TESTIMONY ON THE SFY 2024 EXECUTIVE BUDGET PROPOSAL
SUBMITTED TO THE
JOINT LEGISLATIVE BUDGET COMMITTEE ON MENTAL HYGIENE

Submitted by Lauri Cole, Executive Director
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My name is Lauri Cole, and I am the Executive Director of the NYS Council for Community Behavioral Healthcare. Thank you for this opportunity to share our comments with you about the SFY '24 executive budget proposal, and specifically proposals related to Mental Hygiene services.

The NYS Council is a statewide membership association that represents **125 community-based organizations that operate a broad range of mental health and substance use/addiction disorder prevention, treatment, recovery and harm reduction programs and services** across New York. NYS Council member agency services are provided in a variety of settings to include freestanding community-based agencies, general hospitals, and counties that operate mental hygiene programs. As you know, these programs and services form the core of the public mental hygiene system that is supposed to be available to any New Yorker on demand and without regard to the ability to pay for care. But across the state this is far from the reality at the present time.

The SFY '24 executive budget proposal for New York's mental hygiene system is certainly historic and has the potential to be a transformative opportunity to address some of our core concerns. The budget would deliver $890 million to address capital and housing needs across the state, and for this we are grateful. In addition, the Governor's budget seeks to expand a federal demonstration program, the Certified Community Behavioral Health Clinic initiative, that is fast becoming the standard of care

across the nation for its' ability to increase access to a broad continuum of services that are woven together by the lead agency, thus decreasing fragmentation and barriers for the individual receiving services. The model improves quality outcomes and reduces spending on more acute care services that cost the state more and are unlikely to result in the kinds of outcomes that can be achieved in community care settings. We fought hard for this proposal, and we are gratified that it is included in the Governor's executive budget.

Unfortunately, the Governor's budget fails to make adequate investments in our **workforce**, leaving a major question as to how the Governor's vision for system transformation can be accomplished when, at the present time, our staff vacancy rates have never been higher. The budget also fails to make strategic investments in the prevention, treatment and recovery services that are critical to reduction in suicides and other deaths of despair connected to the opioid and substance use epidemic that continues to ravage our communities and tear New York families apart.

The reality is that for every new staff we are somehow able to convince to come to work for us, another staff person leaves for better pay and a less stressful set of job responsibilities. It's a zero-sum game and this situation is unsustainable without meaningful investments in <u>all</u> areas of the mental hygiene system.

By way of example, New Yorkers with substance use and mental health disorders have experienced disparities in access to behavioral health (BH) outpatient clinic treatment services as well as other services across our continuum, for decades. As a result, the individuals we serve have disproportionately poor health status due New York's Medicaid program failing to provide access to BH services, and reimbursement rates that fail to cover the cost of care. Black, Indigenous, People of Color and other underserved communities have been disproportionately impacted by the growing inequities in our mental health and substance use disorder system. Now, in the wake of a pandemic and during epidemic levels of suicide, addiction, and overdose, the Governor has proposed $1B in resources to reform <u>parts</u> of our system, however we remain deeply concerned that core services such as the OMH and OASAS Outpatient Clinics and OASAS residential services hang by a financial thread as increased demand is met by decreased resources to address need.

The financial pressure on community mental health and substance use disorder providers has only grown since the State transitioned BH Medicaid services to Mainstream Managed Care (MMC) plans and Health and Recovery Plans (HARPs). We see no value to care recipients as insurers are permitted to inappropriately deny claims and delay access to care without enforcement by regulators. As such, the NYS Council believes we must be carved out of Medicaid managed care immediately, to preserve scarce resources that are currently lining the pockets of insurers without any meaningful value add for care recipients.

Of course we support executive proposals that enhance access to capital, but we must also (again) plead with you to address inadequate rates and a COLA proposal that will not alleviate the fact that far too many New Yorkers are sitting on waiting lists, hoping for a call offering ongoing care that is long overdue.

The Executive Budget Proposal: Human Services COLA at 2.5%

Our workforce deserves and our agencies must receive an 8.5% COLA and $500M in rate / contract increases to ensure adequate access to care for those seeking services through the public mental hygiene system.

After almost a decade of financial neglect, last year state leaders enacted a budget that included a 5.4% COLA and for this we are thankful. ***However, as of today, most agencies targeted to receive the COLA are only now receiving these funds from Managed Care Organizations that were required by law to have paid the new rates in full many months ago.***

So, once again we find ourselves begging for assistance. We must be able to recruit and retain adequate numbers of staff. COLA has many mouths to feed – it is not just for staff salaries. It also must pay for impossibly high operating costs such as gasoline, food, maintenance, insurance, etc. That's why we are also requesting $500M for rate increases that will help us pay our bills and keep our doors open.

Throughout the hearing today, you will hear advocates crying out for additional assistance. While a $1B investment in our system of care is historic and unparalleled, the problems we have are acute and must not wait. These are 'right now' problems requiring immediate solutions. New

Yorkers deserve better than to sit on waiting lists while we search for staff and beg insurers to pay us what we are owed.

Network Adequacy Proposal
The NYS Council supports this proposal but we also have a request for additional language (below).

The Governor's proposal calls for the state to promulgate regulations regarding **Network Adequacy** standards. Network Adequacy is a critical metric that helps tell the story of whether individuals needing care are receiving it from in network providers on demand and in a location that is easily accessible to them. The Governor's Network Adequacy proposal says that such standards will address timely and proximate access to care, appointment availability standards including timeframes for initial and follow up visits, time, and distance standards, as well as the availability of telehealth, and the responsibilities of insurers to provide out of network referrals at in network cost sharing/rates but only if no in-network providers available. For OMH/OASAS facilities, payment would be a negotiated rate or the Medicaid rate.

The NYS Council supports the Governor's proposal to modernize Network Adequacy standards however, there must be a stakeholder engagement process to collect ideas from those who use the mental hygiene system or who work in it, to ensure the proposed regulation is person-centered and reflects the needs of New Yorkers who are impacted by access issues. The stakeholder process should be conducted BEFORE the state issues draft regulations for public comment.

NOTE: The NYS Council requests the addition of language that would **step-up state enforcement of Network Adequacy standards** (see bulleted language in green). **Updated Network Adequacy standards will not matter if the Office of Health Insurance Programs (OHIP) under the Department of Health remains reluctant to hold MCOs accountable and avoids enforcing contractual requirements, as is often the case at the present time**. Network Adequacy is much bigger than a set of revised standards. It relies entirely on the state's willingness to send a message to insurers that it is not acceptable to violate these standards, or to dance around other compliance requirements.

The NYS Council proposes the addition of enforcement provisions as follows:

- **The state must perform a quarterly analysis of Provider Network Data Set (PNDS) data without fail. DoH must analyze the data aggregated by MCO, and also by service type.**
- **Results of the analysis (citing each plan by name) as well as the methodology used to calculate NA, and the immediate action taken by the state must be published on DoH website and be easily accessible to the public.**
- **If the plan fails to meet Network Adequacy standards per the Model Contract, this should automatically result in regulatory action by the state, without exception. The regulatory action must include a fine of no less than $10,000 per instance of non-compliance.**
- **If the plan fails to meet NA standards 3 times in one year, the state must prohibit the MCO/plan from enrolling new insureds for a period of no less than 6 months.**

NOTE: In addition to the above enforcement language, the NYS Council has also proposed language to the Mental Hygiene Committee Chairs that requires commercial insurers to pay for ALL behavioral health services (in and out of network) on par with Medicaid, making the APG government rate the floor, and ensuring equal access to care for all New Yorkers, regardless of their insurance benefits.

Proposal to Expand CCBHC Federal Demonstration Program in New York State

The Governor's budget proposal includes an expansion of a model of mental health and substance use disorder care that is fast becoming the new standard of care across the country. Sine 2017, New York State has been participating in a federal demonstration program, the Certified Community Behavioral Health Clinic initiative. The model has been embraced by CMS, HHS and SAMHSA, and is spreading like wildfire across the country. Since NYS entered the federal demonstration program, New Yorkers with behavioral health conditions with access to these services have benefited from requirements that hold demo agencies to a high standard of care. Importantly, the model seeks to reimburse these

providers at cost – something similar to the FQHC Prospective Payment System reimbursement model. The NYS CCBHC Demo has produced great outcomes including expanded access to care, closer formal collaborations between community providers that reduce siloed care, and an overall increase in the availability of culturally competent services. The model addresses the complex co-occurring needs of New Yorkers with mental health and substance use disorder conditions, and co-morbid physical health challenges – and all while saving New York significant resources. Demo agencies must meet 115 criteria that ensure high quality on demand care. Specifically, demo agencies must offer open access to care for any New Yorker seeking services regardless of the ability to pay, as well as Medication Assisted Treatment, crisis services, and much more.

According to the Office of Mental Health, in Demo Years 1 & 2, the CCBHC federal demonstration program in New York achieved the following results:

- Behavioral health inpatient services showed a 27% decrease in average cost per month over the prior year period
- Behavioral health ER services showed a 26% decrease in average cost per month over the prior year period
- Health inpatient services showed a 20% decrease in average cost per month over the prior period
- Health ER services showed a 30% decrease in average cost per month over the prior year period.

In our opinion, there are few more direct routes to ensure New York is fulfilling its' commitment to provide low cost, high-quality care to New Yorkers with complex behavioral health conditions than through **vast expansion** of the CCBHC Initiative. In November, we submitted language to the Governor's Office that (if it had been included in the executive budget exactly as submitted) would have opened the demonstration program up to <u>any eligible provider</u>. The Governor's proposal would add 26 new Demo agencies. This is a great start. As such, we urge you to prioritize and vigorously support this proposal.

Indigent Care Pool for CCBHC Demonstration Agencies, and Implementation of Joint Licensure for these agencies

The NYS Council vigorously supports executive budget proposals having to do with reimbursement and licensing of CCBHC Demo agencies.

At the present time there are 13 CCBHC Demonstration agencies participating in this federal initiative. All are required to serve any New Yorker, regardless of his/her ability to pay. However, the CCBHC federal reimbursement model does not factor in the cost of services provided to those with no insurance. As such, the NYS Council advocated for, and the Governor's budget includes a proposal requiring DoH to seek federal approval for an **Indigent Care Pool,** to meet at least some of the needs of CCBHC agencies that serve significant numbers of New Yorkers with no insurance. This proposal would provide some ongoing reimbursement assistance to CCBHC Demo agencies much like the current Uncompensated Care Pool assistance available to other agencies that qualify for participation in the Uncompensated Care Pool.

As economic conditions continue to stress households across the state and the country, more New Yorkers are unable to afford the high costs of health insurance, and even more are unable to meet high deductibles and copay requirements. The Indigent Care Pool begins to address some of the costs CCBHCs incur as they continue to serve uninsured New Yorkers**. It does not however address care provided to individuals who are underinsured such as those with high deductible plans or copay requirements that make use of their insurance unaffordable.** An Indigent Care Pool makes good economic sense, and it will result in less need for more acute (and expensive) levels of care for individuals who might otherwise delay care for themselves or their loved ones due to the absence of health insurance.

We also support the executive budget proposal that would implement a **joint licensure process for CCBHC Demo agencies.** This proposal will significantly reduce administrative burdens allowing more time for the agency to focus on the provision of high-quality care. Currently, CCBHCs are required to receive separate Article 31 and Article 32 clinic licenses. Existing CCBHCs in the federal demonstration would be certified under this new licensure "where the clinic demonstrates compliance with the

certification standards." We support this proposal and urge both houses of the NYS Legislature to include it in its' one house budget proposals.

Telehealth Rate Parity in Commercial Insurance

Thankfully, the Governor's Executive Budget seeks to expand on last year's requirement for Medicaid plans to reimburse Article 31, and 32 services delivered by telehealth at the in-person rates by requiring commercial insurers to do the same. At a time when there are significant waiting lists for care in outpatient and other programs across the state, all New Yorkers must have access to services on demand, and telehealth is one way to ensure timely access to care.

It should be noted that across the state the ongoing rate disparity that exists in the behavioral health system between the 'government rate' paid by Medicaid and far (far) lower reimbursement rates paid by commercial insurers for the exact same services, **has caused an access to care crisis for New Yorkers with commercial insurance**. New York must immediately address this disparity that we often refer to as state sanctioned discrimination against New Yorkers with private health insurance. DFS should be required to set commercial rates on par with APG government rates paid to behavioral health providers. Until then, we applaud this proposal for step toward the goal of equal access to telehealth – a valuable tool in the arsenal of weapons we have at our disposal to respond quickly to New Yorkers in need of assistance.

Note: This proposal would apply an equivalent payment parity provision in Articles 32 and 43 of the Insurance Law and Article 44 of the Public Health Law, such that all regulated plans would need to pay for these services at the in-person rate, ***although not necessarily the government-established Medicaid rate [HMH, Part II, Subpart C]. We urge lawmakers to review our requests to the Chairs to ensure that the language in this proposal specifically requires payment of Medicaid APG government rates as the floor for these payments.***

Private Right of Action for Parity Violations

Did you know that at the present time, NYS and specifically, OMH, OASAS and DoH have issued over 200 citations to insurers for their failure to comply with mental health and substance use disorder parity requirements, and the accompanying self-compliance requirements NYS implemented several years ago? The Governor's proposal would allow individuals with commercial insurance to sue insurers for violations of telehealth parity, and to potentially recover the greater of actual damages or $1,000.

NOTE: ***Unfortunately, this proposal would not apply to Medicare, Medicaid, CHIP, Essential Plan, or other federal or state "insurance affordability program" coverage [HMH, Part II, Subpart D]. We think this provision should include all payers.***

Preauthorization and Concurrent Review Rules

Pre-authorization: This proposal would prohibit insurers from performing preauthorization or concurrent reviews for the first 30 days of mental health treatment for adults in an in-network inpatient hospital or crisis residence licensed or operated by OMH, except where the insured meets designated clinical criteria or is receiving care in a facility designated by OMH in consultation with DFS and DOH. Given the likelihood that this proposal will close another loophole that insurers often take advantage of in order to deny or delay care, the NYS Council applauds this proposal

Concurrent Review: This proposal requires utilization review determinations for mental health conditions to be made using evidence-based, age-appropriate clinical review criteria approved by OMH in consultation with DFS and DOH. The NYS Council welcomes this proposal that seeks to standardize concurrent review decision-making by requiring utilization of a gold standard tool.

Additional executive budget proposals we support:

SUPPORT HMH Article VII Part BB: Fentanyl Analogs

Adds Fentanyl analogs to the list of controlled substances and adds new crimes for "imitation of a controlled substance" which creates a new misdemeanor and felony for knowingly possessing an imitation controlled substance. We support this proposal.

SUPPORT HMH Article VII, Part II, subpart E: Commercial Insurance Coverage for Maintenance and Detox Treatment:
This proposal would assure state-regulated commercial insurance coverage for detox or maintenance treatment of SUDs including all buprenorphine products, methadone, long-acting injectable naltrexone, or medications for opioid overdose reversal, without prior authorization for initial or renewal of such treatments. While it is unfortunate that we have to go to this length to ensure commercial insurance covers life-saving detox and maintenance treatment of SUDs, we vigorously support this proposal for its' focus on access to care for commercial insurance beneficiaries.

Support Statewide Facility Transformation Program V: This proposal creates a new $1 billion Statewide Facility Transformation Program V, with at least $500 million award to health care providers for various projects, and up to $500 million for critical health care information technologies and telehealth capacity. ***NOTE:*** ***We support this proposal with a request that at least 25% of these funds be set aside for mental health and substance use disorder agencies licensed or regulated by OASAS and OMH. We also request that the list of eligible behavioral health provider types eligible for these funds be expanded to include ANY OMH or OASAS program that incorporates healthcare / wellness services into the program.***

Interstate Licensure Compact: HMH Article VII Part W, Sections 30 & 31 ***NOTE:*** The NYS Council supports this proposal with a request that the ***Legislature expand the titles that it applies to, to include LCSWs, LMHCs, CASAC and LMFT.*** This will result in a larger pool of qualified practitioners who can work in our programs thereby decreasing waiting lists and ensuring access to care that is timely and at the correct level of care.

Thank you for this opportunity to share our response to Mental Hygiene proposals in the Governor's executive budget proposal.

For more information regarding the NYS Council for Community Behavioral Healthcare please contact Lauri Cole, Executive Director at 518 461-8200.