LEGAL ACTION CENTER
Breaking Barriers. Defending Dignity.

Joint Legislative Budget Hearing
Mental Hygiene
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Testimony of The Legal Action Center

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Thank you for the opportunity to submit testimony on the FY 2024 Executive Budget. I write on behalf of the Legal Action Center (LAC), a national non-profit organization based in New York City that uses legal and policy strategies to fight discrimination, build health equity, and restore opportunity for people with arrest and conviction records, substance use disorders, and HIV or AIDs.

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 2020. We also provide direct legal services to those impacted by addiction and work to ensure meaningful access to medications for substance use disorder and other substance use disorder treatment, recovery, and harm reduction services.

LAC is also the anchor organization for the New York State Parity 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.

LAC is also one of three specialist organizations supporting New York State's Mental Health and Substance Use Disorder Ombudsman program, known as the Community Health Access to Addiction and Mental Healthcare Project (CHAMP) where we provide training and technical assistance support on the Parity Act and other related insurance laws.

The 2024 Executive Budget includes several key reforms to enhance insurance coverage of MH and SUD services. If implemented, they will go far to break down barriers to care such as denials for certain services, limited provider networks, and he inability to access appointments when ready to receive services. In addition to these reforms, New York State must be sure to invest in robust monitoring and enforcement of public and private insurance requirements and hold insurers accountable when are not serving their members as required by law.

The FY24 Budget also includes substantial investments in the mental health care continuum, an absolutely critical need, but New York must do much more to address the critical overdose emergency we continue to live in. Provisional data shows over 5,800 people died of a drug overdose in New York State in 2021, a staggering 68% increase over 2019-fully 2,000 more individuals..[1] This increase is most acute for Black New Yorkers, with a five-fold increase in deaths, and a quadrupling of deaths for Latinx New Yorkers. This is an unprecedented crisis of death and public health emergency that deserves a large-scale, targeted response to

[1] Office of the New York State Comptroller, Continuing Crisis: Drug Overdose Deaths in New York, November 2022. Available at: https://www.osc.state.ny.us/reports/continuing-crisis-drug-overdose-deaths-new-york

ensure on-demand access to all facets of evidence-based services including high quality treatment and harm reduction services that help people stay alive now. While there is substantial funding available for these services, primarily through the Opioid Settlement Fund, Governor Hochul's budget address did not convey the enormity of the

Part II: Insurance Reforms Improving Access to Behavioral Health Services

We commend Governor Hochul for including several insurance reforms in the FY24 budget legislation to facilitate increased access to MH and SUD care. Through our Parity Coalition, we work with advocates, providers and families that consistently raise insurance as a key barrier to entry into care for MH, SUD and co-occurring conditions. Time and again, families talk about the countless hours and thousands of dollars spent trying to obtain quality care, all while public and private insurers stand in the way. In recent years, New York State has been a leader in working to address those barriers, such as in the 2019 Behavioral Health Insurance Parity Reforms ("BHIPR") which was a groundbreaking set of policies that made several advances toward improving the ability to access life-saving substance use disorder treatment.

<u>Subpart D</u>

MHPAEA was enacted in 2008 to prevent insurers from discriminating against people with substance use disorders and mental health conditions by inequitably restricting coverage of their care. Timothy's Law in New York was enacted in 2006 to do the same for mental health. To implement these laws, they both mainly rely on state regulators to monitor health plan activity. In recent years, New York has improved monitoring and enforcement with fines issued by the Department of Financial Services and the NY Attorney General. However, it is still near impossible for an individual to hold their own health plan accountable when a violation of the Parity Act has led to lost coverage and health deterioration. The proposal in the executive budget to establish a private right of action for New York regulated commercial health plans will give individuals the right to sue their plans for injury. This is greatly needed. When people have been harmed due to a violation of the law, it is not enough to wait for

regulators to determine if the plan has been engaging in practices or have policies that violate the Parity Act. People need an avenue to remedy their own harm. We support the inclusion of this proposal. We would encourage the legislature to ensure that standards in the law are useful to individuals. We suggest amending the provision to allow for any compensatory damages, not just actual damages which may preclude obtaining damages for pain and suffering or emotional harm. Further, we strongly urge the removal of a $5,000 award for willful violations of the law, and instead leave it to judicial discretion. If included in statute, that figure will need to be updated over time to match inflation, and is not even close to high enough to hold multimillion dollar corporations acting in bad faith and causing harm to an individual suffering from a substance use disorder or mental health condition.

Subpart F

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.[2] 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.[3] 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.[4]

That is why we strongly support the proposal to require the Superintendent of the

[2] 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/

[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/

[4] Id.

Department of Financial Services and the Commissioner of the Department of Health to issue regulations setting comprehensive standards for network adequacy for mental health and substance use disorder treatment.[5] In 2020, The Legal Action Center, together with the Partnership to End Addiction, 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 were intended to ensure health plans maintain adequate networks of MH and SUD providers. We recommended that states implement key quantitative standards: improved geographic standards, provider to enrollee ratios, and appointment wait times for both public and private insurance.

The proposal in the executive budget would require more comprehensive standards in two of these three critical areas. It would require standards for appointment availability, ensuring that consumers can access an in-network provider in particular time frames for new patients, follow-ups and following discharge from a hospital. It would also require time and distance standards that consider proximity of providers to a person's home as well as the availability of telehealth services.

To improve this proposal and ensure networks are meeting the needs of all insured people in New York, the regulations should also include standards for provider-to-enrollee ratios. It is not lost on us that creating a patient-to-provider ratio requirement is challenging when the MH and SUD workforce is so exceptionally limited, particularly in rural areas of New York, but this standard complements the others by recognizing that a reasonable provider-to-enrollee ratio can impact wait times.

We also strongly encourage the legislature to remove "availability of telehealth services" as an element of an adequate network based on geographic location. It is not sufficient to craft an insurance network based on availability of telehealth providers, and certainly not when utilizing telehealth-only services that may be located outside of New York State where quality cannot be assessed. As suggested by the current executive budget language, the option to go-

[5] Subpart F, Health and Mental Hygiene Article VII Legislation, FY 2024 Executive Budget

out-of-network when an in-network provider isn't available may not be utilized if a telehealth provider is available in-network. This essentially eliminates patient choice about whether to use in-network care rather than telehealth. Instead, telehealth should be included uder "specific conditions"

Additionally, existing law only requires regulators to review the adequacy of networks every three years which is way too long. Networks change multiple times a year with providers leaving and new ones being added. The review should be done annually and adjustments required regularly to ensure networks remain adequate.

These network requirements cannot be fully realized without strong investments in the MH and SUD workforce. Low reimbursement rates, workforce shortages, high deductibles and inaccurate or outdated provider directories all contribute to the inability for New Yorkers to obtain quality, in-network care for MH and SUD services and limit their out-of-pocket costs. We urge the legislature to prioritize addressing all these issues in addition to adding network adequacy standards to achieve the ultimate goal of network adequacy.

Ending the Overdose Crisis

While LAC was happy to see widespread support for expanding mental health services throughout the state and the above-mentioned insurance reforms to reduce barriers, we were disappointed with the lack of comprehensive proposals to address the widespread overdose crisis. Disappointingly, the main proposals relate to further criminalizing people who use drugs, which is not only discriminatory and perpetuates structural racism but is also ineffective at addressing the overdose crisis. Instead of supporting evidence-based interventions like overdose prevention centers and syringe service programs, the executive budget focuses on creating new criminal penalties.

The executive budget includes $7 million for specialized units to investigate fentanyl and a long list of newly scheduled fentanyl analogues and new crimes for imitation controlled substances. The collective impact of this criminalization is more incarceration, more collateral consequences, but not fewer overdose deaths. Overdose prevention centers, on the other

hand, are proven to save lives.[6] OnPointNYC, the first overdose prevention center in the United States, located in New York City, has now prevented 600 fatal overdoses, and counting.[7] The Governor has rejected support for these sites, despite the recommendations from the Opioid Settlement Fund Advisory Board which is made up of experts from around the state. To save lives, investments in OnPointNYC and other similar sites are critical.

There is much more to be done to address the overdose crisis in New York State. We thank you for the opportunity to provide this testimony.

[6] Samuels EA, Bailer DA, Yolken A. Overdose Prevention Centers: An Essential Strategy to Address the Overdose Crisis. *JAMA Netw Open.* 2022;5(7):e2222153. doi:10.1001/jamanetworkopen.2022.22153

[7] https://www.hrw.org/news/2022/12/09/new-york-city-overdose-prevention-centers-give-hope