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**Testimony of Health Justice Staff Attorney Sarika Saxena
On Behalf of New York Lawyers for the Public Interest**

**Before New York State Assembly's Committees on Health, Hispanic/Puerto Rican
Taskforce, and Taskforce on New Americans**

Good afternoon, my name is Sarika Saxena and I am the Health Justice Staff Attorney and Project Manager at New York Lawyers for the Public Interest. Thank you to Chairpersons Gottfried, Crespo, and Solages and the Committee and Taskforce members for having this hearing and giving us the opportunity to present testimony today.

I. New York Lawyers for the Public Interest and Coverage4All

For the past 40 years, New York Lawyers for the Public Interest (NYLPI) has been a leading civil rights and legal services advocate for New Yorkers marginalized by race, poverty, disability, and immigration status. Through our community lawyering model, we bridge the gap between traditional civil legal services and civil rights, building strength and capacity for both individual solutions and long-term impact. Our work integrates the power of individual legal services, impact litigation, and comprehensive organizing and policy campaigns. Guided by the priorities of our communities, we strive to create equal access to health care, achieve equality of opportunity and self-determination for people with disabilities, ensure immigrant opportunity, strengthen local nonprofits, and secure environmental justice for low-income communities of color.

NYLPI's Health Justice Program brings a racial justice and immigrant rights focus to health care advocacy in New York City and State. In partnership with community-based organizations and coalitions, we work to advance four broad goals: (1) challenge health disparities; (2) eliminate racial and ethnic discrimination and systemic and institutional barriers that limit universal access to health care; (3) promote immigrant and language access to health care; and (4) address the social determinants of health so that all New Yorkers can live a healthy life. As the Assembly considers the States' priorities with regard to legal services and support for New York's communities, NYLPI hopes that the Assembly and Administration will prioritize immigrant communities and particularly immigrant health.

NYLPI is also here as a member of Coverage 4 All, a campaign to expand coverage to all New Yorkers. Led by a coalition of community members, community organizations, health care providers, legal service providers, and advocates from labor, immigrant, and health care consumer advocates, our objective is to create a statewide health insurance product for New Yorkers who are excluded from eligibility for coverage because of their immigration status.

II. NYLPI's Immigrant Health Advocacy

NYLPI has been advocating for equity in health justice for New Yorkers marginalized by race and immigration status for decades, from advocating for language access in healthcare settings to connecting noncitizen New Yorkers to health coverage. Our interdisciplinary team works with New Yorkers who are uninsured due to their immigration status. Oftentimes, people are eligible for health insurance, but mistakenly believe that they are not. Others may be eligible but have never consulted with an attorney, at times due to their medical condition. We provide immigration representation and health care advocacy to those who are seriously ill to make sure that individuals who are eligible are able to connect to Medicaid. Even after obtaining Medicaid or other insurance coverage, a considerable number of clients continue to experience barriers to accessing benefits for which they are eligible. For example, we have seen that hospital staff are unaware of health coverage options for noncitizen New Yorkers. We have developed trainings and outreach materials for hospital staff, community health centers, and communities who are directly impacted.

NYLPI is also deeply committed to addressing the inadequate medical care in immigration detention facilities in the New York metropolitan area. Each year, thousands of New York residents are detained by U.S. Immigration and Customs Enforcement (“ICE”) in facilities housed within local jails. NYLPI has authored a report, titled *Detained and Denied: Healthcare Access in Immigration Detention*, which highlights the grave, life-threatening deficiencies in the medical care provided to New Yorkers who are detained in these jails. NYLPI works with immigration legal services providers to fight for the release of seriously ill detainees and has created a network of over 50 doctors and residents to support this advocacy. NYLPI also litigates civil rights lawsuits to challenge detention conditions.

III. Problems Immigrant New Yorkers Face in Accessing Healthcare

a. Issues Faced by Immigrants Who Are Permanently Residing Under the Color of Law

New York State is amongst the few progressive states in our nation that offer healthcare to an expansive population of immigrants. In this regard, New York is ahead of a majority of states by providing State-funded Medicaid to immigrants who are “permanently residing under the color of law” or “PRUCOL, a benefits eligibility category and is not an immigration status.” I will define PRUCOL in more detail a little later, but, essentially, this is a category of eligibility for healthcare that includes immigrants whose immigration applications are being processed and who do not yet have immigration status. As you may know, immigration applications can take decades for a decision. It is truly a boon that immigrant New Yorkers can have health coverage while they anxiously wait for their papers to be processed. All the clients that I represent are suffering from curable diseases and have been able to obtain life-saving medical treatment because of PRUCOL. I commend New York for providing coverage to PRUCOL immigrants.

Particularly, PRUCOL has been instrumental in the aftermath of the Trump Administration’s decision to rescind the Deferred Action for Childhood Arrivals (“DACA”) program on September 5, 2017. To be PRUCOL, a federal immigration agency must have

knowledge of an individual's presence in the United States and the agency must either permit or acquiesce to their presence. Also, the agency cannot contemplate enforcing the removal of the individual. This definition is very well written as it reflects the nature of immigration law and how it is enforced. As you may be familiar, DACA was a promise from the federal government not to deport undocumented youth under the age of 31 if they entered the U.S. before their 16th birthday. While it was in place, DACA recipients received authorization to work, which allowed access to driver's licenses, social security numbers, and health insurance. In New York, DACA recipients were considered PRUCOL and enrolled in health insurance. After completing an in-depth legal analysis, I, along with my colleagues, have determined that DACA recipients will remain PRUCOL, despite the Administration's rescission, and thus eligible for Medicaid. This is because DACA recipients continue to meet the PRUCOL requirements: The previous grant of DACA is proof that the federal government has knowledge of the individual. As for whether the agency is permitting or acquiescing to their presence, courts look to the standard operating procedure of the agency and whether it would initiate deportation proceedings against an individual. Here, the agency has stated and written in various fora that DACA recipients will not be targeted for deportation. In addition, DACA recipients do not fit the agency's longstanding protocol that determines which cases will be selected for deportation proceedings.

Continuing Medicaid for DACA recipients will impact a small number of New York residents who have obtained DACA; however, its impact on the lives of vulnerable, young persons will be immeasurable. My client, a longtime Queens resident, for one, called me frantically after the election results and again after the September rescission was announced. You see, my client fought hard over two years to apply for DACA. She was also diagnosed with End Stage Renal Disease at a very young age and has been enduring dialysis three times a week for the past five years. As you may know, dialysis is a grueling procedure and a kidney transplant is the only real cure to ESRD. After being granted DACA, my client was finally able to be evaluated for an organ transplant. When she learned that DACA would end, she was concerned for more than deportation. She worried first and foremost about whether her health would be jeopardized by the politics that were being played and whether she would be able to get a transplant. Since she devoted three to four hours every other day of the week to dialysis, my client is unable to go to school or do much else as dialysis is fatiguing. Having access to the transplant would be life-changing for her, as she would have a fuller life and be able to participate more in the community. Also, having access to the transplant means that the healthcare system is saving money. Paying for lifetime dialysis is much more expensive than providing a transplant to a patient. I am concerned whether my client, and other youth like her, will continue to State-funded Medicaid and have access to life-saving treatment.

We urge the Assembly to write Governor Cuomo and the New York State Department of Health and ask them to issue a firm policy statement that state-only funded Medicaid will continue for the DACA recipients whose DACA immigration status is expiring.

b. Lack of Options for Immigrants Who Are Not Permanently Residing Under the Color of Law

Unfortunately, there are still many immigrants who have no means of accessing insurance despite PRUCOL eligibility. Since PRUCOL largely depends on immigration relief

that is available, several hundreds of thousands of New Yorkers do not have a recourse to obtain health coverage. It is well known that federal immigration laws are deficient and do not provide immigration relief to hundreds of thousand New Yorkers who are integral to every facet of New York life. Without a path to immigration relief, they have no access to healthcare, leaving many uninsured. Additionally, given the political climate, it has become riskier to file certain immigration applications that once led to PRUCOL eligibility, which also curtails an otherwise-eligible person from obtaining health benefits.

New Yorkers who cannot obtain PRUCOL are only able to access medical care in emergencies and prequalify for emergency Medicaid. I meet individuals regularly who have chronic but not emergency conditions, or comorbidities along with an emergency condition, like End Stage Renal Disease, that require specialist care to avoid large medical bills in the future. Without Medicaid, they are unable to access comprehensive care. Many patients who are uninsured and not PRUCOL eligible continue to rely on safety net providers. There are many gaps in care, not the least of which is wait time to see a specialist at a safety net hospital. Also, the care is still expensive and the safety net providers are receiving less and less funding.

Surely, the New York State Assembly cannot change federal immigration law; however, we ask that our State legislature work towards a state health plan that covers its hard-working immigrant constituents who contribute and pay into a system that leaves them uninsured. Expanding accessible and affordable coverage to this population would benefit our hospitals and health care centers which could better care for patients, but it will also immensely benefit your constituents and their families who will be able to access comprehensive care and lessen the burden on emergency rooms.

c. Lack of Understanding and Misconceptions Regarding Immigrant Eligibility for Healthcare.

For clients that I have helped connect to health coverage, my advocacy does not end after the immigration matter is submitted or even after connecting the client to a Navigator to enroll in a health plan. Too often, medical professionals and healthcare providers are unaware of immigrant New Yorkers' eligibility for health insurance, especially those that are eligible because they are PRUCOL. It is understandably a complex process, involving immigration and the public benefits system. Seeing the need for such information and outreach, I developed a training to explain immigration statuses, public benefits eligibility for immigrants, and how medical providers can better assist their immigrant patients. For the last two years, I have been conducting these trainings to community health center partners and hospitals that I encounter through clients. I revamped the training to include emerging issues after the 2016 Presidential election and new immigration enforcement policies. However, there are numerous hospitals and health professionals who I have not been able to reach. I know from my advocacy on behalf of clients that this is an area of great need.

Training and awareness around PRUCOL eligibility is not only important because it is a missed opportunity for patients and medical providers; it is also important because some medical providers have an incorrect understanding of how one obtains PRUCOL eligibility. In one particular instance, a hospital's understanding could have caused irreparable harm to the patient

had advocates not intervened. In late 2016, our 23-year old undocumented Staten Island resident was hit by car and ended up hospitalized in a coma on Staten Island. Shortly thereafter, the hospital contacted his parents in Guatemala and sought permission to call ICE. The hospital claimed this would make our client PRUCOL and eligible for Medicaid, and able to be released from the hospital. There were other options to obtain PRUCOL; however, the hospital wanted to take the quickest route to Medicaid eligibility without regard to the patient's best interest.

The hospital's lawyers were clearly not immigration lawyers. After Rosa Maria, a 9-year-old cerebral palsy patient, was taken into custody by U.S. Customs and Border Patrol, it is difficult for us to rule out the likelihood that such horrific action would be taken against one of our clients. We must take every opportunity to minimize the risk that immigrant New Yorkers are exposed to, especially when it is unnecessary. Thankfully, we worked with community partners, a superb *pro bono* law firm, and a volunteer guardian to obtain Medicaid and the client was discharged to a nursing home facility. We even came across a nursing home that believed that one must be reported to ICE to be considered PRUCOL and that that was the only way. This is a dangerous practice and entities who are trying to assist patients should know the consequences of their actions.

We call on the State Assembly, in conjunction with the Department of Health, to address this issue through oversight practices of local hospitals. We urge the Assembly to consider appropriate funding to train and raise awareness on immigrant health issues, including PRUCOL, while also encouraging health clinics to create a streamlined process for those who are undocumented to get access to healthcare.

d. Nursing Homes unwilling to accept people who receive Medicaid because they are PRUCOL.

Through our outreach and collaborative work with the Human Resources Administration, over the years we have learned that many Nursing Homes throughout the City refuse to take people who receive their Medicaid because they are PRUCOL. With HRA, we and colleagues helped draft an alert to Nursing Homes outlining the validity of Medicaid based on PRUCOL status. Sadly, we have recently heard from community members that this concern is real and live again. Nursing Homes throughout the city are refusing to take patients who legitimately receive Medicaid.

We call on the State Assembly to educate and impress on facilities to provide care, and work with the Department of Health to make sure no individual with Medicaid is turned away.

IV. Access to Health Issues in Immigration Detention

Lastly, I would like to bring your attention to our second area of work to address the plight of New Yorkers who are detained in immigration jails. Earlier this year, we issued a report titled *Detained and Denied, Healthcare Access in Immigration Detention*. It documents that ICE, and the facilities with which it contracts, routinely deny vital medical treatment, including diabetic food, subject sick people in need of surgery to unconscionable delays, ignore requests for care from people with serious symptoms, and refuse basic items such as glasses and

dentures. New York residents who are detained at immigration jails are subject to horrific conditions and the lack of adequate medical care is shocking and immoral.

It behooves the State Assembly to take notice of these grave conditions to which immigrant New Yorkers are subjected. We call on the Assembly to hold hearings to gather information and increase public awareness of the inadequacy of the medical care provided to New Yorkers in immigration jails. Further, we request the Assembly to consider resolutions and other actions which may bring meaningful improvements to these conditions and promote alternatives to detention for immigrant New Yorkers in immigration deportation proceedings.