

December 7, 2023

Honorable Governor Kathy Hochul  
Executive Chamber  
NYS Capitol  
Albany, NY 12224

Dear Governor Hochul:

The undersigned associations represent community-based mental health and substance use disorder prevention, treatment, and recovery agencies that serve tens of thousands of New Yorkers each day. These are New Yorkers who rely on New York's public mental health and substance use disorder systems for care. ***We write to ask New York State to carve behavioral health services out of Medicaid managed care and provide essential behavioral health services to some of our most vulnerable residents on a Fee for Service basis, as was the case less than a decade ago.***

Managed care has proven detrimental to the ability of New Yorkers to receive the mental health and substance use disorder care they need and in turn, has hampered the state and providers' ability to effectively respond to the unprecedented opioid epidemic, escalating rates of suicide and other serious and increasing mental health needs of our residents. By removing managed care plans from the equation, we can simplify and streamline this care, remove unnecessary hurdles and return scarce resources to actual behavioral health services to reduce bottlenecks and ensure all New Yorkers can access the care they need on demand and at the appropriate level of care.

In 2015, NYS began carving-in the vast majority of behavioral health (mental health and substance use disorder / addiction) services currently available through New York's public mental hygiene system, into managed care. The decision to carve in these services was made by the Medicaid Redesign Team and was not presented as a choice for Medicaid beneficiaries or system stakeholders. *New York effectively handed over day-to-day oversight of these important benefits to insurers (most of which are for profit companies) and their Managed Care Organization proxies.*

The result of this failed experiment has been disastrous for care recipients who are sitting on waiting lists around the state, desperate for access to care while providers on the ground fight to provide services and meet increased demands with one hand tied behind their backs. Since 2019, over 200 citations have been issued by state regulators against many of these same companies for a variety of important reasons that restrict access to care and force providers to waste scarce resources chasing health plans for reimbursement. These citations are rooted in three core issues:

- failure to pay the state mandated fee for service (APG) government rate that is required by law;
- inappropriate claims denials; and

- failure to oversee the proxy company that is employed by many of the insurers to manage the benefits.

A recent survey of mental health and substance use disorder provider organizations across New York found that:

- Nearly 50% of providers have waiting lists for outpatient clinical services to include Medication Assisted Treatment and psychiatric services, while New York's children with behavioral health conditions continue to live in emergency rooms across the state due to a lack of appropriate community-based services.
- Providers are forced to spend \$400,000 a year to pay staff to chase MCOs, file complaints, upgrade billing systems, hire attorneys to threaten legal action against MCOs for failure to pay, and to re-process payments that are more often than not paid at the wrong rate by MCOs many months after they are required by law to do so.
- MCOs owe the providers who responded to the survey approximately \$10 million in unpaid claims and some plans still have not paid the COLAs that were fought hard for and included in the 2022-2023 final budget.

Last year Milliman completed an analysis and concluded that the majority of insurers participating in the carve-in of these services to Medicaid managed care fail to comply with federal and state parity laws and regulations and/or New York's requirements around self-monitoring of compliance with the same. In 2020 the Office of Mental Health conducted an analysis of Medical Necessity criteria used by MCOs to make critical decisions around authorizations for care only to find that there were no MCOs that met the Office's Medical Necessity criteria standards. In both of these instances, the issues identified by the state or outside consultants have not been rectified by the majority of plans participating in the carve-in.

Recently it was also identified that MCOs have failed to meet required behavioral health expenditure targets. That is, the amount of the premiums they receive that must be spent on care. Actions were taken and ultimately \$222M was returned to OASAS and OMH for a two-year period however, prior years in which plans failed to meet expenditure targets were never addressed.

The state must ask itself what value is this model providing for New Yorkers with serious behavioral healthcare needs? Managed care plans/insurers are able to keep at least 11% of Medicaid funds for administration and profit. When we consider the total amount of premiums paid to MCOs to manage behavioral health benefits, each year by the state (billions of dollars annually), the hard facts that MCOs add no value, and most MCOs focus on finding ways to delay or deny payment, we must ask ourselves whether we are spending taxpayer resources wisely?

We know there is a better way, and we need to act now in light of the escalating rates of suicides, critical mental health needs and an overdose crisis that continues to claim the lives of so many New Yorkers. And by carving out behavioral health from Medicaid

managed care, the State can save several hundred million which can be reinvested into much-needed care and the workforce that provides it.

If we are going to address these crises which have reached historic proportions unlike anything we've seen before, we must foundationally fix what's broken in our behavioral healthcare system. This begins with eliminating the largely for-profit middlemen (health insurance plans) and reinvesting finite resources to services, the workforce and the essential care New Yorkers need and deserve.

*Now is the time for New York State to take managed care out of the equation and move behavioral health services back to Fee for Service in Medicaid.*

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

**NYS Council for Community Behavioral Healthcare  
Association for Community Living  
Federation of Mental Health Services  
Coalition of Medication Assisted Treatment Providers and Advocates  
New York State Psychiatric Association  
Families Together in New York State  
National Alliance on Mental Illness - New York State  
HealthyMinds, HealthyKids Campaign  
The Therapeutic Communities Association – NYS  
The Coalition of Community Services  
The Legal Action Center  
InUnity Alliance (NY Association of Alcoholism and Substance Abuse  
Providers/ASAP & The Coalition for Behavioral Health)  
Alliance for Rights and Recovery (formerly NYAPRS)**

For more information regarding this request, please contact Lauri Cole, Executive Director, NYS Council for Community Behavioral Healthcare at (518) 461-8200 or [lauri@nyscouncil.org](mailto:lauri@nyscouncil.org)

cc: Karen Persichilli Keogh, Secretary to the Governor  
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Dr. James McDonald, Commissioner, NYS Department of Health  
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