Testimony before the Joint Legislative Budget Committee
Topic: Mental Hygiene Executive Budget Proposals
February 13, 2024

Good morning. My name is Lauri Cole, and I am the Executive Director of the New York State Council for Community Behavioral Healthcare ("The NYS Council"), a statewide membership association representing the interests of 150 community-based mental health and addiction prevention, treatment, recovery, and harm reduction agencies that provide a broad range of essential services in a variety of settings including freestanding nonprofit agencies, counties, and general hospitals.

While there is broad consensus that mental health and addiction disorders should not be treated differently from physical health conditions, there are currently long waiting lists for mental health and addiction services for children, families, and adults seeking services across New York State. There are several causes for these waiting lists to include inadequate salaries for staff that work with care recipients, increased costs associated with operating these programs, insufficient resources to ensure the OASAS and OMH systems of care are prepared to flex at times when demand is higher than normal, and the state continuing to pay scarce resources to 'manage' benefits for Medicaid beneficiaries when in reality the majority of these MCOs add no value and often fail to follow state laws, regulations and contract provisions. These circumstances have left our sector in a perpetual state of emergency, with little ability to respond to demands for increased access to services.

Our comments on executive budget proposals in the Mental Hygiene areas of the Executive Budget should be viewed through the lens of care recipients and the community-based providers that struggle to meet demand for services amidst increased rates of suicide and a lethal Overdose Epidemic. To be clear, in our opinion, NYS has not treated these crises as true public health emergencies worthy of the same laser focus and appropriation of significant resources that it made available during the COVID-19 crisis.

In particular, New York's response to the **Overdose Epidemic** continues to be anemic. Opioid Settlement funds must not be used as New York's main source of investment to address what is clearly an overdose public health emergency, and yet new funding outside of the Opioid Settlement Funds is anemic. For 2024-2025, the executive budget proposal appears to reduce the OASAS budget. This cannot stand.

If we agree that mental health and addiction disorders are of equal importance to chronic medical conditions, New York must implement a full-throated 'all hands-on-deck' to address increasing rates of ***suicide*** *and* ***overdoses****. While it is important for state leaders to shine a light on the importance of prevention, treatment, and recovery services with the message that any New Yorker experiencing difficulty should seek the services they need and deserve, New York is not prepared to address the increased demand that comes with increased outreach and engagement. We urge New York State lawmakers to address this disconnect and address the waiting lists by investing in our systems of care so that for any New Yorker in need of care, services are available on demand and at the correct level of care.*

The NYS Council **SUPPORTS** the following executive budget proposals. In some instances, we provide recommendations for additional investments or other types of enhancements to ensure the desired outcome of the proposal:

1.5% COLA (Part FF HMH Article VII) - In 2006, a law was enacted (Part C of Chapter 57 of the Laws of 2006) to provide a statutory COLA for community-based mental hygiene and human service providers. The COLA for each year was to be based upon the previous July's published annual Consumer Price Index - Urban (CPI-U), from the Bureau of Labor Statistics within the federal Department of Labor. While the original COLA law was effective for a three-year period, it was extended each year until last year, when it was allowed to sunset, despite the final enacted budget including a 4% COLA.

When the Legislature or the Governor appropriates a COLA, these funds are passed through to providers via Medicaid rates, contracts and grants that are eligible for an increase. The funds must cover both **salaries for workers AND costs associated with operating mental health and substance use disorder programs and services.** That is a lot of ground to cover and as of August 2023, the job vacancy rate for client-facing positions in community-based mental health and substance use disorder agencies was 21%.

This year we request the Legislature enhance the Governor's 1.5% COLA proposal and bring it to at least **3.2% in total. We also request $500M** for mental health and addiction investments in recognition of the numerous years in which the statutory Human Services COLA was 'not withstood' under the Cuomo administration.

The one-two punch of widespread staffing shortages, along with rising costs associated with operating programs, has resulted in our inability to recruit and retain the staff we need. New York cannot afford to wait for the federal government or any other entity to take aggressive steps to address workforce shortages that continue to result in delayed or denied care for New Yorkers who need and deserve services on demand and at the appropriate level of care.

There are other **workforce proposals** in the executive budget that we support. These include:

- The existing $14 million **Community Mental Health Loan Repayment Program** (**Source: Article VII, HMH Part Y)** is proposed to increase by **$4 million.**
- Two workforce investments are embedded in the 1115 Waiver plan, which requires spending authority via this year's budget. The **Career Pathways Initiative** and the **Student Loan Forgiveness Program** will be helpful, but again, *our sector needs significant investments beginning with enhanced rates for Medicaid services, commercial rate improvements and commercial insurance reimbursement rates on par with the Medicaid rate, and a robust package of incentives designed to increase our ability to recruit and retain qualified staff who can afford to work in our programs while also meeting their financial obligations.*
- The Executive Budget proposal includes a description of **five new initiatives to expand the mental health workforce** (**Part YY, HMH, Article VII)** through job marketing, the creation of a job bank, and the creation of a Behavioral Health Fellowship Program. It states that OMH will also develop new ways to credential mental health paraprofessionals, and that rural governments will receive funding to develop targeted workforce investments. We support all of these initiatives but urge that the Behavioral Health Fellowship Program be specifically designed to bring professionals to community-based service providers.

Commercial Insurance Rate Mandate (Part AA in HMH executive Article VII bill) - The NYS Council wholeheartedly supports the Governor's proposal that will ensure New Yorkers with commercial insurance no longer face disparate access to care due to commercial reimbursement rates that are (on average) just 50% of the state mandated reimbursement rate paid for services provided to Medicaid beneficiaries. This situation may seem counterintuitive since in most areas of NYS healthcare it is the Medicaid rate that is the lower of the two rates, however, for mental health and addictions agencies the commercial rate remains unregulated and is abysmally low. As such, providers are often unable to afford to serve New Yorkers with commercial insurance. This situation has resulted in what we often refer to as state sanctioned discrimination against New Yorkers with commercial insurance. At the very least, this problem represents a disparity in access to care that must be addressed this year.

According to a new Report issued last week by Inseparable, a national mental health coalition, just 1/3 of New Yorkers with commercial health insurance were able to access specialty mental health care in 2021. The report, released on February 8, 2024, uses data from a study the firm commissioned last year to assign each state an access scorecard. New York, it found, is not faring well compared to the rest of the country. Of the more than three million New Yorkers with a diagnosed mental health condition*, just 34% with commercial coverage received specialty care, the report, based on data from Milliman, the Centers for Medicare and Medicaid Services and commercial insurers, shows.* Furthermore, it illustrates that only 24% of New Yorkers got follow-up care within 30 days after visiting an emergency room for mental health or substance use care. About 21 individuals per 100,000 people died because of a drug overdose and eight per 100,000 New Yorkers died by suicide.

Importantly, Part AA in the HMH Article VII bill seeks to remedy this disparity. The Governor's proposal would mandate commercial insurance plans to reimburse community-based providers who are in-network with a commercial insurer, or (at least) the same amount as the state mandated Medicaid rate. **We implore you to support this critical proposal and include it in your one-house budget bills so that your constituents with commercial insurance can access the services they need through their local community-based mental health and/or substance use disorder provider.**

While the NYS Council enthusiastically supports the Governor's proposal to waive cost share requirements for Insulin in the treatment **of Diabetes (Transportation, Economic Development and Environmental Conservation Art. VII bill, Part EE**), we urge members of the NYS Legislature to expand this proposal to include **additional cost share waivers** for other essential treatments for chronic illnesses such as addiction and mental health conditions. Intervening early – at the beginning of a disease process – has been proven to save countless lives and scarce state resources, not just in the behavioral health arena but also in the physical health space. No New Yorker should have to choose between cost share obligations and putting dinner on the table. ***The NYS Council requests that the NYS Legislature broaden the Governor's Insulin cost share waiver proposal to include co-pays and high deductibles for substance use disorder and mental health care – at least during the ongoing overdose and suicide public health crises.***

Carve Out BH Outpatient Services from Medicaid Managed Care - Although it is not included in the executive budget proposal, the NYS Council requests that the members of the NYS Legislature add our budget language that would carve out mental health and addiction outpatient services from the state's Medicaid managed care program. We do not believe the Governor's Competitive procurement proposal (discussed below) will address the myriad problems that have plagued our systems of care for over eight years and since these services were carved into the state's Medicaid managed care program.

Our request for a carve out is not new. The NYS Council has been engaged in advocacy designed to fix serious problems associated with the carve in of mental health and addiction services into the state Medicaid managed care program since 2016. Our first meeting with DoH officials to educate them about the numerous problems with the carve in took place just six months after it was implemented. At that time, we reported serious problems with timely payment, and use of prohibited contract language put forward by health plans to providers. Since then, we have appeared numerous times before Legislative Budget Committees, begging for relief from the now enormous problems we face when trying to transact business with MCOs, the majority of which are large for-profit corporations. We have argued vociferously for increased surveillance, monitoring, and enforcement by the Office of Health Insurance Programs at DoH. However, the problems in Medicaid managed care have only increased over time for behavioral health providers, and enforcement by the DoH/OHIP continues to be anemic.

Since 2019, over 200 citations have been issued against numerous MCOs for three primary issues: failure to pay the government mandated Medicaid rate, failure to oversee the third-party vendors insurers are permitted to deputize to act in their stead, and failure to comply with federal and state parity laws. A recent assessment of medical necessity criteria used by insurers to make life and death decisions about access to mental health care found that none of the MCO insurers medical necessity criteria met OMH standards, and the current rate for MCO inappropriate claims is around 58%.

In 2020, the NYS Council issued over 25 FOILs to six different state agencies/regulators and confirmed what we already knew – that DoH had failed to enforce an expenditure target requirement embedded in MCO contracts with the state that requires them to spend the vast majority of funds paid to them (by the state) on actual services for Medicaid members. As a result of this failure to enforce an important contract provision, the OMH and OASAS systems of care were deprived hundreds of millions of dollars that MCOs were permitted to hold on to despite not having earned it. As a result of NYS Council advocacy and the Hochul administration's willingness to finally address this problem, in 2022 the state began recouping funds from MCOs that failed to meet these targets. The Executive Budget refers to these recouped funds as 'Reinvestment Funds' associated with the transition to Medicaid managed care and the '24-'25 executive budget for both OASAS and OMH includes proposals **that appropriate $74M to OMH, and $37M to OASAS** (**Article VII, HMH, Part H).** Again, these are state funds that health insurers were permitted to hold on to and presumably collect interest on while the Overdose Epidemic and increased rates of suicide continued to rage in our local communities. This is the clearest example we can share where the state's failure to enforce a requirement of MCOs in the Medicaid managed care program resulted in two state agencies being deprived of desperately needed funds.

This year, the NYS Council, along with 17 other statewide coalitions/associations representing care recipients and providers of mental health and substance use disorder services, has been advocating for NYS to *carve out mental health and substance use disorder outpatient services from the state's Medicaid managed care program*. Our agencies are unable to transact business with MCOs in an efficient manner, health plans do everything they can to hold on to funds that they have not earned, and agencies across the state have been forced to hire small armies of staff who spend their days chasing payments. There are currently long waiting lists for care in many of the outpatient clinics across New York. When agencies spend too much of their time chasing MCOs who do not respond to provider inquiries, or fail to pay rates on time or in full, the result is an inability for these agencies to maintain services. The clearest example of this problem is the 21-22 COLA. Despite the COLA being enacted in April of 2022, most providers did not receive the increased rates from many MCOs for a good seven months after it was enacted

Competitive Procurement of MCOs (Article VII, Health/MH, Part H) - This proposal will not change the fact that New York State does not robustly surveil, monitor, or enforce the laws, regulations, and contract requirements that were embedded in MCO contracts when behavioral health services were carved into the state's Medicaid managed care program. The provisions were included to protect care recipients and the providers who serve them. **The Governor's Competitive Procurement proposal lacks potency.** For instance, the Procurement being proposed appears to allow the state to identify and award additional MCOs after the initial round of awards, without a transparent process. We also have questions about whether the procurement will take into consideration the past track records of MCOs applying for an award. And while the executive budget proposal includes a provision that would impose liquidated damages on MCOs that fail to comply with the Model Contract, the proposal limits fines to between $250 and $25,000 and in our experience, MCOs will see these fines as nothing more than the cost of doing business. In other words, these fines are unlikely to change MCO behaviors. And unfortunately, we have seen little evidence that the state will be willing to enforce at the high range of the fines when enforcement is required.

Telehealth Rate Parity through 4/1/25: (Health/MH Article VII, Part B) - The Executive Budget proposes to extend the sunset date for the current telehealth rates to be equal to in-person rates until April 2025. The NYS Council strongly urges that this provision be made permanent, as it addresses the workforce shortages in rural areas, helps practitioners manage the ever-growing demand, and minimizes waiting periods for patients to access care. Telehealth services are foundational to New York's ongoing efforts to address health disparities. Telehealth has opened the door to New Yorkers who are either unable or unwilling to present at a bricks and mortar facility. Most New Yorkers do not have the luxury or the resources to travel to care in the middle of a workday and some New Yorkers are reluctant to be seen visiting a mental health agency. New York needs to stand behind the message that we are a person-centered system of healthcare that is devoted to meeting the client where he/she is at. Sometimes that means telehealth. Telehealth is good person-centered public policy.

Mental Health Parity Enforcement (Transportation, Economic Development and Environmental Conservation Art. VII bill, Part HH) – This proposal raises penalties that the Department of Financial Services would impose on an authorized insurer, and any representative thereof, that violates any mental health or substance use disorder provision or the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. The penalty could be up to $2000/offense. The proposal states that robust enforcement measures are essential to incentivize insurers to comply with their legal obligations.

The NYS Council strongly supports this proposal that authorizes the Department of Financial Services to levy a fine of up to $2,000 per offense against health plans and insurers after finding a "willful violation" of federal or state mental health and substance use disorder parity (MH/SUD) laws and/or regulations. The NYS Council has, for years, actively supported efforts to increase surveillance, monitoring, and enforcement of federal and state (MH/SUD) parity laws and regulations as critical means for sustaining access to high quality care and treatment.

A recent Milliman study found that non-compliance with federal and/or state parity laws is rampant, making the enactment of this provision critical for New Yorkers living with MH/SUD and their families to ensure they can access their benefits and coverage. Governor Hochul's State of the State rightly captures the need to raise the fine for non- compliance, however all of this relies heavily on the appetite of the Department of Financial Services to act swiftly and impose significant fines that will make a strong impression on the insurers that fail to abide by the laws.

While not proposed as part of the FY 2024-25 Executive Budget, the NYS Council also strongly supports the establishment of a **private right of action**, allowing individuals with grounds to sue insurers and health plans for violations of parity laws to recover "actual damages." Enactment of such would provide accountability and would mirror a private right of action that already exists under the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. The NYS Legislature must not allow this disparity to persist as we continue to face non-compliance with parity laws clearly evidenced by data and reports submitted to the Department of Financial Services pursuant to the Mental Health and Substance Use Disorder Parity Report Act of 2018. A state private right of action and the above provisions will take New York one step closer to achieving the full spirit and intent of the parity laws. As such, we hope the enacted budget will include such provisions.

In addition, recent evidence of non-compliance and challenges with access to care includes the investigation undertaken by New York Attorney General Letitia James. The investigation included a survey of nearly 400 mental health providers listed as in-network, which found 86% were in fact unreachable, not in-network, or not accepting new patients.

Raising the amount of the fines the Department of Financial Services (DFS) is authorized to levy is critical as DFS and DoH move forward the promulgation of network adequacy standards as required by the enactment of provisions in the FY 2024 budget, which the NYS Council has vigorously supported.

It should also be noted that SFY 2025 Executive Budget authorizes DoH to impose liquidated damages for Medicaid Managed Care plans that fail to comply with the state model contract which lays out the rules of the road for Medicaid managed care. Under the proposal, liquidated damages against managed care plans shall range from $250 up to $25,000 per violation based on the severity of noncompliance as determined by the Department. Importantly, the proposal states that plans may not pass such liquidated damages through to any provider or subcontractor.

All of the proposed enforcement changes (described throughout this document) *rely almost entirely on the appetite of the appropriate regulator to enforce the fines and penalties to the maximum amounts permitted in order to send a clear message to health plans that current behavior in which MCOs often violate state laws, regulations, or contract provisions, will not be tolerated*. It is our belief that the current fines being proposed are not sufficient to change behavior given the range of problems that continue to plague the mental health and substance use disorder systems of care, and the individuals' seeking services from the same.

Additional Proposals We Support:

Support for People with Mental Illness Involved in Criminal Justice System (Briefing Book) - Invests $6.2 million to provide mental health specialists and peers in mental health courts, $2.8 million to provide individuals with mental illness with housing and supports, and $9.6 to enhance and expand specialized Forensic Assertive Community Treatment (FACT) teams that support individuals in the community.

Opioid Settlement Funds (Aid to Localities – OASAS) - The Governor's Executive Budget proposal identifies deposits of $63.7 million from settlement agreements with opioid manufacturers and distributors in the Opioid Settlement Account (down by $148.5 million from $212.2 million in the SFY 2024 final budget). Unfortunately, the administrative requirements on providers that want to apply for the RFPs that are being rolled out by OASAS are onerous and often disincentivize providers from applying for these resources. This is not a problem that is rooted at OASAS but instead, an example of the quagmire of regulations and requirements required for the procurement of these and other funds due to complex regulations. New York State should immediately waive the vast majority of administrative and other requirements that are put on providers shoulders when they compete for these resources. Also, we see no reason why these funds should be limited to nonprofit agencies when for profit providers are also struggling to address the ongoing overdose epidemic with the resources they currently possess.

Overdose Prevention Programs for Schools (Aid to Localities – DoH) - Provides $272,000 for services and expenses of an opioid overdose prevention program for schools (same as level provided in SFY 2024 final budget). We support this proposal although we feel that, in total, the Executive Budget proposals included in the Governor's proposal are deeply insufficient given the epidemic numbers of overdoses across New York State. New York must be a leader when it comes to investments in prevention programs in schools and really anywhere community members gather, rather than dedicating just $250,000 (as proposed in the Governor's budget) for one program.

Align NYS and Federal DEA Requirements/Regulations for a 3 Day Supply of Narcotics (Article VII, HMH, Part U) - Aligns state law with revised DEA regulations that permit providers in hospital emergency departments to dispense up to a 3-day supply of schedule III-V narcotics (Buprenorphine) for the purpose of initiating maintenance or detox treatment while arranging for a patient referral.

Opioid Stewardship (HMH Article VII, Part U) - Deposits $63.7 million from settlement agreements with opioid manufacturers and distributors in the Opioid Settlement Account (down by $148.5 million from $212.2 million in the SFY 2024 final budget).

Mental Health and Addiction Ombudsman Program (Aid to Localities bill – OASAS) - Continues funding for the Community Health Access to Addiction and Mental Healthcare Project (CHAMP), a joint program of OASAS and OMH that provides New Yorkers with assistance with behavioral health insurance related barriers that delay or prevent access to and continuity of care for New Yorkers seeking MH or SUD treatment.

Expand Number of Youth ACT Teams (Briefing Book) - Provides $9.6 million to create 12 new youth Assertive Community Treatment (ACT) teams that offer treatment, rehabilitation, and support services to children and youth with serious mental illness, as well as children who are at risk of needing, or returning home from, high end services. We support the additional programs *however at the present time the rates of reimbursement associated with the operation of these services are inadequate and caseloads are far too high to maximize effectiveness or to attract new providers to offer this care.*

Expand Coverage for ACE Screening for Adults (Medicaid Scorecard) - Provides $1.2 million in SFY 2025 and $0.9 million in SFY 2026 for such expanded coverage.

Increase Reimbursement for Mental Health Services Provided in DoH Licensed Facilities and Private Practices (Briefing Book) - This proposal would appropriate $42.2M to increase reimbursement for

mental health services provided in DoH-licensed facilities and private practices. While we certainly support this initiative for its' ability to expand access to care in FQHCs and other primary care settings, we must also point out that this proposal **does not** address the need for rate increases for community-based MH and SUD outpatient clinics and other core services that are best suited to meet the needs of New Yorkers with complex behavioral health and other conditions. To implement true collaborative care, **New York must adequately reimburse both primary care and behavioral health specialty programs at an adequate reimbursement rate that covers the true costs of care, in order to create no wrong door for New Yorkers regardless of where they choose to seek treatment.**

Mental Health Services Provided to Children in Integrated Settings (Medicaid Scorecard) - While the NYS Council supports this proposal that would add $7.8M for MH services provided to children in integrated settings, the current proposal is a one-way investment in integrated care that increases rates for mental health services in primary care settings, but *fails to increase the rates in children's specialty programs such as the Article 31 Outpatient Clinic.* Given the increasing numbers of children and youth with complex mental health challenges, *an equal investment in the children's mental health continuum of care should be made to ensure New York's children and their families can get the focused care they need from mental health experts in a timely manner.* Across New York there are long waiting lists for services for children and youth across the state with too many children and youth having to board in Emergency Departments due to these waiting lists and the lack of an appropriate place for them to be referred to. **We urge this Committee to review the Healthy Minds, Healthy Kids Rate Reform proposa**l that seeks to increase rates for children's mental health services – specifically for the OMH Article 31 Outpatient Program and HCBS services. https://cccnewyork.org/coalitions/campaign- for-healthy-minds-healthy-kids/#

Loan Forgiveness for MH Clinicians Services Children (Aid to Localities bill - OMH) - The Executive budget proposal recommends an additional $4 million for the existing Community Mental Health Loan Repayment Program and expands the eligible work sites to include Office of Children and Family eligible locations to ensure highly qualified psychiatrists, psychiatric nurse practitioners and other licensed practitioners have the incentive to work with children and youth with high acuity needs as a means to qualify for loan forgiveness.

Increase Funding by $5M for Children's High Fidelity WRAP Program (Aid to Localities – OMH) - Eligibility determinations for Health Home care management services are undergoing reforms due to a new version Child Adolescent Needs and Strengths (CANs). The NYS Council strongly supports the development of a non-Medicaid dependent care coordination effort via Hi-Fidelity Wrap, which will allow counties to identify children and families at extremely high right of hospitalization and/or residential placement and link them with community services that will "wrap" the youth in care immediately.

$45M to fund **expansion of school- based mental health** for schools that need them. **(Briefing Book)**

Extension of Medicaid coverage **(Article VII, HMH, Part B)** for individuals age 19 or 20 who are living with their parents who meet certain criteria through May 1, 2029.

$4 million in Medicaid funding to expand and provide a 25% rate enhancement for the Partial Hospital program (for children and adults). (**Aid to Localities bill – OMH)**

Continuous Medicaid coverage (Article VII, HMH, Part M) for children from birth to 6 years old.

$1.7 million for **infant mental health consultations** at regional infant and toddler mental health resource centers. **(Medicaid Scorecard)**

$6.1 million for a 5% rate increase for **Early Intervention Services** and $500,000 for a rate modifier for rural and underserved community Early Intervention (EI) providers.

(**HMH Article VII, Part Z**) Makes permanent the ability of OMH, OASAS and OPWDD to utilize flexibility to develop new methods of services through demo programs.

(**Article VII HMH, Part B**) Extends OMH and OASAS ability to waive regulations for DSRIP projects through April 1, 2026.

(**From the Briefing Book)** Invests $6.2 million to provide mental health specialists and peers in mental health courts, $2.8 million to provide individuals with mental illness with housing and supports, and $9.6 to enhance and expand specialized Forensic Assertive Community Treatment (FACT) teams that support individuals in the community.

Thank you for this opportunity to share our thoughts regarding the Governor's Executive Budget proposal.

For more information regarding the content of this document, please contact Lauri Cole, Executive Director, NYS Council for Community Behavioral Healthcare, at 518-461-8200 or lauri@nyscouncil.org. For more information regarding the NYS Council for Community Behavioral Healthcare, visit our website at: www.nyscouncil.org.