NYS Council for Community Behavioral Healthcare

2021 JOINT LEGISLATIVE HEARING ON MENTAL HYGIENE

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WRITTEN TESTIMONY BY:
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Thank you to the chairs and members of the committees for this opportunity to provide testimony on behalf of mental health and substance use disorder/addiction prevention, treatment, and recovery providers across New York. The NYS Council for Community Behavioral Healthcare (NYS Council) is a statewide membership association representing approximately 100 behavioral health organizations that provide mental health and substance use disorder/addiction prevention, treatment, recovery and harm reduction programs and services for tens of thousands of New Yorkers each day. Our membership includes community-based agencies, hospitals, and counties providing a broad array of behavioral health services.

The NYS Council's primary mission is to ensure access to and continuity of care for children, youth, individuals, and families seeking services from the public mental hygiene system. We appreciate your significant efforts over the years to support the behavioral health community and to ensure that the role of community-based organizations (including our behavioral health care organizations) is recognized within the State's health care delivery system and payment reform efforts.

We come to you again this year for your assistance to stabilize our system of care that continues to be ravaged by the COVID-19 pandemic, the Opioid Epidemic, and the increasing rate of completed suicides in certain populations that we serve. An historical lack of investment to community-based providers has jeopardized the entire human services sector and access to and continuity of care is questionable in many communities across the state.

Our testimony today highlights various high priority areas in mental health and health but all of our concerns relate to stabilizing our sector, reducing health disparities, and enhancing access to care. Vulnerable children and adults rely on mental health and substance use disorder/addition providers as their primary connection to treatment and recovery as they address these complex challenges that continue to devastate families across the state.

Mental Health Priorities

STATE AID WITHHOLDS

Issue:
While the state has reported that some economic indicators are better than expected, and the originally proposed withhold of 20% may be reduced to 5% beginning January 2021, mental health and substance use/disorder providers are in no position to withstand any cuts with the current COVID pandemic, continued opioid crisis, and rising suicide rates.

A statewide impact survey revealed the precarious financial condition of behavioral health agencies, with less than adequate cash on hand and increased COVID -19 related expenses for providers who have played a vital role since the onset of the pandemic.

- 25% of the respondents have one month or less of cash on hand, 45% have two months or less of cash on hand and 65% have three months or less of cash on hand; and
- On average, mental health and substance use agencies reported losing nearly one half million in revenue since the pandemic; and

- On average, providers had increased expenses of nearly $300,000 for the additional purchase of PPE, air filtration and other supplies to increase the safety of the staff and individuals served during COVID-19.

Cuts to services will further jeopardize access to care which will lead to increased health disparities and continued access issues within our system. Unfortunately, the upward trajectory of behavioral health issues is at an all-time high.

- According to a recent CDC study, over one third of New Yorkers experienced depression or anxiety from April-July 2020. Across the US, 13 % of individuals started or increased substance use, and 11 % stated they had considered suicide in the last 30 days.
- Drug deaths have risen an average of 13% this year compared to last year, according to mortality data from local and state governments collected by The New York Times.
- Black individuals are twice as likely to be diagnosed with a serious mental illness (SMI) than their white counterparts and, along with people with SMI, are overrepresented in the criminal justice system. (JAMA Psychiatry, July 2020).
- The CDC has found that the proportion of children's mental health-related ED visits among all pediatric ED visits in 2020 increased and remained elevated.

Many children have struggled throughout this pandemic with some facing the loss of a parent or loved one. Even prior to the pandemic, there was a behavioral health crisis among children, with suicide the second leading cause of death among children age 15-19 and the third cause among children 5-14. The ongoing lack of funding and severe workforce shortages have led to increased consumer costs, long waiting lists, and a backlog of children unable to access care. Any cuts to programs and services will further exacerbate this.

Request:
The Senate and Assembly must impose a moratorium on any/all proposed or recent reductions in state aid. This includes reversing the destructive impact that 20% less funding has already had on community-based substance use and mental health service providers beginning in July 2020, a possible in the current budget year, as well as potential cuts for FY 2021 depending on the amount of federal relief New York State receives. We want to point out that the federal government has been paying and has agreed to continue to pay enhanced FMAP rates for Medicaid services resulting in an additional $2B in federal funds for New York. These additional funds would cover at least two-thirds of the governor's bottom-line request, even before Congress acts on a further relief package.

DEFERRING A 1% COLA FOR THE WORKFORCE

Issue:
Aside from a moratorium on any proposed cuts, there also continues to be a need for an infusion of funding by behavioral health organizations, and especially related to funding for their workforce. Last year, the #3for5 campaign had hundreds of members statewide working with legislators to show how underpaid the not-for-profit sector is for their life saving work. This message continues this year as we acknowledge and support the great work of our direct care workers during COVID. They have been celebrated and praised for their work but they have, unfortunately, not gotten what is most needed –

additional pay increases. While we are appreciative that the State continues to support the increases in minimum wage, the State's deferral of the COLA is the wrong message at the wrong time.

Request:
We understand the precarious financial position the State is in at this time but restoration of the 1% COLA should be a priority.

SUBSTANCE ABUSE PREVENTION AND TREATMENT (SAPT) AND COMMUNITY MENTAL HEALTH (CMH) BLOCK GRANT FUNDING

Issue:
Although the executive budget is silent on this matter, New York State is slated to receive (if it hasn't already) additional funding from the federal government and specifically from the Substance Abuse and Mental Health Services Administration (SAMHSA) to enhance and expand services for New Yorkers with mental health and/or substance use disorder/addiction challenges.

In the federal FY 21 Omnibus budget deal that passed in December 2020, Congress appropriated an additional $1.65m for an increase in both SAMHSA Substance Abuse Treatment and Prevention Block Grant and SAMHSA Mental Health Block Grant. Each of the two block grants are to assist states to address ever increasing demands for behavioral health care. Congress required that at least 50% of these funds must go directly to providers in the states receiving these funds.

Request:
We ask the Senate and Assembly to pass budget language that ensures that the new vitally needed federal funds are not used to supplant existing State funds. We ask that new funds be used first to support our workforce and strengthen existing services and then for new initiatives. We need Senate and Assembly support to make our existing service delivery system stronger and we need it now.

COMMUNITY REINVESTMENT

Issue:
As we have mentioned above, there is an overwhelming need for an immediate infusion of additional resources in the community-based provider sector and compelling evidence that shows New York is not adequately investing in community-based organizations that are part of the sector most relied on to divert New Yorkers from having to rely on more costly acute care services, and (if hospitalization becomes necessary) assist them once they are discharged so that they do not return to the hospital.

Despite the increasing need for substance use and mental health services, and our continued plea that financially our agencies are at a breaking point, there has still not been funding necessary for the financial health of human services providers and the millions of people we serve.

Request:
The SFY 2022 Executive Budget proposes $22 million in savings due to decreased need for state-run services but fails to deliver on the state's promise to re-invest savings into community-based behavioral health services which are in demand. We ask the Senate and Assembly, as promised by the Community Reinvestment Act, to deliver on the State's promise to reinvest savings.

OPIOID SETTLEMENT

Issue:
As the State continues to face an Opioid Epidemic of historic proportions, we need to ensure that OASAS and its providers have the resources and funding to meet the demands for prevention, treatment, recovery, and harm reduction services in every corner of the state. There needs to be an infusion of new funds to support the OASAS and OMH workforces that are hemorrhaging staff due to an inability to recruit or retain qualified employees, and who are desperate for increases in rates that have remained flat for far too long.

New York State will receive funds as a result of national, regional, and state lawsuits. And, it was just announced that New York will get more than $32 million under a multistate agreement with McKinsey & Company. Since our service providers are charged with addressing the substance use and mental health consequences of the opioid crisis, we advocate that all funding from settlements be set aside specifically and exclusively to support related services (prevention, harm reduction, treatment, and recovery) under the oversight of OASAS and OMH.

Request:
We ask the Senate and Assembly to ensure that settlement funds are segregated and allocated to OASAS and OMH specifically to address the needs of persons impacted by the opioid crisis and to help prevent further consequences.

ADULT USE CANNABIS

Issue:
According to the Substance Abuse and Mental Health Services Administration (SAMHSA), "Approximately 1 in 10 people who use marijuana will become addicted. When they start before age 18, the rate of addiction rises to 1 in 6." Given the already serious addiction issues we face across the state, the potential impact this legalization could have on already fragile New Yorkers, as well as our behavioral health providers struggling to provide access to care, is staggering. We encourage lawmakers to seriously consider the impact this may have and request further investigation to ensure this is the right thing to do for New Yorkers.

Request:
If the Senate and Assembly approve marijuana for adult use, they must do so with a strong commitment to the amelioration of negative public health consequences. Addiction and mental health issues will be a consequence of marijuana use for some adults and underage use will be an issue for which we should be prepared. We ask the Senate and Assembly to include a significant commitment of funding (25% of gross tax receipts) to support prevention, harm reduction, treatment, and recovery as part of any adult-use program they approve.

INTEGRATED LICENSING MODEL

Issue:
Individuals with mental health and substance use disorders, that also have preventable chronic illnesses like hypertension, diabetes, obesity and cardiovascular disease, may die decades earlier than the

general population because these illnesses mostly go untreated due to the challenges in navigating multiple, complex health care systems that are major obstacles to care. Behavioral health providers need the ability to screen and treat for these illnesses while at the same time, primary care settings need support and resources to screen and treat individuals with behavioral health care needs.

The Governor's budget proposes integrated licensure for comprehensive outpatient services of integrated physical and behavioral health programs. The proposal expands the definition of facility or provider agency to include licensed comprehensive outpatient service center which can be licensed as a physical health services provider under public health law, as a licensed mental health provider, or licensed methadone provider under mental hygiene law, through a newly established integrated framework.

Request:
Integrating mental health and substance use treatment with primary care services produces the best outcomes and proves the most effective approach to caring for people with multiple health care needs. We request that the Senate and Assembly support this proposal for an integrated licensing model in an effort to move toward a more holistic model of care.

MINIMUM WAGE

Issue:
The NYS Council represents statewide, non-profit agencies that serve thousands of people who access life-saving and life-changing addiction and mental health treatment from those agencies. The individuals, children, and families in need of services deserve quality, integrated, and accessible care. Our agencies, however, have reached a dangerous tipping point due to the pandemic, opioid crisis, and increasing suicide rates. And, with severe workforce shortages, rates that have remained stagnant, and ever-increasing operating expenses, we have an inability to recruit and retain qualified staff at all levels of the organization, which jeopardizes access to care for all New Yorkers.

Request:
We support a minimum wage increase for our workforce, essential workers during COVID-19, 80% of whom are women, half of whom are Black, Indigenous, and People of Color, and 60% of whom are living in poverty (*3for5 So Communities Thrive Campaign, February 2020*). We support the SFY 2022 Executive budget that includes $38.5 million to support minimum wage increases for staff working in OMH, OASAS, and OPWDD funded non-profits.

SUPPORT CONTINUED FUNDING FOR THE CHAMP PROGRAM

Issue:
Too many New Yorkers are unable to obtain SUD and MH care due to barriers to care created by health plans and confusing state regulations. Thanks to initial support from the legislature in 2018, the Community Health Access to Addiction and Mental Healthcare Project (CHAMP), a first in the nation ombudsman program, was created to help New Yorkers with mental health and substance use disorder treatment access issues.

The project is a joint endeavor between OASAS and OMH, administered by the Community Service Society (CSS). CHAMP provides services to New Yorkers 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 The Medicaid Rights Center) and five community-based organizations (CBOs) across the State who provide on-the-ground support, as well as community outreach.

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 and we are grateful that the program has been recognized and will continue.

Request:
CHAMP is an innovative program that has helped so many individuals and families access the care they need. We ask the Senate and Assembly to support the continuation of the CHAMP funding but to also consider expansion of the program for the months and years to come.

COMBINED OMH/OASAS AGENCY

Issue:
In the fall of 2020, OMH and OASAS held listening sessions on the issue of the potential creation of a new Office of Addiction and Mental Health Services (OAMHS). In our testimony at those sessions, we focused less on whether this should happen but instead on how the state agencies should engage with one another in order to address significant cultural differences between the two agencies and the field. We support a new entity where human and other resources can be used more efficiently, where we can leverage our collective influence to impact our standing as a priority issue for state leaders, and where a major change can lead to improved outcomes for care recipients and their loved ones.

We suggest that the new state agency should be configured to deliver on the following high priorities:

1) immediately ease regulatory burdens,
2) provide a consistent message to providers and other system stakeholders about expectations, and priorities, and
3) permit and encourage innovation that benefits our system of care and the individuals it serves.

Request:
We support the new combined agency but encourage the configuration to focus on our above high priority areas to ultimately improve outcomes for our most vulnerable populations.

Health Priorities

TELE HEALTH

Issue:
When the COVID-19 pandemic struck, providers were forced to use tele health services as the only way to connect with, and ensure continuity of care, for their patients. For some consumers, tele health – including telephonic care – became a lifeline while they sheltered in place. For some providers, tele health became a financial lifeline, as revenues associated with in-person services cratered. And, the results of using tele health have shown great potential in expanding and ensuring access to care.

Pandemic aside, in rural communities there is no public transportation and the Medicaid cab system is dysfunctional and this lack of transportation has presented barriers to accessing face-to-face treatment. Urban areas also face transportation challenges and a reluctance to utilize public transportation will likely outlast the public health emergency. Throughout the State, child-care and work-related difficulties also create barriers to accessing consistent mental health and primary care services. These types of barriers delay care and increase costs to the Medicaid system, because patients' symptoms may worsen to the point where hospital-based services are needed.

The Governor's executive budget includes a health proposal that makes significant strides forward towards standardization of the use of the tele health modality to access healthcare and behavioral health care services. Although the proposal is in the health area of the budget, we want you to know that while we are supportive of the specific elements of the proposal that advance the availability of tele health, we are concerned that the proposal has a savings of $39.5 million attached to it.

In addition to the proposed savings, the Governor's proposal is silent with regard to the 'audio-only' option for services. As you may recall, in June 2020, the Legislature wisely passed and the Governor signed a bill into law that adds the 'audio-only' option to the list of modalities that can be reimbursed within the state's Medicaid Telehealth Program. Remote access to care by telephone is a matter of health equity for disadvantaged populations, especially those located in areas that have been most adversely impacted by the COVID-19 public health emergency. However, it is unclear whether the state will continue its' policy of reimbursing for audio-only services on par with face-to-face services.

Many individuals face technical barriers to care in accessing care via the tele health modality. This is true in poor communities and neighborhoods where internet access or cell service may not be a given, in rural communities where broadband coverage remains sparse, and for individuals who have developmental disabilities, don't routinely use technology or lack English proficiency. As tele health becomes more widely available, failure to reimburse telephonic visits on par with in-person visits will reduce usage for some populations, potentially exacerbating existing health inequities.

Request:
We support the SFY 2022 Executive proposals to make permanent COVID-19 reforms related to accessing substance use and mental health services via tele health. We ask the Senate and Assembly to strengthen the Governor's proposal by adding tele health rate parity so that rates for audio/video services are the same as in-person rates, helping cover the full cost of services.

HEALTHCARE TRANSFORMATION FUND ACCOUNT AND SET ASIDE FOR COMMUNITY-BASED ORGANIZATIONS OF 25%

Issue:
The Healthcare Transformation Fund account was created "to support care delivery, including for capital investment, debt retirement or restructuring, housing and other social determinants of health, or transitional operating support to health care providers." However, in October 2018, when the State deposited $675 million into the Fund from the proceeds of the sale of the insurer Fidelis Care to Centene, the funding was used to implement a Medicaid rate increase for most hospitals and nursing homes. Community-based providers received nothing!

There has already been a disproportionate impact of the pandemic on CBOs that have not had many pandemic expenses reimbursed. But an unequal distribution of funds, unfortunately, is not unique. The community-based sector has been starved of funding for over two decades and it needs to stop!

Examples of initiatives in which community-based organizations were left out:

- HEAL NY (2006-2012) allocated only 1.4% of the total $2.76 billion to community-based providers.
- Capital Restructuring Financing Program (2017) allocated only 1.5% of the total $1.26 billion to community-based providers.
- Statewide Healthcare Facility Transformation Phase I (2017) allocated only 6.5% of the total $475.9 million to community-based providers.
- Transformation Funding: DSRIP, VBP QIP and BHCC (2015-2020) has allocated only 0.7% of the total $8.47 billion to community-based providers.

In order to support care delivery, as the Fund was intended, all areas of the healthcare system require investments to provide efficient and effective care. The compelling evidence shows that New York State is not adequately investing in the community-based sector.

Request:
We request that you amend the language of the statute establishing the Healthcare Transformation Account to include a minimum 25% set aside for our sector from any future disbursements from this or any other account/s holding funds realized from settlements or business transactions in the healthcare sector, or from any other sources where the intent of the funds is to support the health care infrastructure or health care improvement. At present there is over $248 million in this Account. We are simply requesting 25% be set aside for community-based organizations.

ACCESS TO CARE AND ARTICLE 163 PRACTITIONERS

Issue:
There is currently a critical shortage of mental health professionals across New York State and these shortages are impacting access to care and contributing to higher costs for voluntary nonprofit agencies, and New York State. In June 2021, some NYS Licensed Mental Health Counselors (LMHCs), Licensed Marriage and Family Therapists (LMFTs), and Psychoanalysts will no longer be permitted to diagnose patients. These essential practitioners have fully served care recipients in New

York for decades but because of a sunset to a current exemption this will end unless lawmakers take action to reverse this situation.

For decades, the dramatic shortage of licensed mental health practitioners has been "masked" by an exemption to the scope of practice for certain practitioners licensed under Art 163 of the Education Law. According to Part Y of Chapter 57 of the Laws of 2018, in June 2021 any newly graduated Article 163 practitioner will not be permitted to diagnose patients in OMH, OASAS, OCFS or OPWDD settings during their clinical internships which are required to become licensed. The pipeline of incoming mental health practitioners will be cut off, as sites that offer clinical internships will have to select practitioners who are able to perform a full scope of practice. Without these licensed practitioners, a bottleneck in diagnosing new patients and attesting to their medical necessity for Medicaid services will create a major crisis.

Request:
The solution is a modernization to the scope of practice and standardization of the Master level educational, clinical training, and licensing standards for LMHCs, LMFTs, and Psychoanalysts. According to the NYS Education Department, there are currently over 10,600 of these capable, trained and licensed practitioners working up to their full scope of training in New York State.

Mental health provider associations, providers and clinical practice associations have developed a solution that does not include another exemption extension, but instead addresses the discrepancy in the scope of practice descriptions in law. The legislative solution will:

1) amend education law, in relation to requirements for licensure of certain mental health practitioners, and,
2) permit those licensed mental health practitioners to render a diagnosis.

We ask that you not make the serious shortage of mental health providers worse in 2020 and that you act on our modernization solution as part of the state budget agreement.

COMBAT INEQUITY WITH AN EXPANSION TO CHP

Issue:
There are disparities between the children's mental health services covered under Medicaid and the services covered under Child Health Plus. And while New York's Public Health Law requires Child Health Plus (CHP) to cover mental health services, this is at the discretion of the NYS Department of Health and Department of Financial Services. This has led to significant differences o care via the CHP, some of which are noted below:

1) While CHP provides comprehensive health, dental and vision benefits, when one compares the mental and behavioral health choices under CHP, it comes up short, especially as compared to a more comprehensive service array under the children's Medicaid program.
2) The authorizing CHP statute is outdated. While medical treatment is completely covered, mental health services are limited to those authorized by the Commissioners. This seems to be in conflict with Mental Health Parity laws in that children covered under CHP currently have unequal access to critical behavioral health supports.

Request:
We request that the differences between available coverage under the CHP and the Medicaid Program be rectified as soon as possible. We ask that you support two bills that would address these disparities: A.303 (Gottfried)/S.2539 (Rivera) and A.343 (Gottfried)/S.2538 (Rivera).

RETURN MEDICAL ASSISTANCE AUTHORITY TO OMH AND OASAS

Issue:
As noted above, we support the integration of OMH and OASAS, but we also believe that with this integration it is time to return control for fiscal oversight to the state agencies. The separation of programmatic oversight from fiscal oversight has weakened service delivery and this transition is the perfect opportunity to relieve the overwhelmed department of health of some responsibility and support the successful transition of this new state agency to the fullest.

Request:
We support the new combined agency but for there to be strength and flexibility to the new agency, we urge the return of the Medical Assistance oversight of Medicaid funds for OMH/OASAS programs and services from the Department of Health to the new agency.

PRESCRIBER PREVAILS

Issue:
Year after year there is a proposal in the executive budget to eliminate Prescriber Prevails. Medication administration is an integral piece to an individual's treatment plan and the decision as to which medication is most effective should remain with the prescriber. Not every mental health medication works the same and limiting the choice of mental health medications may force individuals to take a less effective medication for their mental health diagnosis. Prescriber Prevails simply says that the final decisions about an individual's medication should be made by their prescriber in consultation with the individual.

Request:
We ask the Legislature to let the prescriber and individual decide the best course of treatment for a diagnosis and continue to safeguard the Prescriber Prevails by including it back in this year's budget.

CONCLUSION

In conclusion, we are asking for your assistance to stabilize the entire human services sector, and particularly the behavioral health providers. Our priority areas seek to emphasize the historical lack of funding in our sector and the negative consequences this is having. We strongly believe that we must do everything within our power to protect and enhance access to care for vulnerable children and adults who rely on mental health and substance use disorder/addition treatment providers as their primary connection to treatment and recovery from living with these complex challenges.

Thank you for your time and the opportunity to comment. And, thank you for your public service and your commitment to the behavioral health field. We look forward to working with you throughout the remainder of the legislative process.