



The New York State Conference of Local Mental Hygiene Directors, Inc.

***Joint Legislative Budget Hearing on Mental Hygiene
SFY 2023-2024 Executive Budget Proposal***

February 16, 2023

Testimony Presented By:

***Courtney L. David,
Executive Director***

Chairwoman Krueger, Chairwoman Weinstein, Senator Brouk, Assembly member Gunther, Senator Fernandez, Assembly member Steck, Senator Mannion, Assembly member Seawright and other distinguished Committee Members, thank you for this opportunity to testify before you regarding the SFY 2023-24 Executive Budget.

My name is Courtney David and I am the Executive Director of the New York State Conference of Local Mental Hygiene Directors (the Conference).

The Conference was created pursuant to section 41.10 of the Mental Hygiene Law and its members are the Directors of Community Services (DCS) for the 57 counties and City of New York. The DCSs serve as the CEO of the Local Governmental Unit (LGU), defined in the statute as the portion of local government responsible for mental hygiene policy and for the planning, development, implementation, and oversight of services to adults and children in their counties affected by mental illness, substance use disorder, and intellectual/developmental disabilities.

As such, DCSs have linkages to all of the various health and social service systems in their jurisdictions and have a unique view of the needs of and problems facing the people they serve. Most often, these needs are not limited to a single service but are complex and extend beyond the scope of behavioral health care and into other distinct areas, such as housing, school/employment, public benefits, food/social needs, and the criminal justice system, including the county jail.

My testimony outlines the Conference's State Budget priorities for SFY 2023-24:

- Implementation of 730 Competency Restoration Reform
- Mental Health Workforce Needs
- Sustaining the Role of LGUs in Local Service Planning

The Conference is pleased with the proposals outlined as part of the Governor's Executive Budget that include various investments totaling approximately \$1 billion in an attempt to counteract decades of divestment in mental health services. We applaud the Governor's agenda which seems to be designed to support New Yorkers who are struggling with mental health concerns, helping them to get connected with housing, mental health treatment and supports, ultimately to achieve health and stability in the community.

In order for the State to be successful with this level of investment, strategic and thoughtful service planning is critical when approaching the development of any new services or the expansion of existing services in the current operating environment. We MUST shore up the foundations of our mental health system, hospitals, and outpatient treatment before we

continue to attempt expansions. If we don't do this – these systems will continue to collapse.

Implementation of 730 Competency Restoration Reform

We have seen first-hand the impact of not maintaining strong core mental health services and workforce by individuals continuously interacting with the criminal justice system. The number of individuals with suspected mental health conditions interfacing with law enforcement and the court system continues to rise.

The Conference seeks to amend the statutory framework that governs competency restoration. My colleagues and I, along with our partners at the NYS Association of Counties (NYSAC), ask for the Legislature's support for the inclusion of S.1874 (Senator Brouk) (Assembly bill number pending) in this year's final enacted budget. We sincerely thank Chairs Brouk and Gunther for their ongoing sponsorship of this critical local issue.

Competency restoration are services provided to an individual charged with a crime who is found by a court not to understand the charges against them or is found to lack the capacity to participate in their own defense, due to an active mental illness or an intellectual disability. A criminal defendant who is not competent cannot be tried for or plead to an offense unless and until they can be restored to competency.

Individuals who enter the restoration process often have complex needs, which may include behavioral health conditions, cognitive and neurodevelopmental impairments, and often, an undiagnosed history of traumatic experiences.

While a component of restoration services may include some mental health treatment, the main purpose of these services is to allow a mentally ill or developmentally disabled person to be tried for a criminal offense. This is different from the goal of mental health treatment, which is intended to lead to recovery and the ability to lead an otherwise normal life. Judges who believe they are helping a mentally ill defendant to get "better" by ordering restoration are often operating under the mistaken belief that they are providing the defendant with traditional mental health treatment.

Defendants involved in the competency restoration system in New York State are commonly called "730s," referring to the state's Criminal Procedure Law Section 730, which governs the process. It is estimated that between one-quarter and two-thirds of all defendants committed for competency restoration under Section 730 end up going through the system multiple times on the same charge — hundreds of people each year.

There is no requirement for the state to consult with their county mental health departments on treatment planning, consequently all decision-making is left up to the State's providers.

While the majority of these 730 defendants can be restored within 90-150 days, there have been several cases where defendants have been kept in restoration for periods of 3, 6 or even 10 years.

Additionally, these lengthy confinements have been declared by the U.S. Supreme Court to violate the Americans with Disabilities Act. In the case of Jackson v. Indiana, the court held that states may not indefinitely confine criminal defendants solely on the basis of incompetence to stand trial. If there is no such expectation for restoration, the case should be converted to allow the individual to receive additional services in an appropriate setting or the defendant should be allowed to return to the community with proper supports.

Unfortunately, the DCSs are seeing massive increases in the issuance of 730 competency restoration orders that place individuals with serious mental illness (SMI) into State forensic facilities at 100% of the cost to counties. This divestment on behalf of the State syphons millions of dollars from county budgets which is desperately needed for critical community-based resources. The statute governing this process is severely antiquated and the increased use of these orders as a means of "treatment" needs to be addressed this budgetary cycle.

In 2022 alone, the insurmountable expenditures paid to the State for 730 restoration orders show just how crippling this statute is to county mental health department budgets.

Below are just a few examples of payouts by counties in 2022:

- Oneida County: \$4.6 million
- Erie County: \$3.6 million
- Westchester County: \$3.5 million
- Suffolk County: \$3.5 million
- Ulster County: \$1.35 million
- Albany County: \$1.3 million
- Herkimer County: \$1 million
- Niagara County: \$1 million

Enactment of this proposed legislation as part of the final budget is critical to ensure that these high-needs individuals who are unable to be restored to competency receive the most appropriate treatment for their diagnoses. It will also ensure the millions of dollars of expenditures currently being directed to the State's General Fund be sent back to the counties who will have local oversight spending authority to reinvest in critical services needed to support community-based care.

Workforce Crisis

The foundations of our community mental health system are crumbling due to lack of workforce and inadequate funding. We continue to try to expand our range of services, with reduced staff – and to what end?

The State must recognize and address the current crisis faced within our behavioral health workforce. Without appropriate investments and long-term sustainable solutions that support the recruitment and retention of mental health workers, any local service investments will be unrealized and continue to fail individuals with mental health needs.

Without strong core mental health services and workforce, individuals in crisis are all too often interacting with criminal justice system and/or being referred to emergency departments due to acute crisis.

Outpatient mental health clinics, many of which are county-operated and serve as the backbone of service provision in the State's rural areas, are severely struggling with workforce needs. Staff vacancy rates for Master's level therapist positions continue to increase while demand for services has risen. Programs have decreased or eliminated same-day access to services.

While programs will continue to see individuals with acute needs, as this is a regulatory requirement, other individuals have experienced longer wait times for service, or longer wait times in between appointments.

Agencies have also had to scale back on satellite locations due to staff vacancies. The result, as highlighted in the Governor's Budget Briefing Book, is that more than 40% of adults and nearly 50% of children/youth who experienced mental health challenges were unable to receive necessary treatment.

Experienced clinicians are leaving for higher paying jobs in private practice or jobs in the telehealth industry. As one local DCS describes, "we are just a training ground for new graduates." Don't individuals served in the public mental health system deserve highly trained, skilled, and experienced practitioners? Workforce shortages create a vicious cycle. Staff left behind are overburdened, contributing to further burnout and attrition. The care of individuals receiving services is significantly disrupted when their trusted therapist leaves. The outpatient behavioral health system needs higher reimbursement rates that will allow agencies to maintain reasonable units of service and case load expectations for their staff members, as well as statutorily driven annual cost of living increases, and continued reduction of administrative (including paperwork) burdens.

As need for services is increasing and entry into the “helping” professions is decreasing, a long-term approach to crafting solutions is also necessary. This includes the creation of job pathways beginning in high school, and, clear career development/advancement programs at the community college level, including scholarship opportunities and easily accessible student loan forgiveness programs.

In short-term, a significant first step would be a commitment of an annual cost-of-living adjustment that aligns with the Consumer Price Index (CPI), 8.5% for SFY 2023-24, for the human services workforce.

Impact of Removing LGU Authority in Local Service Planning

The Conference is strongly concerned with pending legislation (S.2398/A.2210) that seeks to remove the DCSs/LGUs legal authority for local service planning, and we ask that any considerations to advance changes to Article 41 of Mental Hygiene Law (MHL) include prior consultation with the Conference to incorporate necessary amendments to the current language as proposed.

When identifying pathways to strengthen the State’s behavioral health system of care, the expertise and vision of the DCSs provides a unique local perspective necessary to successfully promote the health and social care of individuals and their families in the communities they serve.

The Annual Local Services Plan (LSP), developed by every county LGU establishes the local priorities, needs and outcomes for the coming year. Every county submits the LSP which is strategically planned with input from diverse cohorts of stakeholder groups ranging from providers, peers, recipients of services, family members, etc. and are reviewed and approved by local community services boards in each county. These plans are then, certified by the state agencies and serve as a blueprint to drive State Aid received by each county. Locally driven plans seek to address unmet needs and maximize resources by targeting critical local gaps in care while avoiding unnecessary (and costly) duplication.

Consequently, State Aid is linked to data informed and community driven needs identified by each county. Any deviation to this process will severely impact the identified priorities and cause additional stressors to these systems, including those essential providers that have suffered years of funding decreases, persistent staff shortages, rising operational costs, and now an ever increasing demand for mental health and substance use disorder services.

The LGUs are looking to the State for continued partnership and collaboration to develop policies aimed at reimagining local planning that will enhance the local planning process, not dismantle them.

Thank you again for the opportunity to provide you with our testimony today and I am happy to answer any questions you may have at this time.