

TESTIMONY OF THE LEGAL ACTION CENTER

Joint Legislative Budget Hearing  
Mental Hygiene

Monday, February 3, 2020

Presented by

Christine Khaikin  
Health Policy Attorney  
Legal Action Center

My name is Christine Khaikin and I am a Health Policy Attorney at The Legal Action Center.  
Thank you for the opportunity testify before you today.

The Legal Action Center (LAC) is the only public interest law and policy organization in New York City and the United States whose sole mission is to fight discrimination against and protect the privacy of people in recovery from drug dependence or alcoholism, individuals living with HIV/AIDS, and people with criminal records. LAC works to combat the stigma and prejudice that keep these individuals out of the mainstream of society, helping people reclaim their lives, maintain their dignity, and participate fully in society as productive, responsible citizens.

LAC was one of the founders of and continues to co-chair, coordinate and staff the Coalition for Whole Health, a national coalition bringing together advocates from the mental health and substance use disorder fields. The Coalition played a key role in advocating for passage of the federal Mental Health Parity and Addiction Equity Act (MHPAEA) and ensuring that parity for behavioral health services was a key component of the Affordable Care Act.

In New York State, LAC works closely with the State Office of Addiction Services and Supports (OASAS) as well as several individual addiction providers across the State. In addition, LAC's Director and President, Paul Samuels, was appointed by the Governor in 2013 to chair the New York State Behavioral Health Services Advisory Council, which advises the State Office of Mental Health and OASAS on issues relating to the provision of behavioral health services. We also provide direct legal services to those impacted by addiction and work to ensure meaningful access to medication assisted treatment and other substance use disorder services, as required under the MHPAEA.

LAC is also the anchor organization for the New York State Parity at 10 Coalition. The Coalition was created on the tenth anniversary of MHPAEA with the goal of making the law's promise a

reality after ten years of little to no enforcement. The Coalition is comprised of 26 organizations from across New York State, including directly impacted individuals, providers of SUD and mental health (MH) services, provider coalitions, as well as other health providers, community-based organizations and legal services providers.

Building on the groundbreaking reforms enacted over the past 5 years, 2019 solidified New York as a national leader by including in the budget the Behavioral Health Insurance Parity Reforms ("BHIPR") a groundbreaking set of policies that makes several advances toward improving the ability to access life-saving substance use disorder treatment. Despite these advances, New Yorkers have trouble finding SUD and MH providers with available appointments who are in their insurance network. A December 2017 study by Milliman found that New Yorkers went out-of-network for care significantly more often for MH/SUD care than for medical surgical care, with disparities increasing from 2013 to 2015.<sup>1</sup> An update to that study was just released this November, finding that disparities have continued to worsen since 2015. They found that New York State ranks third in the nation for highest proportion of out-of-network utilization for behavioral health office visits as compared to medical office visits, with patients having to go out-of-network 11 times more for behavioral health care than for medical care.<sup>2</sup>

New Yorkers also face delays in getting care when their insurer requires prior authorization, or their care is denied mid-way through treatment because their insurer says their treatment isn't medically necessary. People pay hundreds or even thousands of dollars out of pocket even when they have insurance, due to co-pays and co-insurance that are higher or charged more often for SUD care than for other medical care. High quality SUD and MH providers throughout

---

<sup>1</sup> Melek, S. P., Perlman, D. J., & Davenport, S. (2017, November 30). *Addiction and mental health vs. physical health: Analyzing disparities in network use and provider reimbursement rates* (Rep.). Retrieved March 12, 2018, from Milliman website: <http://www.milliman.com/insight/2017/Addiction-and-mental-health-vs-physical-health-Analyzing-disparities-in-network-use-and-provider-reimbursement-rates/>

<sup>2</sup> Melek, S.P., Davenport, S., Gray, T.J. (2019, November 20). *Addiction and mental health vs. physical health: Widening disparities in network use and provider reimbursement*. Retrieved December 17, 2019, from Milliman website: <http://www.milliman.com/bowman/>

the State are struggling because they receive sub-par reimbursement rates for behavioral health services compared to providers of physical health care, in fact, their reimbursement rates may not even cover their costs of providing care. The same Milliman study found that reimbursement rates for behavioral health in New York are below Medicare rates for similar services, but primary care and other medical specialty care in the State is reimbursed higher than Medicare rates.<sup>3</sup>

For some of these barriers, state and federal parity laws have made things better, but insurers are often not held accountable for violating the law. Insurance should help people access care, not prevent someone from receiving treatment and going on to live in recovery.

That is why we are thrilled to see that the 2021 Executive Budget includes a provision to require the Department of Financial Services and the Department of Health to promulgate regulations to clarify and strengthen parity compliance requirements. We hope these regulations will provide strong compliance standards and will allow the state regulators to hold plans fully accountable to follow the law and provide benefits for mental health and substance use disorder services at parity with medical services.

The Executive Budget proposes to establish the Behavioral Health Parity Compliance Fund. The Fund will use penalties collected from health plans when they violate Parity laws to support the work of New York's Mental Health and Substance Use Disorder ombudsman program. The ombudsman program, also known as Community Health Access to Addiction and Mental Healthcare Project ("CHAMP") is a first in the nation ombudsman program created by the legislature in 2018 to help New Yorkers with mental health and substance use disorder treatment access issues.

---

<sup>3</sup> Melek, S.P., Davenport, S., Gray, T.J. (2019, November 20). *Addiction and mental health vs. physical health: Widening disparities in network use and provider reimbursement*. Retrieved December 17, 2019, from Milliman website: <http://www.milliman.com/bowman/>

CHAMP, which is a joint project of OASAS and OMH, operates a hub and spoke network. Administered by the Community Service Society (CSS), CHAMP provides services to NY consumers and providers through a helpline and network of three specialist organizations with expertise in specific areas of insurance and behavioral health (The Legal Action Center, The NYS Council for Community Behavioral Healthcare and Medicaid Rights Center) and five community based organizations (CBOs) across the State who provide on the ground support as well as community outreach.

Highlighting the huge void it has filled, the CHAMP Helpline has served over 1600 New York health care consumers and providers since it became fully operational in October of 2018. CHAMP callers face numerous insurance barriers such as an inability to find a treatment provider with an open bed, or repeated care denials.

CHAMP is currently funded by the executive at \$1.5 million. The Behavioral Health Parity Compliance Fund, once it becomes established in October 2020, may eventually provide an additional \$1.5 million, depending on the ability for the State to collect fines from plans who violate the Parity law.

However, the need to fully fund CHAMP to expand services is now. With an additional \$1.5 million from the legislature for a total budget of \$3 million, CHAMP can reach more individuals through an expanded network of CBOs so that more New Yorkers can have services available to them locally. Currently, the CHAMP CBO network does not include 38 counties in New York State. The CHAMP helpline is available statewide and provides an incredible service to New Yorkers in need, but on-the-ground CBOs provide local outreach and support that is invaluable to individuals with MH and SUD needs. The additional funding would also go towards additional health counselors so that the helpline hours can be extended. Right now, the helpline only operates from 9am to 4pm on weekdays when many New Yorkers are at work. Too many New Yorkers continue to be unable to obtain SUD and MH care because of payment barriers from

insurers, managed care organizations and others. Thanks to initial support of the legislature in creating this program, this innovative program has helped so many individuals and families access the care they need. The legislature's continued support of an additional \$1.5 million will allow CHAMP to serve even more New Yorkers in need.

We also thank the legislature for your unwavering support for removing all insurance barriers to accessing Medication Assisted Treatment (MAT). We were thrilled to see the Governor sign legislation to remove prior authorization requirements from commercial insurance because studies have shown that removing prior authorization requirements for MAT increases access and results in fewer overdose deaths and a reduction in costs associated with untreated addiction.<sup>4</sup> A January 2020 report from the Government Accountability Office (GAO) found that prior authorization poses a life-threatening barrier to accessing MAT.<sup>5</sup> A recent report from the National Academies of Science recommends that CMS withhold approval of Medicaid State Plan Amendments in states that require prior authorization for MAT and recommends that states take steps to remove prior authorization for all FDA approved medications to ensure efficient prescribing and more immediate access for patients.<sup>6</sup>

We thank the legislature for continuing to support the elimination of prior authorization in Medicaid so that all New Yorkers, no matter their insurance type, do not have to face this unnecessary administrative delay to access life-saving treatment.

We also call on the legislature to take the additional following actions to support access to SUD and MH care:

---

<sup>4</sup> Paris, W., Mark, T., (2019, November). *Economic and Health Effects of Removing Prior Authorization from Medications to Treat Opioid Use Disorders under New York State Medicaid*.

<sup>5</sup> See GAO, *Opioid Use Disorder: Barriers to Medicaid Beneficiaries' Access to Treatment Medications*, GAO-20-233 (Washington, D.C.: Jan. 24, 2020). Available at: <https://www.gao.gov/assets/710/704042.pdf>

<sup>6</sup> National Academies of Sciences, Engineering, and Medicine 2020. *Opportunities to Improve Opioid Use Disorder and Infectious Disease Services: Integrating Responses to a Dual Epidemic*. Washington, DC: The National Academies Press. Available at: <https://doi.org/10.17226/25626>.

- **Enact legislation to require true network parity between mental health and substance use disorder providers and medical/surgical providers.** The State must develop strong quantitative standards for networks of SUD and MH providers that consider patient to provider ratios, provider capacity and time and distance standards, as well as considering complex health needs or languages spoken other than English.
- **Insurance networks will continue to be limited if providers are not appropriately reimbursed. The State must develop strategies to ensure parity of rate setting between substance use disorder (SUD) and mental health (MH) providers and medical/surgical providers** and set rates that consider the especially complex needs of patients with SUD and mental illness. One strategy is to understand how reimbursement rates are impacting providers. Legislation recently introduced by Senator Carlucci and Assemblywoman Gunther; S6694/A7935, will create a workgroup to analyze reimbursement rates in Medicaid and commercial insurance for behavioral health services and whether they are adequate to ensure continued viability of providers in our state.
- **Ensure employees of all public-facing business can administer naloxone without fear of legal liability.** Business owners currently cite a fear of legal liability as a major barrier to encouraging access to naloxone at public-facing businesses such as restaurants and retail establishments. The legislature should remove that fear to ensure there are trained individuals available in those establishments in case an individual experiences an overdose.
- **Require emergency departments to offer MAT following an overdose** so that people are connected to care.

**Provide individuals involved in the criminal justice system with appropriate care**

The criminalization of mental illness and substance use disorder has resulted in a disproportionate number of low-income New Yorkers of color landing in the criminal justice system instead of community health care settings. In 2018, 16% of the average daily jail population statewide had a serious mental illness, 59% had a substance use disorder, and 10% had complex mental health needs. We must continue to try to find ways to break the cycle of re-incarceration and relapse that costs an exorbitant amount in both lives and money lost every year.

While there have been significant reductions in the number of people incarcerated in NYS for drug crimes since the 2009 Rockefeller Drug Law Reforms, thousands of New Yorkers each year who should be eligible for diversion are still sentenced to state prison. New York must ensure individuals currently eligible for diversion are actually diverted. Further, New York State should expand the crimes eligible for diversion under Drug Law Reform to include Burglary in the 2<sup>nd</sup> Degree and Robbery in the 2<sup>nd</sup> Degree where violence is not a factor. While these can be serious crimes, individuals may be serving needlessly long sentences when they could be better served by being diverted into treatment.

Improved SUD care within jails and prisons is also greatly needed. New York should pass legislation to establish a program to provide MAT at all jails and prisons throughout the state. These medications were introduced in early 2017 in the Rhode Island correctional system. A study published in the April 2018 issue of JAMA Psychiatry found a 60% reduction in overdose deaths between the first six months of 2016, before the program began, and the first six months of 2017 among individuals recently released from incarceration in Rhode Island.<sup>7</sup> They have been in use on Rikers Island for thirty-one years and DOCCS, as well as a number of local jails outside of New York City, have recently introduced or expanded programs providing medications to treat opioid use disorders. This is an important start. However, at a time when

---

<sup>7</sup> Green TC, Clarke J, Brinkley-Rubinstein L, et al. Post incarceration Fatal Overdoses After Implementing Medications for Addiction Treatment in a Statewide Correctional System. JAMA Psychiatry. 2018;75(4):405–407. doi:10.1001/jamapsychiatry.2017.4614 <https://jamanetwork.com/journals/jamapsychiatry/article-abstract/2671411?redirect=true>



New York and the US are confronting an overwhelming opioid epidemic, resulting in tens of thousands of deaths per year, providing these medications to every individual who needs them is not only the humane thing to do. It is essential to saving lives.

A main issue thwarting effective jail and prison discharge planning is the lack of access to consistent transitional care. Treatment works best when it starts upon admission and certainly well before an individual re-enters the community.

In November 2019, New York State proposed to become the first state in the nation to obtain a waiver from the federal government of the Medicaid Inmate Exclusion to allow Medicaid to pay for specific and limited transitional care inside prisons and jails by submitting an amendment to the 1115 Medicaid Waiver to CMS. Paying for care inside jails and prisons via federal Medicaid is a critical element in addressing the State's overdose epidemic, especially in light of the high rate of death post-incarceration: an individual is 12 times more likely to die and 130 times more likely to die of a drug overdose in the first two weeks after release from incarceration compared to the general population. We urge the Legislature to support the State's application to for this waiver amendment. Coordinating the services between our criminal justice and health systems is imperative because, not only is treating people the humane course of action by making individuals healthier and more productive, it's also undeniably smart policy that reduces crime and recidivism, saves money in both systems, and makes communities at large healthier and safer.

For our State to address barriers to MH and SUD care most effectively, it is imperative to address barriers to insurance coverage and the nexus of health and justice. Legal Action Center thanks you for the opportunity to provide our input.

