



**New York State Office of the Attorney General
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Testimony Submitted to the
New York State Senate
&
New York State Assembly
Joint Legislative Budget Hearing on Mental Hygiene for Fiscal Year 2024
February 16, 2023**

Esteemed chairs and committee members:

My office and I thank you and your committees for your work and advocacy across a range of issues important to vulnerable New Yorkers served by our mental hygiene agencies. Based on recent work conducted by my office, this testimony is limited to issues of mental health in New York's FY2024 Budget. I submit this testimony to offer my support of the historic investment and reforms for mental health proposed by Governor Hochul in her Executive Budget and to provide input on ways to further strengthen our state's commitment to this important issue. I am encouraged that the governor is prioritizing an issue that has long been at the top of the legislature's agenda and I offer my office's partnership to assist your committees and your respective houses to build upon the progress put forward in the Governor's Executive Budget.

As Attorney General, I have advocated for transforming our mental health system. Most recently, I convened public hearings in New York City and Buffalo¹ in which providers, advocates, and people with lived experience of mental illness testified in person and submitted over 250 written comments about the challenges they face in accessing care and the need for reform. These hearings made all too clear that we cannot tackle the mental health challenges confronting New Yorkers without significant state investment and strengthening the laws and regulations governing mental health treatment and insurance.

¹ The recordings and transcripts of the hearings can be found on our website at the following link: <https://ag.ny.gov/mental-health-access-new-york>. The written testimony from the Western New York hearing will be published soon at the same link as well.

I. Emergency Department Services and Inpatient Psychiatric Beds

Our public health system only works when providers and insurers follow the rules so that every New Yorker – no matter their income, insurance status, or the nature of their health condition – can receive necessary care. At my public hearing in June 2022, I heard from frontline nurses, including SEIU 1199 member Gabriel Valles and NYSNA member Irving Campbell, that hospitals took advantage of temporary rules that allowed inpatient psychiatric beds to be used to treat COVID-19 patients. Instead of reopening psychiatric beds after the executive order allowing these changes expired, hospitals closed those beds permanently. I also heard from providers and affected individuals who testified that the closure of inpatient beds contributed to overcrowded and often unsafe conditions in emergency rooms. The continued closure of hundreds of beds across the state – approximately 15 percent of all licensed beds – has accelerated a decades-long decline in inpatient bed capacity, a trend that has unfairly shifted a largely unprofitable service onto public hospitals. The lack of inpatient beds has had a particularly negative impact on children, whose rates of depression and suicidality have spiked dramatically.

Bringing Inpatient Beds Back Online

I support Governor Hochul’s proposal to increase the penalties that may be issued against hospitals that take psychiatric beds offline without authorization.² My office stands ready to support the Office of Mental Health (OMH) in its enforcement of this law by using the courts to hold non-compliant hospitals accountable. This proposal could be further strengthened by giving the Office of Attorney General direct authority to bring actions for injunctive relief against violators, instead of solely relying on referrals by OMH.

In addition to strongly supporting increased inpatient capacity, I also recognize that reimbursement rates for inpatient psychiatric services have been well below the rates for other medical services for far too long, causing significant financial strain on hospitals that maintain these beds. I support the proposal to increase the Medicaid reimbursement rate for inpatient services by five percent³ in addition to the investment made in the FY2023 budget. The proposed \$60 million in capital funding to develop 12 new Comprehensive Psychiatric Emergency Programs around the state is also a welcome contribution that can help ease the burden on emergency rooms.

Discussing the importance of inpatient beds, I would be remiss not to mention the importance of federal legislation known as the Michelle Alyssa Go Act, introduced by former-Congresswoman Carolyn Maloney and recently picked up by Congressman Dan Goldman. That bill would eliminate the nonsensical Medicaid exclusion that prohibits the program from covering long-term stays for patients aged 21-64 in need of mental health or substance abuse treatment. It is a reminder that the state can do much to improve the system but we must also direct our advocacy efforts at the federal level.

Data Reporting and Accountability

² Article VII Bill, Part JJ at 1095-96.

³ Article VII Bill, Part E at 188.

To ensure that increased funding for emergency and inpatient psychiatric services is used to bring beds back online and for improved treatment, OMH should consider collecting key metrics from hospitals, including the number of beds in use, average daily census, emergency department waiting times, and average length of stay for emergency and inpatient units.

II. Insurance Reform

I firmly support strengthening the obligations of health insurance companies to pay for needed inpatient care. These reforms would require health plans to pay claims for emergency and inpatient services, subject to later review, and ensure that individuals are responsible only for the copayment, coinsurance, or deductible after receiving emergency care.⁴ Insurers would also be prohibited from requiring preauthorization or conducting concurrent reviews for the first 30 days of mental health treatment for adults in in-network inpatient hospitals or crisis residences in New York, except as permitted by OMH.⁵

Behavioral Health Parity

My office is a national leader in investigating and enforcing state and federal parity laws that require that insurers cover mental health and substance use disorder treatment on par with other medical treatment. To date, we have entered into ten settlements with health insurers, which greatly improved coverage of mental health and addiction treatment and returned millions of dollars to impacted patients.⁵ But more needs to be done to ensure true parity.

With that need in mind, I support the governor's proposals to close loopholes in insurance coverage of mental health services, including establishing network adequacy standards.⁶ My office regularly receives complaints from individuals who are unable to find in-network behavioral health providers through their insurance plans. When they cannot find an in-network provider, individuals delay treatment, pay more than they can afford for out-of-network care, or forego treatment altogether, with potentially tragic consequences. Directing state agencies to issue specific standards for an adequate network of behavioral healthcare providers, such as time and distance requirements for initial visits, addresses the root of the problem. It will also protect consumers by requiring that insurers reimburse treatment with out-of-network providers at no less than the Medicaid rate where they fail to meet the standards.

III. Community-Based Care

Inpatient beds serve an important role in stabilizing individuals in crisis, but they do not provide individuals with the support that they need for long-term recovery or treatment. While the deinstitutionalization movement envisioned a transition to community-based care, we have not adequately invested in a robust system of outpatient care. I am pleased to see that the Executive

⁴ Article VII bill, Part J at 248-52; Part II at 1079-80.

⁵ See [Attorney General James Provides \\$13.6 Million to Consumers Who Were Denied Mental Health Care Coverage](https://ag.ny.gov/press-release/2022/attorney-general-james-provides-136-million-consumers-who-were-denied-mental), (May 20, 2022), <https://ag.ny.gov/press-release/2022/attorney-general-james-provides-136-million-consumers-who-were-denied-mental>.

⁶ Article VII Bill, Part II(F) at 1091-94.

Budget includes significant funding to expand outpatient services and residential units for people with mental illness.

Funding for these expanded services is bolstered by a new provision requiring private health insurers to cover these necessary services, closing a major loophole in the continuum of care for those with commercial health plans.⁷ The expansion of Certified Community Behavioral Health Clinics,⁸ an innovative new model for coordinated mental health and substance use care, is also promising. I encourage the legislature to support these proposals.

Addressing the Workforce Crisis

In order to expand services at the scale envisioned, we must address the workforce crisis that prevents mental health agencies from meeting the enormous need for their services. Some agencies have vacancy rates of up to 40 percent. I encourage legislators to consider increasing the proposed cost of living adjustment (COLA)⁹ to account for the impact of inflation. In my public hearings, virtually every provider raised the workforce shortage as the primary barrier to maintaining, let alone increasing, the services that they offer. Providers like Cindy Lee, the CEO of OLV Human Services, testified that inadequate funding prevents providers from paying wages that are competitive with jobs in the fast food and retail sectors. A higher COLA will help ensure that the ambitious goals of this budget are truly realized by securing a committed workforce to implement and sustain those goals.

I support the governor's proposals to incentivize enrollment in educational programs for licensed mental health professionals. To strengthen this provision, I encourage the Legislature to explore additional measures to expand and incentivize programs for licensed mental health professionals with an emphasis on those who have cultural and language competencies specific to their client populations. In my western New York hearing, for example, I heard from Sara Taylor, who spoke powerfully about the challenges she faced as a Black parent seeking assistance in a system "where there's no professional clinical staff of color that looks like us, programs that lack training, and culturally responsive care" and how those deficiencies contribute to the disparate impact of the mental health crisis on communities of color.

Residential Units

Finally, I applaud the proposed historic capital investment of \$890 million to build 3,500 much-needed mental health living units throughout the state, which will allow individuals to transition from psychiatric inpatient care to independent living in the community. I also support the \$39 million increase in support for existing mental health housing. As we embark on this new chapter, I encourage policymakers to consider legislation aimed modernizing our mental health housing models, especially for aging populations.

⁷ Article VII Bill, Part II(A) at 1067-77. Cindy Lee testified about this at the Western New York hearing.

⁸ Article VII Bill, Part HH at 1057-62.

⁹ Article VII Bill, Part DD at 1048-54.

In conclusion, this budget represents an important step forward in New York's response to the overwhelming need for mental health services in our state. I thank you for your fine work advocating on behalf of populations in need and thank you for your careful review of the proposals included in this testimony. Please do not hesitate to reach out to my office with any questions.