savings and vastly improved quality of life for low income families that reasonable shelter and heating allowances would afford so many households.

Recommendation: The Legislature should allocate \$40 million to the Home Stability Support initiative (HSS). HSS will create a new statewide rent supplement program for families and individuals facing eviction, homelessness, or loss of housing due to domestic violence or hazardous conditions. The HSS rent supplement would bridge the gap between the current shelter allowance and 85% of the Fair Market Rent as determined by HUD. To account for the inadequacy of the current fuel allowance, HSS will also include a fuel supplement for those households that pay for heat separately from their rent.

We believe that HSS would achieve significant savings throughout the State by preventing evictions and reducing shelter utilization while limiting the costs of additional homeless services. HSS would provide mandate relief to the localities by not only reducing the costs associated with emergency housing but by replacing all existing optional rent supplement programs. Furthermore, the rent supplements would be funded by State and federal dollars.

Finally, to encourage employment and avoid creating a “benefits cliff,” HSS will include a one-year transitional benefit for households that increase their earnings enough to leave public assistance.

We were disappointed that the Governor did not include Home Stability Support in the executive budget, though we appreciate that some of his initiatives did recognize the current crisis in housing and homelessness. We believe that HSS will reverse the growing trend of homelessness in New York State and we urge the Legislature to adopt the proposal. Keeping low-income families and individuals in their homes will save the taxpayers millions of dollars, and will provide the housing stability that is essential to family and individual well-being.

PROTECT WORKERS AND BUSINESSES AND INCREASE STATE REVENUE BY ADDRESSING LOOPHOLES IN EXISTING LAW

Every year over \$1 billion dollars of wage theft occurs in New York State. Despite laws meant to curb wage theft, the practice is pervasive in both urban and rural areas, and across a wide variety of industries, because of loopholes in existing law. Empire Justice Center has represented – from our Yonkers and Rochester offices – hundreds of low income workers outside of New York City who have suffered from wage theft. We represent workers who have been exploited by their employers and help them recover unpaid wages. Unfortunately, our clients and their advocates are all too familiar with the wage theft epidemic and wage collection crisis in New York.

Exploitative employers take advantage of loopholes in existing law to hide or transfer assets to avoid paying wages they have stolen from their employees. In too many cases, by the time workers have filed a lawsuit and are awarded a judgment, there are few, if any, assets to be found. This epidemic of wage

theft hurts workers at every level, but low wage workers are, of course, most severely affected. According to the U.S. Department of Labor, minimum wage violations alone cause up to 25,600 New York families to be pushed under the poverty line³.

New York State itself is also a victim of the wage theft epidemic. When employers fail to pay workers their lawful wages, the state loses out on hundreds of millions of dollars in payroll taxes for social security, Medicare, workers compensation, and unemployment insurance. In addition, as low wage workers are pushed into poverty the state is forced to spend millions every year on Medicaid and Supplemental Nutrition Assistance Program (SNAP) benefits⁴ – with one study estimating that wage theft in the construction industry alone shifts approximately \$111 in Medicaid costs to the state every year⁵. This means taxpayers end up subsidizing employers who steal from their workers. Addressing wage theft could increase New York State revenues by hundreds of millions of dollars a year.

Law-abiding businesses also lose under the wage theft crisis. Honest businesses that comply with the labor laws are currently forced to compete with businesses that can undercut their competition by paying unlawfully low wages. Without stronger enforcement mechanisms to prevent wage theft, scofflaw employers will continue to steal their workers' wages and line their own pockets with stolen funds.

A.628 (Rosenthal)/S.579 (Peralta), Securing Wages Earned Against Theft ("SWEAT") is legislation that will strengthen workers' ability to collect stolen wages and improve enforcement mechanisms for wage and hour laws. This legislation will close existing loopholes in the law by preventing employers from simply refusing to participate in the legal process, and thus effectively insulating themselves from liability by defaulting, selling their business or shutting it down. Enactment of this legislation in the budget will not only help working families, legitimate businesses, and the economy, it will also have positive fiscal effects for the State itself in the form of increased tax revenues and lower public assistance spending.

Recommendation: Include A.628 (Rosenthal)/S.579 (Peralta) in the Assembly and Senate one-house budget bills in order to:

- Expand New York's existing mechanic's lien law to include all workers, joining ten other states allowing workers to put a temporary lien on the property of an employer who fails to pay wages.
- Amend New York's existing attachment provisions to make it easier for workers to attach an employer's assets at the start of litigation before the property can be sold or transferred, using the standard currently set forth in Connecticut law; and
- Improve procedures for holding the largest shareholders of privately held corporations and limited liability companies personally liable for wage theft. Current law allows for the largest shareholders of corporations and members of LLCs to be held accountable, but only if workers follow complicated procedures.

³ U.S. Department of Labor, *The Social and Economic Effects of Wage Violations: Estimates for California and New York* (2014), available at <https://www.dol.gov/asp/evaluation/completed-studies/WageViolationsReportDecember2014.pdf>

⁴ The Legal Aid Society, Urban Justice Center, and the National Center for Law and Economic Justice, *Empty Judgements: The Wage Collection Crisis in New York* (2015), available at <http://nclej.org/wp-content/uploads/2015/11/Empty-Judgments-The-Wage-Collection-Crisis-in-New-York.pdf>

⁵ Fiscal Policy Institute, *Building Up New York, Tearing Down Job Quality* (2007), available at http://www.fiscalpolicy.org/publications2007/FPI_BuildingUpNY_TearingDownJobQuality.pdf.

These three necessary changes to New York law will strengthen the ability to enforce existing labor laws, dissuade further wage theft, enable workers to collect stolen wages, and significantly increase New York State revenues.

HOLD PUBLIC HEARINGS TO EXAMINE PAY RATES FOR CERTAIN JOBS AND THE ELIMINATION OF TIPS AS A WAGE SUBSIDY

There are over 38,000 restaurants in New York State, and a sizable portion of them are committing violations of the New York wage and hour laws every day. Based on our representation of low income clients, there are four causal agents for these violations. First, there is the large cash element to the business, which results in undeclared (and untaxed) income for both employers and employees. Second, there are many undocumented immigrants working in kitchens and dining rooms throughout the restaurant industry, and these workers are particularly vulnerable to physical and economic exploitation. Third, the restaurant industry is often competitive, and some restaurants increase their profit margins by cheating employees of their lawful compensation. Finally, there is an extraordinarily complicated set of laws governing the payment of restaurant employees, which vary by job and geographic region. Taken together, these factors contribute to the many difficulties in determining whether restaurant employees are receiving a living wage or even minimum wages.

In 2016, the Federal Bureau of Labor Statistics determined that average wage (mean) for wait staff working outside New York City is \$14.41 per hour. In contrast, Glassdoor, a popular on-line job and recruiting site, estimates that the median hourly pay for waiters and waitresses for the entire state is only \$8.45 per hour. Another employment website, Indeed, estimates that the average waiter/server earns \$9.88 per hour in Rochester; \$8.64 per hour in Niagara Falls; and only \$8.23 per hour in Buffalo. These upstate hourly wage rates are substantially below the current state mandated minimum wage rate of \$10.40 per hour for restaurant staff (which includes \$1.75 tip credit). The wide disparity in these data indicates further study of restaurant pay is necessary in order to identify comprehensive policy solutions and eliminate state-sanctioned poverty wage rates.

Recommendation: For these reasons, the Empire Justice Center supports Governor Cuomo's proposal directing the Commissioner of Labor to schedule public hearings examining the pay rates for restaurant, car wash, and related workers, and eliminating tips as a wage subsidy for these employees.

FUND THE LIBERTY DEFENSE PROJECT TO ENSURE OPTIMAL SERVICE AND CONTINUITY

In last year's budget, the Independent Democratic Conference (IDC) successfully advocated to include a new \$10 million appropriation for the Liberty Defense Project (LDP) in the Department of State. Governor Cuomo long championed these efforts with the creation of the first state Office for New Americans (ONA) in the country. Aimed at helping immigrants integrate into our communities, ONA supports a network of 27 Opportunity Centers and five Legal Counsel offices across the state that provide English for Speakers of Other Languages (ESOL) classes, citizenship exam preparation, support for new immigrant business owners and legal assistance in naturalization efforts.

Through the new Liberty Defense Project, the state is now contracting with seven legal services providers and community-based organizations that in turn are partnering with a network of 45 organizations around the state. These organizations are launching services aimed at assisting immigrants in navigating the legal system and securing their ability to avoid deportation and family

dislocation. While the Governor remains committed to the continuation of the LDP, the Executive Budget provides only for the re-appropriation of last year's funding and does not including any funding to keep the LDP funded beyond the first year.

As one of the organizations funded through the LDP, we have worked diligently this past year to get this new statewide program up and running. We submitted our first work plan to the state in June after completion of the state budget process, we worked with the Office for New Americans on revisions to our work plan and budget, we developed our staffing plan to serve the Hudson Valley and Long Island and, in an effort to create a network of immigration legal services outside New York City, we entered into three sub-contracts with our partners to provide legal assistance to clients in Rochester/Western New York, Syracuse/Central New York and in Albany serving the Capital Region. We were notified that contract was approved by the state on December 19. We launched our hiring process and began taking referrals as best we could with our existing staff and we continue to work through the start-up process.

To find that there is no continuation funding for the LDP in the Executive beyond a appropriation of the first year funding is extremely troubling. We work hard to be good stewards of our grants and contracts but this lack of certainty gives us incredible pause. We have hired new staff and we have entered into sub-contracts with other providers for their services and while we have verbal assurances from the Executive that this program will indeed continue, we see a lack of financial commitment to do so.

In order to provide the stability and on-going support needed to ensure that these critical services are maintained, we urge the Legislature to restore the needed \$12 million in the Office of New Americans in this year's budget.

INVEST \$100 MILLION FOR CHILD CARE ASSISTANCE

Empire Justice Center joins Winning Beginning New York and the Empire State Child Care Campaign and asks the State to invest \$100 million new dollars to restore and increase child care subsidies. As child care costs have increased (the average child care subsidy per child has risen from \$7,200 to approximately \$7,683 since 2013), with no increased investment, New York has passed some costs on to providers by dropping provider reimbursement from the 75th percentile of the market rate to the 69th percentile⁶ and reduced the number of children served. Significant numbers of eligible children go unserved because of the lack of subsidy funding.⁷ This number could drop further if the State implements the federal child care Development Fund Block Grant (CCDBG) regulations without increased investment. To keep vulnerable children in child care, we urge the legislature to invest an additional \$93 million (over the \$806 million in the Governor's budget) to restore subsidies lost by escalating costs, and to increase the number of children served. This can be done by direct investment in subsidies, using economic development and workforce dollars to support parents and providers , and increasing tax credits for parents and providers.

⁶ 16 OCFS INF-06, p2. Available at: http://ocfs.ny.gov/main/policies/external/OCFS_2016/INFs/16-OCFS-INF-06%20Child%20Care%20Market%20Rates%20Advance%20Notification.pdf

⁷ CLASP 2016 Disparate Access report which reports that only 17% of eligible children in New York State in families up to 175% of poverty received subsidies using 2013 Office of Child Care Administrative data and U.S. Census American Community Survey three-year estimates (2011-2013) at: <http://www.clasp.org/resources-and-publications/publication-1/Disparate-Access.pdf> Appendix IV. Methodology at pages 7-8 and Appendix I. (last accessed 2/2/18)

A. Child care is in crisis

Counties are running out money, even as the need grows. Some are simply refusing to accept new applications. Others, in an effort to cope with limited funds, are reducing financial eligibility, falling far short of the state's statutory eligibility level, 200% of poverty. As indicated below:

- The eligibility levels in **Albany, Delaware and Suffolk Counties** are **125%** of poverty (\$25,200 for a family of three). (Once in receipt of a subsidy, Suffolk allows families to retain them until they reach 200% of poverty).
- **Niagara County** only serves those at or below **135%** of the federal poverty level (\$27,567 for a family of three).⁸
- Although **New York City** has technically retained its eligibility levels at 200% of poverty, data show that few families over **135%** of poverty are being served.
- Four social services districts have lowered eligibility to **150%: Clinton, Oneida, Orange and Schenectady Counties;**
- **Livingston and Rensselaer Counties** have lowered eligibility to **160%** of poverty.
- In **Ontario and Saratoga Counties** eligibility is at **175%** of poverty.

Adequate funding for child care is critical to the success of New York's economic development initiatives and for working families with young children who are trying to pay the rent and pay for child care. For those families that leave welfare for work, it makes no sense to guarantee a child care subsidy for one year, and then remove that benefit when the family's wages remain below the county eligibility level, when research shows that without assistance, most families below 200% of poverty cannot pay for both child care and rent.⁹

B. Investing in child care is critical to economic development

As a result of 1996 Federal Welfare reform, with its emphasis on "work first," public assistance rolls have plummeted as families left welfare for low wage jobs. In 1995, there were 1.5 million recipients of cash public assistance in New York State; 1.2 million received Aid to Families with Dependent Children (AFDC, the cash public assistance program before welfare reform). 803,000 of these recipients were children.¹⁰ By December 2017, the number of persons on Temporary Assistance had dropped to 546,013 (270,181 of those recipients were children)¹¹.

⁸ These numbers reflect the 2017 poverty level which for child care, are in effect until June 1, 2018. 2017 OCFS-INF-02, available at: https://ocfs.ny.gov/main/policies/external/OCFS_2017

⁹ Research done in 2010 developed a self-sufficiency wage for every county and 72 family types in New York State. See: <http://www.fiscalpolicy.org/SelfSufficiencyStandardForNewYorkState2010.pdf> Even under this dated standard, our eligibility levels fail to support working families that are below these wage levels set forth in this document.

¹⁰ New York State Department of Social Services, Social Statistics, December 1995 Table A (p.27), Table B (p.33), on file at the Empire Justice Center.

¹¹ New York State Office of Temporary and Disability Assistance Monthly Caseload Statistics, December 2017, Table A-5, p. 38, available at <https://otda.ny.gov/resources/caseload/2017/2017-12-stats.pdf> [accessed February 2, 2017].

However, without assistance in paying for child care, low wage workers cannot make ends meet. The report on the Self-Sufficiency Standard for New York concludes that in order meet basic needs, including child care, a family of three with a preschooler and a school age child needs the following hourly wage:¹²

- NYC (Northern Manhattan): \$27.38 per hour
- Westchester/Yonkers: \$32.38 per hour
- Erie: \$22.33 per hour
- Suffolk: \$37.37 per hour

These hourly wages are significantly above the wages earned by many families and illustrate how, without a subsidy, the cost of child care is out of reach to low wage families, and that without assistance, they face the bleak choice between paying the rent and paying for child care.

At the very least, the legislature should reinstate the 75th percentile formula for establishing provider reimbursement rates when market rates are adjusted in October 2018 and allocate additional funds to assist child care centers and group family day care providers that receive child care subsidies to cover increased wage costs as the new minimum wage standard is implemented across the state.

C. Child care must be affordable

The commentary to the federal child care regulations states that to assure equal access to child care, child care must be affordable, and recommends that parent copayments do not exceed 7% of household income.¹³ As set forth more fully below, a 35% copayment is not an affordable copayment, especially for families over 150% of poverty. In twenty counties families at 200% of poverty pay 17.5% of their income as a copayment. As indicated by the chart below, for lower income families the percentages are slightly better, but even families at 150% of poverty pay nearly 12% of their income if they reside in counties with 35% multipliers. Only seven counties have parent copayments requiring that families at 200% of poverty pay no more than 7.5% of their income.

This disparity exists because of the Office of Children and Family Services (OCFS) regulation at 18 NYCRR 415.3 [e] [3], which sets forth the formula for calculating copayment amounts, gives social services districts total discretion to choose a multiplier between 10% and 35% that is then applied to the family's income above the state income standard (the equivalent of the federal poverty level) to determine the household's copayment amount. The result is that the larger the multiplier chosen by the county, the smaller the child care benefit received by the family. The inequity in the child care benefit offered to similarly situated families (same family size, same income) varies by as much as 300% depending on the county in which a family resides.

It's time to address this inequity. Despite clear guidance in New York's Social Services Law 410-x(2)(a) requiring that families be provided "equitable access" to child care funds, and that parent copayments should be "based upon the family's ability to pay" SSL 410-x(6), this standardless formula has been in place, unchanged, since at least June 29, 1987, when the New York State Department of Social Services, the OCFS predecessor agency, directed all social services districts to adopt the methodology by June 1, 1988. Because OCFS authorizes each district to select a multiplier without further guidance, child care subsidies and copayment policies vary dramatically across the state. A county can opt to issue child care

¹² D. Pearce, The Self Sufficiency Standard for New York State 2010, <http://www.selfsufficiencystandard.org/docs/New%20York%20State%202010.pdf>

¹³ 81 Fed.Reg. 67438, 67516 (9/30/16).

benefits that are approximately one-third of what the same family would receive in a neighboring county.

The inequity is vast across New York. As indicated by the chart below, in four social services districts parents pay 10% of their income over the poverty level as their child care copayment; in three districts parents pay 15% of their income over poverty; in thirteen districts, parents pay 20% of their income over poverty; in fifteen districts, parents pay 25% of their income over poverty; in one district parents pay 27% of their income over poverty; in two districts, parents pay 30% of their income over poverty; and in twenty districts, parents pay 35% of their income over poverty.

**COPAYMENT DISPARITIES BY COUNTY FOR A FAMILY OF THREE WITH AN INCOME OF \$40,840/year
(200% of poverty)**

COUNTY	COUNTY MULTIPLIERS	ANNUAL/WEEKLY FEE
In Cattaraugus, Livingston, Schuyler and Steuben counties	parents pay 10% of their income over the poverty level for a child care subsidy	this means they pay \$2042 per year, or \$39.27 per week (5% of their income)
In Franklin, Oswego and St. Lawrence counties	parents pay 15% of their income over the poverty level for a child care subsidy	this means they pay \$3063 per year, or \$58.90 per week (7.5% of their income)
In Allegany, Cayuga, Chautauqua, Clinton, Columbia, Essex, Nassau, Niagara, Ontario, Putnam, Saratoga, Suffolk and Tompkins counties	parents pay 20% of their income over the poverty level for a child care subsidy	this means they pay \$4084 per year, or \$78.54 per week (10% of their income)
In Albany, Broome, Chemung, Delaware, Hamilton, Jefferson, Lewis, Madison, Oneida, Rensselaer, Rockland, Ulster, Warren, Washington and Wayne counties	parents pay 25% of their income over the poverty level for a child care subsidy	this means they pay \$5105 per year, or \$98.17 per week (12.5% of their income)
In Westchester County	parents pay 27% of their income over the poverty level for a child care subsidy	this means they pay \$5513.40 per year, or \$104.68 per week (13.5% of their income)
In Dutchess, and Otsego counties	parents pay 30% of their income over the poverty level for a child care subsidy	this means they pay \$6126 per year, or \$117.81 per week (15% of their income)
In Chenango, Cortland, Erie, Fulton, Genesee, Greene, Herkimer, Monroe, Montgomery, New York City, Onondaga, Orange, Orleans, Schenectady, Schoharie, Seneca, Sullivan, Tioga, Wyoming and Yates counties	parents pay 35% of their income over the poverty level for a child care subsidy	this means they pay \$7147 per year, or \$137.44 per week (17.5% of their income)

In response to recommendations made by the New York State Assembly Child Care Workgroup,¹⁴ in the 2015-16 legislative session, the Assembly passed A. 8928 (Russell), which would do much to curb copayment disparities between counties and improve affordability by amending Social Services Law § 410-x to limit child care copayments to 20% of a family's income in excess of the corresponding poverty level.¹⁵ This bill has been re-introduced this session as A.1438 (Jenne)/S.6061 (Kennedy), and we urge its passage to assure equity and fairness in the distribution of child care subsidy funds.

A simpler method would be to provide no family could be required to pay more than 10% of its gross income for child care.¹⁶ Counties would be free to choose their multiplier but there would be a second step in the copayment calculation to review if the resulting number exceeds 10% of the family's gross income. If it does, the copayment would be adjusted downward to that number. New York City actually implemented such a methodology from 2007-2009,¹⁷ but ended up adjusting the cap upward from 10% to 12% in May 2009¹⁸ and then to 17% in 2011,¹⁹ rendering the cap essentially meaningless, except for families in the facilitated enrollment program, who without such a cap can be required to pay over 22% of their income, often more than the cost of care, as a copayment.

The existing regulation has resulted in a system that unequally distributes an important benefit and puts the cost of child care out of reach of some low income working families, but not others. As a consequence, the system is not equitable and not based upon a family's ability to pay.

Recommendation: Empire Justice Center urges the legislature to make copayments equitable and pass the A.1438/S.6061 or an equivalent, such as imposing a straightforward 10% cap, to assure that all parents can afford child care in New York State.

D. Prioritize distribution of scarce child care dollars to working families: exempt parents of very young children from the welfare work rules when there is not enough funding to serve all eligible

In 2016, the New York State Assembly passed A.1805 (Titus)/ S.5176(Avella), which would have prioritized the use of child care funds to eligible parents who were employed by allowing unemployed parents on public assistance to choose a one year work exemption in social services districts where there was not enough funding to serve all eligible working families. Had the bill passed the Senate, more low income working families would have subsidies today. This is because allowing one parent on public assistance to choose a work exemption – and thereby not require child care – frees up three slots for working families. The details of that calculation are explained below. Assemblymember Titus has reintroduced this bill this session (A.4662) and we urge its passage.

Every year OCFS allocates the funding in the New York State Child Care Block Grant (NYSCCBG) to local social services districts according to a formula that is based on the average level of annual child care

¹⁴ *Child Care in Crisis: A Report from the Assembly Child Care Workgroup*, NYS ASSEMBLY, p. 4, <http://assembly.state.ny.us/comm/ChildCare/20131220/index.pdf> (last accessed February 2, 2018).

¹⁵ A.8928 (Russell) passed the New York State Assembly on March 5, 2014, was delivered to the Senate and referred to the Children and Family's Committee there.

¹⁶ Assemblywoman Titus cosponsored a bill with seventeen other Assemblymembers (A.4207) in the 2015-16 legislative session, which would have imposed the 10% cap.

¹⁷ <http://www.ocfs.state.ny.us/main/childcare/plans/New%20York%20County/New%20York%20County312.pdf>

¹⁸ <http://www.ocfs.state.ny.us/main/childcare/plans/New%20York%20County/New%20York%20County310.pdf>

¹⁹ <http://www.ocfs.state.ny.us/main/childcare/plans/New%20York%20County/New%20York%20County305.pdf>

claims for the last five years, which is then reduced if the county has unspent roll-over child care block grant funding exceeding a certain percentage from the prior years.²⁰ The allocations which go to each district are not sufficient to serve all eligible families. The decisions regarding who to serve is in part determined by the law, which guarantees child care to certain categories of families, and in part based on district option. With respect to those families who are not guaranteed child care, OCFS allows districts to prioritize the use of their remaining limited funds in the county plan which is filed with OCFS.

Three categories of families are guaranteed a child care subsidy:

- those on public assistance;
- those under 200% of poverty who have left public assistance in the prior year for work or because of increased child support; and
- those who are eligible for public assistance but choose only to receive a child care subsidy.

The system is strained because the public cost of a subsidized child care slot, which has increased to \$7,683 per year, is entirely paid with public funds when the recipient of a subsidy is on public assistance.²¹ Public assistance recipients are required to participate in work programs as a condition of receiving assistance and are guaranteed child care subsidies to make it possible for the parent to work. Currently, under state statute and regulation, public assistance recipients are exempt from the work activities requirement only until their children are 3 months old.²² After that, they are required to participate in work activities while their child attends fully-subsidized child care. Although there is evidence that work activities such as job search and work experience programs result in little or no economic gain for these families,²³ New York State prioritizes spending its limited child care dollars to support these activities when there is not enough funding to support low income working families with real jobs.

Working families with incomes over the poverty level, on the other hand, contribute to the cost of their subsidized child care by making copayments. For a low income working family, the state pays only part

²⁰ According to 17-OCFS-LCM-11, the allocation for SFY 2017-18 “ reflects each LDSS’s proportionate share of the block grant funds based on the average level of annual child care claims for the FFY 2011-12 through FFY 2015-16. Rollover of unspent NYSCCBG funds is taken into account for those LDSSs that meet the following two criteria:

- If the LDSS’s FFY 2015-16 rollover into FFY 2016-17 is more than 15 percent of its FFY 2015-16 NYSCCBG claims; AND
- The LDSS’s FFY 2015-16 rollover amount exceeded 75 percent of its FFY 2014-15 rollover amount. For any LDSS meeting both of these criteria, the base allocation is first reduced by an amount equal to 40 percent of the rollover amount from FFY 2015-16 into FFY 2016-17 (but not to exceed the five-year-average-claim base allocation). The statewide allocation reduction is then redistributed among LDSSs as follows. For LDSSs whose FFY 2015-16 NYSCCBG claims exceeded the sum of their SFY 2016-17 base allocations (as adjusted) and FFY 2015-16 rollover amounts, the amount of allocation reduction is redistributed on a pro-rated basis, proportionate to counties’ share of the total excess claims. The sum of each LDSS’s five-year-average-claim base allocation, allocation reduction and redistribution is its final SFY 2017-18 allocation.” 17-OCFS-LCM-11, *New York State Child Care Block Grant Subsidy Program Allocations for State Fiscal Year 2017-2018*, NYS OFFICE OF CHILDREN & FAMILY SERVICES (June 26, 2017), available at https://ocfs.ny.gov/main/policies/external/OCFS_2017/LCMs/17-OCFS-LCM-11.pdf (last accessed February 2, 2018).

²¹ Average cost of subsidized care per child provided by OCFS. E-mail from Janice Molnar, Office of Children and Family Services to Susan Antos, dated 11/28/17 (on file with the author).

²² N.Y. SOC. SERV. LAW § 410-w(3); 18 NYCRR § 385.2(b)(7).

²³ D.Greenberg, V Deitch & G. Hamilton, *Welfare to Work Program: Benefits and Costs: A Synthesis of Research*, pp. ES-4, ES-11 (MDRC, February, 2009). Available at: http://www.mdrc.org/sites/default/files/full_611.pdf (last accessed February 2, 2018).

of the cost of child care, not the whole cost of care as they would for a family receiving public assistance. Specifically, a working family is expected to pay a percentage of the income they earn over the poverty level toward child care. The county then pays the difference between the family share and the actual cost of care, up to the market rate established by OCFS.

Cost Analysis: Each Infant Slot from an Exempted Public Assistance Parent Creates Three Slots for Working Families

As indicated in the table below, the funding that fully supports one infant slot for a working public assistance recipient with subsidized child care would actually fund three slots for working families, because the cost is shared between the government and low income families.²⁴ For example, in Erie County, infant care costs the county \$9,620 per year for a public assistance recipient, but a child care subsidy for a working family with a preschool age child will cost the county only \$3,739. This means that the amount of money saved by Erie County from one public assistance family that does *not* require full-time infant care can be allocated to pay for child care subsidies for 2.6 working families in need of preschool aged care, or 2.3 working families in need of infant care. In Yates County and a multitude of other smaller and predominately rural counties, the savings from one less public assistance household in need of infant care would fund 3.2 child care subsidies for working families of preschool aged children.²⁵

The Assembly bill addresses this issue by shifting child care dollars that are being spent on welfare recipients in programs like job search and workfare to low income working families with real jobs. This was done by amending §410-x of the social services law to maximize and target child care subsidies to low income working families who are employed when local districts are unable to provide subsidies to all who are eligible. Specifically, the bill provides that when a social services district does not have sufficient funding to serve all eligible working families under 200% of poverty,²⁶ the district must offer a twelve month work exemption to welfare recipients who are personally providing care for a child less than one year of age.

We estimate that this cost neutral action will make a total of \$5.38 million in child care dollars, currently being used to support child care assistance for welfare recipients, available to provide child care subsidies to parents who are employed. In addition, we estimate an additional \$3.96 million in administrative savings through the elimination of the connected work program expenses (e.g. expense

²⁴ These calculations are conservative because the average cost of a subsidy includes the costs for a fully subsidized slot of a family on public assistance and the cost of a slot of a working family that has a copayment.

²⁵ In the accompanying chart, the estimate of child care slots for working families that can be leveraged from a public assistance infant care slot was calculated by dividing the cost of one full-time infant care slot, fully paid for by the county, by the county's share of child care costs for a working family with a child in a full-time preschool or infant care program. The market rates are separated into five distinct geographical groups and a representative county was highlighted in each of these geographical groups. The calculation was run separately for each of the five different market rate groups at two different levels—to see how many working family infant care slots can be funded from one public assistance infant slot, and how many working family preschool slots can be funded from one public assistance infant slot because the cost of care is different between different age groups. Infant care is the most expensive level of care, and preschool aged care is the most commonly used category of care. Because the number we used as the cost per slot is actually the average cost spent on public assistance and non-public assistance families, it is actually likely that each public assistance infant slot will purchase more slots than are indicated in our conservative calculations.

²⁶ The most recent information available indicates that New York City as well as Albany, Clinton, Cayuga, Delaware, Niagara, Ontario, Orange, Oneida, Livingston, Rensselaer, Saratoga Schenectady, and Suffolk, are not able to serve all eligible working families.

of the workfare or soft skills program). Total funds freed up would be \$9.34 million. A detailed chart explaining this cost savings appears below.

Comparison of County Contribution to Child Care Costs for PA and Working Families: High Family Share Counties²⁷					
County	Westchester²⁸	Erie²⁹	Yates³⁰	Orange³¹	NYC³²
Annual cost: fulltime infant care	\$15,340	\$9,620	\$7,800	\$11,700	\$10,400
Annual cost: fulltime preschool aged care	\$14,300	\$9,100	\$7,800	\$10,400	\$9,100
For each infant of a PA family, the county pays the full cost of care.	\$15,340	\$9,620	\$7,800	\$11,700	\$10,400
Working families contribute to their child care costs by paying a % of their income above the poverty level.	27%	35%	35%	35%	35%
Annually, a working family contributes to the cost of care:	\$4,135.05	\$5,360.25	\$5,360.25	\$5,360.25	\$5,360.25
For each infant of a working family, the county pays	\$11,204.95	\$4,259.75	\$2,439.75	\$6,339.75	\$5,039.75
1 PA infant slot provides infant care to working families	1.37	2.26	3.20	1.85	2.06
For each preschool child of a working family, the county pays	\$10,164.95	\$3,739.75	\$2,439.75	\$5,039.75	\$3,739.75
1 PA infant slot provides fulltime preschool slots to working families	1.51	2.57	3.20	2.32	2.78

²⁷ Calculation conducted using market rates effective June 1, 2016, and copay percentages as of February 1, 2017. Family share and county share calculations are based on a household of three earning \$35,735.00 (175% of the 2016 state income standard/federal poverty level in effect as of June 1, 2016). The type of child care assumed for this calculation were the weekly rate for a registered family day care in two different age categories: infant (0-1.5 years), and preschool (3-5 years).

²⁸ Westchester County lies in market rate group 1, with other downstate sub-urban counties. Group 1 includes Nassau, Putnam, Rockland, Suffolk and Westchester Counties.

²⁹ Erie County lies in market rate group 2, with other upstate urban and more expensive rural counties. Group 2 includes Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Schenectady, Tompkins and Warren Counties.

³⁰ Yates County lies in market rate group 3, with other upstate rural and small counties. Group 3 includes a total of 38 counties: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming and Yates.

³¹ Orange County lies in market rate group 4, with other upstate high cost counties. Group 4 is made up of Albany, Dutchess, Orange, Saratoga, and Ulster Counties.

³² Market Rate Group 5 is solely comprised of the five boroughs of New York City.

Those dollars will be stretched even further because working families have copayments and welfare recipients do not. As a result, each child care slot transferred from a welfare recipient will generate 2.4 slots for working parents on average. In addition, by reducing the amount of administrative time spent coordinating job search and workfare activities, local districts would see savings in administrative costs statewide.

Under current law, local districts should be able to exempt from work assignments parents and caretakers of children under one year, and thereby generate savings in child care expenditures. But the process would clearly be simplified if New York amended the law to permit that these parents and caretakers be explicitly exempted from the work requirements.

We recommend that state Social Services Law 332(1)(d) be amended to conform with federal law and allow districts to exempt a person from work even if she had already been exempt for a total of twelve months. This would be done with the understanding that this household would be included in the participation rate calculation for any period of exemption beyond twelve months.

The proposed amendment to Section 332(1)(d) would state that a person will be exempt from work assignment if she is the:

(d) a parent or other relative of a child who is personally providing care for such child under one year of age for a ~~maximum~~ period of up to twelve months, ~~only three months of which shall be attributable to any one child, except as otherwise extended up to the twelve-month period by the social services official.~~ At district option, this exemption may be extended for an additional child or children. [New language is underlined, current language that will be deleted is ~~crossed out~~]

We need to protect the jobs of low income working families! New York is facing a crisis of insufficient funding for child care subsidies for the working poor which undermines their ability to stay in the work force and off welfare. Reintroducing and passing this bill will free up the subsidized child care funding necessary to help maintain and expand slots for working families.

Recommendation: Prioritize the use of child care funds to eligible parents who are employed by allowing unemployed parents on public assistance to choose a one year work exemption in social services districts where there was not enough funding to serve all eligible working families.