TESTIMONY OF THE LEGAL ACTION CENTER

Joint Legislative Budget Hearing
Mental Hygiene

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Presented by

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My name is Christine Khaikin and I am a Health Policy Attorney at The Legal Action Center. Thank you for the opportunity to 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 (Parity Act) 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 be the inaugural chair of 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, and served in that position until last year. 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 Parity Act.

LAC is also the anchor organization for the New York State Parity at 10 Coalition. The Coalition was created on the tenth anniversary of Parity Act 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.

2020 has been a challenging year to say the least. The unprecedent COVID-19 pandemic has devastated our state and the economic loss, isolation and new barriers to care and treatment have compounded the overdose and suicide epidemics we were already living with. Evidence from around the state shows increasing rates of drug overdose deaths, upending the progress we were making. We recognize the legislature has many challenges ahead and we sincerely thank you for prioritizing the need to serve people with SUDs and MH issues during this time.

Executive Budget

Telehealth Reform

We commend Governor Cuomo's proposal to expand telehealth services, particularly for MH and SUD care. The rapid shift to telehealth due to the COVID-19 pandemic has shown that quality, accessible telehealth is an important complement to in-person services and can continue to be after the public health emergency has subsided. Previous limitations on telehealth services such as a narrow definition of "originating site" and complex clinical requirements serve only as deterrents to what can be a critical opportunity for MH and SUD service access. We commend the Executive for expanding the types of providers able to deliver telehealth SUD services to peers.

We also recognize the need to ensure telehealth expansion is done with an eye towards ensuring equitable access to quality services and not done at the expense of supporting the important in-person services that people may still rely on. It is critical to preserve patients' rights to determine with their provider whether in-person, telephonic, audio-visual or some mixture will best serve their needs. In particular, for individuals in rural or other hard to service areas or with transportation issues, expanded access to telehealth cannot be considered a substitute for access to in-person services when needed, but it is also important that people with limited technology capabilities or in broadband deserts must be given support to access telehealth. It is also always important to ensure that MH and SUD telehealth service delivery options are equivalent to those available for other health services consistent with the Parity Act.

Creation of Office of Addiction and Mental Health Services and Integrated Licenses

The Executive's proposal to integrate the Office of Addiction Services and Supports (OASAS) and the Office of Mental Health (OMH) has been included in the budget after the State has been exploring it for several years. LAC appreciated the opportunity to provide input on this proposed integration at the agencies' listening sessions in October 2020. As we said then, we encourage the Governor, the Legislature and each agency, if they move forward with this merger, to do so in order to maintain, expand and improve the full continuum of quality SUD and MH prevention, treatment services and medications, recovery supports, and harm reduction initiatives in order to meet all the needs of both populations. During the pandemic with evidence of rising overdoses and suicides across the state, interruptions to in-person services and funding cuts, it is more critical than ever to remain laser focused on supporting service providers, the workforce, patients and their families. If the new Office of Addiction and Mental Health Services is created, it must be focused on maintaining leadership and expertise

on both SUD and MH and prioritizing the needs of the populations historically served by both OASAS and OMH.

Similarly, we commend the Executive for addressing the longstanding challenge of smooth integration of treatment for addiction, MH and physical health by creating the Comprehensive Outpatient Services Center license and ensuring their ability to provide medication to treat opioid use disorder. It is so important that the state ease any barriers to treating the whole person in this way, and it is critical that the implementation of the integrated license leads to equitable services as well as reimbursement.

Crisis Stabilization Services

We commend the executive for proposing to establish Comprehensive Crisis Stabilization Centers across the state to ensure individuals in crisis are given the appropriate health-focused response they need rather than facing arrest or languishing in an emergency department. We appreciate that the budget specifically requires crisis stabilization centers to have the capability to address a crisis related to substance use as well as a mental health. It is critical, though, that the crisis response system developed in New York State continue to focus exclusively on addressing the health and social service needs of individuals instead of a law enforcement response. Law enforcement responses, as we have too often seen particularly for Black and brown individuals, can lead to unnecessary arrest, injury or even death. As the state moves forward with developing comprehensive crisis reform, it needs to be focused entirely community health and social service responses.

Additional Key Priorities

Mental Health and Substance Use Disorder Parity

In recent years, parity related policy reforms have solidified New York as a national leader. The 2019 Behavioral Health Insurance Parity Reforms ("BHIPR") was a groundbreaking set of policies that made several advances toward improving the ability to access life-saving substance use disorder treatment, but more needs to be done. New Yorkers continue to 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.[1] An update to that study was released in 2019, finding that disparities have gotten worse since 2015. In fact, 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.[2] 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.[3]

Addressing network adequacy and ensuring equitable reimbursement rates are critical steps the legislature can take to address access and coverage barriers to MH and SUD care. Network requirements in New York State are limited, and enhancing the quantitative standards used to

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[1] 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/

[2] 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/

[3] 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/

measure the adequacy of networks will help the state monitor that plans are providing adequate numbers of quality providers to meet the MH and SUD care needs of their members. The Legal Action Center, together with the Partnership to End Addiction, recently released the Spotlight on Network Adequacy Standards for Substance Use Disorder and Mental Health Services. The Spotlight found wide variation among states in the amount and kinds of quantitative metrics or other requirements that are intended to ensure health plans maintain adequate networks of mental health and substance use disorder providers. To make sure plan networks meet the MH and SUD care needs of its members, the Spotlight recommends that states implement three key quantitative standards; improved geographic standards, patient to provider ratios, and appointment wait times for both public and private insurance. New York currently only has limited geographic standards, so the state should look at enhancing and adding additional metrics.

High quality SUD and MH providers throughout 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. It is a requirement of the Parity Act that standards and processes for establishing reimbursement rates for MH and SUD providers be done equivalently to those for medical/surgical care. The state can begin to improve reimbursement rates for MH and SUD providers by ensuring public and private plans are in compliance with the Parity Act as they establish reimbursement rates.

The 2020 enacted budget created the Behavioral Health Parity Compliance Fund. The Compliance Fund is intended to support Parity monitoring and enforcement efforts in the state. The Department of Financial Services (DFS), the Department of Health (DOH), OASAS and OMH have been engaged in efforts to monitor health plan parity compliance over the last several

years, collecting data reports from plans pursuant to 2019's Parity Reporting Act and engaging in other monitoring efforts. Although there appears to be evidence of parity non-compliance across plans, no citations have been issued and no fines have been collected. In 2020, DFS and DOH promulgated the Parity Compliance Program regulations to require private and public health plans to develop robust internal parity compliance programs, including regular comparative analyses of several parity benefit classifications. Insurers are often not held accountable for violating the Parity Act or other state insurance laws. Insurance should help people access care, not prevent someone from receiving treatment and going on to live in recovery. It is critical that the State continue to enhance their monitoring efforts and actually hold plans accountable for non-compliance. The real-world impact of Parity non-compliance is delayed or denied life-saving MH and SUD services.

The Compliance Fund is also intended to use penalties collected from health plans when they violate Parity laws to expand 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. CHAMP, 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 2,700 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.

The Executive Budget continues CHAMP's funding at $1.5 million which can continue its services at the existing level. With increased funding, 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. 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 it, this innovative program has helped so many individuals and families access the care they need.

We also thank the legislature for your unwavering support for removing all insurance barriers to accessing Medication for Addiction Treatment (MAT). 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.[4] A January 2020 report from the Government Accountability Office (GAO) found that prior authorization poses a life-threatening barrier to accessing MAT.[5] 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

[4] 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.*
[5] 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

authorization for all FDA approved medications to ensure efficient prescribing and more immediate access for patients.[6]

We were so grateful that the legislature passed bills to remove prior authorization in commercial insurance and Medicaid but were disappointed that Governor Cuomo only signed the bill applying to commercial insurance. In its place, last year's budget created the single statewide formulary for opioid dependence agents that unfortunately will not be as effective in removing barriers to accessing MAT. The single statewide formulary, due to be implemented in April, only removes prior authorization for a few medications and will still require patients with Medicaid to go through an onerous administrative process, and this is all while people with commercial insurance no longer have to obtain prior authorization. It is imperative, in order to ensure equitable access to care, for the Legislature to once again ban prior authorization of all MAT in Medicaid so that those in need do not have to face unnecessary delays in obtaining life-saving treatment.

The state can also increase access for MH and SUD care by enabling pharmacists to administer long-acting injectable medications for the treatment of SUD and Mental illnesses by amending the education law to expand pharmacists' scope of practice. Pharmacists are already trained and capable of administering a wide variety of medications and vaccines. Now more than ever it is imperative to use all tools in the toolbox to ensure patients can access the treatment they need. Particularly during the pandemic when provider practices may be closed or travel is more difficult, being able to access injectable medications from a local trusted pharmacy is more important than ever. We urge the legislature to pass this important legislation to increase access to these important, life-saving medications.

[6] 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.

Provide individuals involved in the criminal legal 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 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 2nd Degree and Robbery in the 2nd 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.[7] They

[7] 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

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 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.

Unfortunately, New York State could end up taking a step back. The FY2022 Executive Budget proposes to slash funding for jail-based SUD treatment and transition services from $3.75 million to just $1.85 million – a 50% cut from last year. This is an absolutely devastating cut that will have a devastating impact on the ability to provide evidence-based treatment, including medications, in jails which is a critical point of treatment. The legislature must restore this funding.

Another 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 2016, 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 and resubmitted again in November 2019. 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.