



**Memorandum In Opposition**  
**S2451- Comrie /A10458- Bichotte-Hermelyn**

AN ACT to amend the not-for-profit corporation law, in relation to making certain not-for-profit corporations subject to the freedom of information and open meetings laws

The New York State Council for Community Behavioral Healthcare (NYS Council) represents the interests of 150 community-based mental health and addiction prevention, treatment, recovery, and harm reduction agencies that provide essential services in local communities across New York. These agencies are licensed, certified, or registered with the Office of Addiction Supports and Services, the New York State Office of Mental Health and (in many instances) the NYS Department of Health.

The NYS Council strongly opposes this legislation. We urge the bill sponsors and committee chairs to table the bills in favor of a full airing of concerns from stakeholders, and potential revisions to the bill language to address the following concerns:

- Subjecting private entities to public disclosure and open meetings requirements would impose burdens on these entities that State agencies have difficulty bearing themselves. Specifically, the imposition of the numerous requirements on covered entities in this legislation creates an undue burden on the agency and would require adding at least one additional full time staff person to respond to FOIA requests. With massive workforce shortages throughout the human services sector and continued threats to financial viability of many community-based agencies this is an unfunded mandate that community-based agencies cannot afford.
- Not-for-profit organizations are already subject to oversight from the attorney general, as well as from the licensing agencies (and if contractors or grant recipients, from the Comptroller), which sufficiently protects the public interest.
- The term ‘patient records’ is not a defined term in the Health Insurance Portability and Accountability Act and so, if the intent of the legislation is to exclude these records from disclosure, we are concerned that the records would not be adequately protected under this legislation
- It is not clear in the bill language whether clinical records under MHL 33.13 are excluded from disclosure.
- It is not clear whether patient identifying information or records under 42 CFR Part 2 (Confidentiality of Substance Use Disorder Patient Records) are excluded from disclosure.
- It seems clear that there would be antitrust implication if competing providers of services have free access to each other’s business information.

Based on the above concerns, we welcome further dialogue with the bill sponsors, Committee Chairs and staff and urge that this bill not be advanced this session.