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Joint Legislative Public Hearings on 2019-2020 Executive Budget Proposal

Human Services

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INTRODUCTION

We appreciate this opportunity to submit this testimony on behalf of Empire Justice Center. This testimony addresses issues in the Executive Budget that pertain 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.

The New York State economy has recently been relatively robust, but the urgent need for support for human services is unabated. One need only look at, for example, record-breaking homelessness and the chronic inability of low and modest income New Yorkers to meet their child care needs to confirm that there is much to be done. This is ever more emphatically clear in light of the continuing uncertainty with regard to federal support. But we also recognize that in this moment our State has a unique opportunity to take action on behalf of those most in need, to expand and solidify the safety net and to enact and provide funding for dramatic, progressive change. We urge the Legislature to decisively affirm its Constitutional commitment to aid and support the most vulnerable New Yorkers.

This testimony touches 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 Health. We will discuss the positions set forth below:

1. **Invest a Total of $2.767 Million in the Managed Care Consumer Assistance Program (MCCAP)**
2. **Restore and Build Upon the Investment in the Disability Advocacy Program (DAP)**
3. **Improve the New York State Supplement to the Federal SSI Program for New Yorkers with Disabilities**
4. **The Home Stability Support Initiative Will Bring Housing Security to Thousands Of New Yorkers and Will Dramatically Reduce the Soaring Costs of Emergency Shelter**
5. **Support Empire Justice's Work Serving Immigrants Under the Liberty Defense Project**
6. **Invest in Child Care to Provide Equitable Access to Working Parents and Adequate Reimbursement to Providers**

INVEST A TOTAL OF $2.767 MILLION IN THE MANAGED CARE CONSUMER ASSISTANCE PROGRAM (MCCAP)

Empire Justice Center supports funding for the Managed Care Consumer Assistance Program, the state's community-based consumer assistance program for people with Medicare.

We would like to thank Governor Cuomo for including level funding for the Managed Care Consumer Assistance Program (MCCAP) in his 2019-2020 budget proposal. MCCAP is a statewide program that provides essential assistance to low-income seniors and people with disabilities in accessing health services and reducing their Medicare costs. Along with the other members of the MCCAP, Empire Justice collaborates with the New York State Office for the Aging (NYSOFA) to take referrals of complicated cases and resolve complex Medicare issues.

Empire Justice Center requests that the Legislature increase funding for MCCAP in 2019-2020 to the amount of $2,767,000, an increase of $1,000,000. We are pleased that the Governor's 2019-2020 Executive Budget includes funding for MCCAP at last year's level. However, several programs—New York State of Health (NYSoH), Managed Long-Term Care (MLTC), and Dual Eligible Special Needs Plans (D-SNP)—have added to the complexity of the healthcare landscape for people with Medicare and those dually eligible for Medicare and Medicaid. Thousands of New York residents will need MCCAP agencies to continue serving as trusted on-the-ground resources explaining how such changes affect their Medicare prescription drug and health coverage, and access to healthcare providers.

As a greater number of residents become Medicare eligible MCCAP services are needed more than ever to help people enroll into valuable cost-saving federal benefits such as the Medicare Savings Program (MSP) and Extra Help. Enrollment for New York Medicare beneficiaries in the MSP is far under the national average. By providing $1 million in additional MCCAP funding, a new initiative could be started that is dedicated to reaching 25,000 more people with Medicare to educate them about the MSP and helping a minimum of 2,000 low-income New Yorkers enroll in MSP and Extra Help benefits. For an investment of $1 million, the state could save elderly and disabled New Yorkers, many of whom live in poverty and on fixed incomes, over $10 million in out-of-pocket expenses each year.

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

For three and a half decades, 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 2018, DAP providers, who work in every New York county:

- Assisted over 227,000 disabled New Yorkers.
- Helped put almost $810 million in retroactive benefits in their hands to be spent in local economies.
- Generated over $226 million in federal funds paid back to New York State and the

counties.

- Saved at least $ 304 million in avoided public assistance costs.

Consistently successful in about 72% 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 $2 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.

In 2019, applicants for disability benefits face a new addition to the appeal process, institution of a mandatory "reconsideration" step before a hearing can be held. Based on previous experience with the reconsideration process in New York twenty years ago, this desk review of rejected applications for federal disability benefits creates an additional hurdle in an already daunting process. In the past, and in states where it has been in place, it results in few successful appeals. It also has the additional negative impact of discouraging disabled New Yorkers from pursuing valid claims. SSA data shows that 71% of people denied disability benefits initially do not request reconsideration. Providers will allocate a portion of the extra money requested to develop targeted pilot programs to provide representation at the reconsideration level, in the hopes of improving the chance of success and, in turn, helping more New Yorkers access federal benefits sooner.

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 at least 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. New funding from the Legislature of an additional $2 million is needed to begin representing claimants at the reconsideration step, as well as representing more of the disabled applicants who were turned away. Increasing funding will provide ongoing 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. We are asking that the Legislature not only restore last year's level of funding, but invest an additional $2 million for a total of a $5 million add-on to the Executive Budget level to bring statewide funding to a total of $10.26 million. Half of this cost is borne by the local counties, leaving the actual cost of the request to the legislature at $2.5 million. The additional funding will go a long way towards further stabilizing the long term future of DAP services and will allow providers to begin to represent claimants at the reconsideration step while continuing to chip away at the unmet need for services.

IMPROVE THE NEW YORK STATE SUPPLEMENT TO THE FEDERAL SSI PROGRAM FOR NEW YORKERS WITH DISABILITIES

The Federal Supplemental Security Income program for very low income elderly and disabled individuals authorizes states, at their option, to provide a state supplement to the Federal benefit. New York has provided that supplement for many years, but it was administered by the Federal government until 2014. In that year, New York State took over the administration of the state supplement and created SSP, the state supplement program.

When a person becomes eligible for SSP benefits, their benefit amount is determined, in part, by what is known as their "Living Arrangement." The person's SSP benefit amount can vary depending on whether they are determined to be "Living Alone," "Living with Others" or living in "Congregate Care." For purposes of this testimony we focus on two categories, "Living Alone" and "Living with Others." The Living Arrangement categories can be somewhat misleading, and are often confusing for recipients. New York currently provides an SSP benefit of $87.00 per month for persons determined to be "Living Alone" and $23.00 per month for persons determined to be "Living with Others." These rates have remained unchanged since the program was taken over nearly five years ago, and even for several years before when the federal Social Security Administration issued the SSP payments on the State's behalf.

Recommendation: The SSP benefit provides a modest but important bump in income to some of our State's most vulnerable residents. For this reason, correctly determining the living arrangement that sets the benefit is of the utmost importance to securing a fair and valuable benefit. Empire Justice Center supports two important improvements to SSP: (1) increasing the modest benefit and (2) making application assistance widely available.

Proposed benefit increase: Specifically, we propose a 12.5% increase in the SSP benefit level. While the amount sounds higher than many increases, the benefit itself has not been raised in more than half a decade and the amounts are modest. A 12.5 % increase for "Living Alone" households will provide an additional $11 per month, and a mere $3 increase for single individuals who are categorized as "Living with Others."

Application assistance: As noted above, the living arrangement categories and criteria can be quite confusing. But it is essential – because of the benefit implications – that correct determinations of living arrangement categories are made. In order to ensure that SSI recipients are able to complete the necessary SSP enrollment and secure the correct benefit level, Empire Justice Center supports the creation of a network of application assisters who would be available to SSI recipients to ensure that their living arrangement forms are completed and submitted correctly. The application assisters would be available to help SSI recipients complete relevant forms, gather documentation, and identify barriers to recipients seeking to access their benefits. This would provide a critical tool to a recipient population that is predominately comprised of disabled individuals with very limited access to resources.

THE HOME STABILITY SUPPORT (HSS) INITIATIVE WILL BRING HOUSING SECURITY TO THOUSANDS OF NEW YORKERS AND WILL DRAMATICALLY REDUCE THE SOARING COSTS OF EMERGENCY SHELTER

The time has come for the Legislature to effectively combat the devastating impacts of homelessness and housing instability by adopting the Home Stability Support program. While many parts of the country show a decrease in homelessness, New York State continues to break homelessness records on an annual basis. Across the State, we have an estimated 90,000 people who are homeless each night and more than 150,000 children experiencing homelessness over the course of a year. Currently, there are as many as 80,000 families that are at serious risk of homelessness.

Over time, research has confirmed what we perhaps have intuitively known all along about the harm that is caused by homelessness and housing insecurity. Acute stress and hardship accompany the loss or the risk of loss of a secure place to live. The consequences are manifold: Children do less well in school and are more likely to drop out, parents are less able to secure and retain employment, mental and physical health are in jeopardy and the general well-being of the family suffers.

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 most of these proposals are costly, and will take years to bring to fruition. The inability of lower-income New Yorkers to meet the costs of even the most modest housing represents a crisis that cannot await the implementation of these proposals. Particularly for people who must rely on public assistance to enable them to pay the rent, the absurd disconnect between their rent allowances and the actual cost of housing must be addressed immediately.

The housing portion of the public assistance grant (the "shelter allowance") has not remotely kept pace with the relentlessly increasing cost of housing. More than two-thirds of public assistance recipients living in private housing have rent costs that are greater than the amount they receive for rent. And for many of these individuals and families, their rent costs are 150 to 200 percent higher than the shelter allowance. In other words, chronic housing instability – and the accompanying trauma and stress – are virtually guaranteed for these thousands of households. At the same time, 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. These costs are prohibitive. The cost of emergency shelter for a family 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 of providing a family with rent sufficient to secure modest but decent housing would likely be one-third or less than the emergency shelter cost, while offering an opportunity for stability and security that simply cannot be offered in the emergency shelter system.

A brief sample comparison of the shelter allowance 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. And it should be noted that the FMR approximates the cost of decent but modest housing. In Albany County, the monthly FMR for a two-bedroom unit is $1,115, while the maximum shelter allowance for a household of three is $309 per month, or about 28% of the FMR. In Erie County, the two-bedroom FMR is $838, while the shelter allowance for a household of three is $301, or about 36% of the FMR. 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, they are generally available only to families with children and even the supplements often fall short of the actual rents. The eligibility rules for these supplements notably disadvantage those living with hazardous conditions or fleeing domestic violence.[1] This fact has taken on particular significance because domestic violence is now recognized as a leading cause of homelessness. Indeed, I must note that I have, in recent months, been researching services provided within the welfare system for domestic violence survivors. In talking with local DSS staff, domestic violence non-profit providers and other advocates around the state, I have consistently been told that the inadequacy of public assistance rent allowances poses a nearly insurmountable barrier to the ability of survivors to move out of emergency shelters and move on with their lives.

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). New York State is clearly failing to meet its statutory obligations under the Social Services Law.

There is one final consideration that must be addressed. Many New York households outside of New York City and its suburbs must pay for heat separately from their rent. There is a fuel-for-heating allowance provided to public assistance households who must pay for heat, but this allowance has not seen an increase since its creation more than 30 years ago. During that time span, the cost of heating oil has increased four-fold, and the cost of natural gas has doubled. The inability to meet heating costs may mean that the family must relocate or must endure hazardous living conditions – another manifestation of housing instability.

The inevitable consequence of these grossly inadequate shelter and heating allowances is that too many low-income households in New York State are in a constant state of housing

[1] 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.

insecurity and homelessness. In many parts of the state, the only affordable living quarters may be overcrowded, unsafe and perhaps illegal.

Adoption of the Home Stability Support program will make stable housing a reality for thousands of individuals and families. Keeping families in their homes will, in turn, save millions of dollars currently needed for emergency housing and other expenses – health care, emergency food programs, remedial education, court costs – associated with unstable housing and homelessness. At the same time, significant positive outcomes will be reflected in education, health, employment and family well-being.

Recommendation: We urge the Legislature to 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 enable a household to pay up to 85% of the HUD Fair Market Rent. 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 with State and federal dollars.

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

As noted above, we strongly support initiatives in the Executive Budget that would expand the stock of affordable housing. But we firmly believe that the current housing emergency requires immediate action to enable households to pay the rent. We believe that HSS will reverse the growing trend of homelessness in New York State, keep low-income families and individuals in their homes, save millions of taxpayer dollars and will bring housing stability to thousands of struggling households.

SUPPORT EMPIRE JUSTICE CENTER'S WORK SERVING IMMIGRANTS UNDER THE LIBERTY DEFENSE PROJECT

New York created the Liberty Defense Project at a timely and critical moment in our State's history. The federal government's increasingly chaotic and enforcement-oriented approach to immigration is threatening Due Process protections and prolonging the legal immigration process at every turn. For immigrant New Yorkers facing deportation, seeking asylum, or in need of basic legal assistance, the Office of New Americans (ONA) within the Department of State (DOS) developed the LDP, partnering with the Empire Justice Center and other organizations to build a statewide network of legal assistance providers who offer legal assistance, training, and advice to meet these challenges head on.

To ensure that New York's immigrant communities have access to trustworthy and consistent legal assistance, the infrastructure for these services, which are now fully up and running, must be made permanent and expanded in the coming year.

Thus, Empire Justice is extremely disappointed that the Governor has failed to include renewed funding for LDP in the SFY 2019-20 Executive Budget. The proposed budget relies instead on re-appropriating prior year funding to support this critical program.

Under LDP, Empire Justice developed a powerful new network of immigration legal services across New York State (outside New York City), reaching the greater Rochester region through the Legal Aid Society of Rochester, Central New York through Hiscock Legal Aid in Syracuse, the Capital Region through The Legal Project, the Hudson Valley through our offices in Yonkers and through the Center for Safety and Change in Rockland County, and on Long Island by expanding our own immigration services. Each of these programs is fully staffed under the current contract, attorneys are actively engaged in providing services and continuing to interview and undertake representation of immigrants in need of legal assistance and we now face uncertainty with regard to continued funding.

By November 2018, the network Empire Justice created under the statewide LDP network included **seven** attorneys and **five** paralegals who had already served over **3,980** immigrants, assisting with issues ranging from asylum to Temporary Protected Status. These services include the presentation of **80** Know Your Rights events, legal clinics and community education sessions reaching **475** community members and training offered to **387** legal professionals. Over **2,850** immigrants have been assessed for needed services and **687** immigrant clients have already been accepted for representation.

Any loss of funding or disruption in the current contract will be extremely damaging to this new network and the clients we already represent, let alone those who are still in need of legal assistance. Without continuation of the LDP funding for the network, there will be very few legal resources available in upstate New York to help stabilize families, reduce fear and protect New York's immigrants from hostile federal enforcement policies and ever-harsher practices.

We urge the Governor to amend the Executive Budget to include the needed $10 Million in renewed funding for the Liberty Defense Project and to maintain existing service agreements under the current LDP network.

INVEST IN CHILD CARE TO PROVIDE EQUITABLE ACCESS TO WORKING PARENTS AND ADEQUATE REIMBURSEMENT TO PROVIDERS

Empire Justice Center joins Winning Beginning New York and the Empire State Child Care Campaign and asks the State to invest 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 $8,028 since 2013), and 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 percentile[2] and reduced the number of children served. Significant numbers of eligible children go unserved because of the lack of subsidy funding.[3] 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

- **ADD $51 million to restore the child care subsidy program** to the level attained in 2016, adjusting for four years of inflation;
- **ADD $26 million to revise the copayment formula** so that no family receiving a child care subsidy contributes more than 20% of its gross income exceeding the poverty level as the parent share while maintaining the number of families receiving subsidies; and
- **ADD necessary funds** to enable all counties to maintain updated subsidy waitlists.
- **Increase the subsidy reimbursement rate to the 75th percentile formula.** The Executive Budget proposes $26 million to hold the reimbursement rate to the 69th percentile outside of New York City. This is a positive step, but not enough to keep struggling providers across the state in business, nor to allow them to pay their workforce a living wage.

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 **Delaware and Suffolk Counties** are **125%** of poverty ($25,975 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 **130%** of the federal poverty level ($27,014 for a family of three).[4]
- 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.
- Three social services districts have lowered eligibility to **150%**: **Clinton, Oneida, and Orange Counties;**
- **Livingston and Rensselaer Counties** have lowered eligibility to **160%** of poverty.

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[2] 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

[3] 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.

[4] These numbers are calculated based upon the 2018 poverty level which for child care, is in effect until June 1, 2019. 2018 OCFS-INF-01, available at: https://ocfs.ny.gov/main/policies/external/OCFS_2018/

- In **Albany, Ontario, Saratoga and Schenectady 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.[5]

B. Investing in child care is critical to economic development

As a result of the 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.[6] By December 2017, the number of persons on Temporary Assistance had dropped to 503,109 (245,524 of those recipients were children)[7].

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:[8]

- 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. Market rates should have been adjusted in October 2018 and

[5] 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.

[6] 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.

[7] New York State Office of Temporary and Disability Assistance Monthly Caseload Statistics, November 2018, Table 5, p. 8, available at https://otda.ny.gov/resources/caseload/2018/2018-11-stats.pdf [accessed January 30, 201].

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

providers are still waiting, struggling to comply with increased costs as minimum wages increased yet again at the end of December as follows:

NYS Minimum Wage – December 31, 2018
NYC - Large Employers (of 11 or more) $15/hr
NYC - Small Employers (10 or less) $13.50/hr
Long Island & Westchester - $12/hr
Rest of State: $11.10

The legislature must 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 not exceed 7% of household income.[9] As set forth more fully below, a 35% copayment is not an affordable copayment, especially for families with incomes 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 six 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 the copayment 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 benefits that are approximately one-third of what the same family would receive in a neighboring county.

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

The inequity is vast across New York. As indicated by the chart below, in three 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 sixteen 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 $41,560/year

(200% of poverty)

COUNTY	COUNTY MULTIPLIERS	ANNUAL/WEEKLY FEE
*In **Cattaraugus, Livingston** and **Steuben** counties*	*parents pay* **10%** *of their income over the poverty level for a child care subsidy*	*this means they pay* **$2078** *per year, or* **$39.96** *per week (5% of their income)*
*In **Oswego, Schuyler** and **St. Lawrence** counties*	*parents pay* **15%** *of their income over the poverty level for a child care subsidy*	*this means they pay* **$3117** *per year, or* **$59.94** *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* **$4156** *per year, or* **$79.92** *per week (10% of their income)*
*In **Albany, Broome, Chemung, Delaware, Franklin 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* **$5195** *per year, or* **$99.90** *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* **$5610.60** *per year, or* **$107.89** *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* **$6234** *per year, or* **$119.88** *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 **$7273** per year, or **$139.87** per week (17.5% of their income)*

In response to recommendations made by the New York State Assembly Child Care Workgroup[10] in the 2015-16 legislative session, the Assembly passed A. 8928 (Russell), which would do much to curb copayment disparities among 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.[11] This bill was re-introduced in the 2017-18 session as A.1438 (Jenne)/S.6061 (Kennedy), and has been reintroduced this session as A.3110 (Jaffee)/S.1546 (Kennedy). 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.[12] 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,[13] but ended up adjusting the cap upward from 10% to 12% in May 2009[14] and then to 17% in 2011,[15] 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. In October 2018, New York City abandoned its cap altogether.

The OCFS 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.

[10] *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).
[11] 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.
[12] Assemblywoman Titus cosponsored a bill with seventeen other Assemblymembers (A.4207) in the 2015-16 legislative session, which would have imposed the 10% cap.
[13] http://www.ocfs.state.ny.us/main/childcare/plans/New%20York%20County/New%20York%20County312.pdf
[14] http://www.ocfs.state.ny.us/main/childcare/plans/New%20York%20County/New%20York%20County310.pdf
[15] http://www.ocfs.state.ny.us/main/childcare/plans/New%20York%20County/New%20York%20County305.pdf

Recommendation: Empire Justice Center urges the legislature to make copayments equitable and pass the A.3110 (Jaffee)/S.1546 (Kennedy) or an equivalent, such as imposing a straightforward 10% cap, to assure that all parents can afford child care in New York State.

Thank you for the opportunity to submit this testimony. We look forward to working with you to achieve positive, progressive change in this legislative session.