



Testimony before the Joint Legislative Budget Committee

Topic: Mental Hygiene Executive Budget Proposals February 5, 2025

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 165 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.

We appreciate the opportunity to provide comments, through the lens of care recipients and the community-based providers that struggle to meet demand for services, on the Executive Budget Proposals in the OASAS and OMH executive budget proposal.

ACCESS TO CARE CRISIS

Across the state New Yorkers continue to face significant wait lists as they search for low-cost high-quality mental health and substance use disorders services through New York’s public mental hygiene system. There are numerous reasons for delayed access to care beginning with our inability recruit and retain the staff we need to meet current demand. We are largely unable to recruit essential workers due to inadequate reimbursement rates coupled with delay and deny tactics employed by Managed Care Organizations (MCOs) who will do most anything to hold on to funds due to providers for services rendered months and sometimes years ago.

Carving in behavioral health services to the state’s Medicaid managed care program has a failed social experiment with serious negative outcomes. The state’s insistence on continuing to pay scarce state resources to middlemen who are hired to ‘manage’ Medicaid benefits for vulnerable New Yorkers should be immediately reversed and reimbursement should be returned to the Medicaid Fee for Services system. The majority of MCOs hired by the state to ‘manage’ outpatient behavioral health services fail to follow state laws, regulations and contract provisions while New Yorkers wait for many to obtain care from a community-based provider that has to employ (on average) 5 full-time staff who do nothing but chase reimbursement from delinquent health insurers. To be clear, when insurers fail to reimburse providers on time and in full, providers are unable to pay adequate wages to staff, to increase the amount of care they provide to match demand, and to manage ever increasing operating expenses associated with running these programs.

New York State could save (at a minimum) \$400 million / year by carving out outpatient mental health and substance use disorder services from the state’s Medicaid managed care program where (mostly) for-profit middlemen (MCOs) are permitted to keep (at a minimum) 11% of the funds they are paid by the state for profit and ‘administrative expenses’ despite the fact that there is no value add associated with employing these companies. Adding insult to injury, state surveillance, monitoring and enforcement is deeply inadequate, and the state complaint process we

are told to use when insurers fail to meet their obligations, is designed to deter providers from filing complaints against these insurers. All of this has left our sector in a perpetual state of chaos.

EXECUTIVE BUDGET INVESTMENTS

OASAS investments proposed in the executive budget are important for the Office to perform its responsibilities however investing in the Office does not address the ongoing issues facing New Yorkers struggling with addictive disorders right now. And while it is useful to acknowledge recent data tracking overdose rates here in New York, most data summaries do not acknowledge the disproportionate impact of the ongoing overdose crisis on communities of color and other underserved populations. When you hear a state leader discuss a 17% decrease in overdose rates from 2023-2024, know that communities of color have not experienced a similar reduction in these rates and these New Yorkers continue to shoulder the burden for the state's failure to adequately invest in prevention, treatment, recovery and harm reduction services.

We all have a responsibility to look beyond the headlines to understand the serious and unrelenting burden on black and brown New Yorkers who continue to be caught in the eye of the overdose storm due to our apparent rush to deliver good news on this front. Going forward we urge you to read beyond the headlines and challenge state leaders who are obligated to show you the full picture.

At the end of the day, any New Yorker experiencing a mental health or substance use challenge should be able to access services on demand and in their local communities. We urge New York State lawmakers to address waiting lists and our inability to provide culturally competent services. ALL New Yorkers deserve the same access to care and an opportunity to recover in their local communities with the assistance and supports they need.

The NYS Council **SUPPORTS** the following SFY 25 executive budget proposals; however, we have added comments on areas where we think there needs to be an increase of funds or a second look at the impact of these proposals:

- While we appreciate the proposed **2.1% Targeted Inflationary Increase** for OPWDD, OASAS, OMH, Office of Children and Family Services (OCFS), Office of Temporary and Disability Assistance (OTDA), and the State Office for the Aging (SOFA), survey after survey administered to providers that offer mental health and substance use disorder services through the public systems of care reveal serious workforce shortages up and down the organization, but especially staff who work directly with care recipients. In addition, these programs are financially fragile and are unable to keep up with ever increasing costs associated with operating these programs. Our system of care needs a **7.8%** increase to address these and a myriad of additional factors that should be deeply concerning to all New Yorkers. In our opinion, delayed care for any reason is denied care, and in the long run, underfunding these programs will result in increased use of more acute services down the road.

The NYS Council **SUPPORTS** the following executive budget funding appropriations in the Executive Budget:

- \$8.36 million provided for **minimum wage funding** increases (up from \$8.22 million in SFY 2025).
- \$10 million as part of a five-year \$50 million investment **to upgrade OASAS's** data collection, reporting, and information technology systems, to 'utilize additional performance metrics, decrease administrative burden on providers, and meet the needs of the growing system of substance use disorder services.'

- \$5 million in annual funding to support **increased IT costs** and other incremental improvements to OASAS' systems.
- \$11.4 million to **reprocure** vocational, job placement, and day services for those with substance use disorders with an eye towards efficient and effective use of these funds and statewide availability of these services.
- **SUD/MH Ombudsman Program** - \$1.5 million and \$8.5 million is included as two appropriations for the SUD/MH Ombudsman program, similar to SFY 2025.
- \$22.5 million for **Certified Community Behavioral Health Clinics (CCBHCs)**.
- \$25 million for **BH Vital Access Provider program (VAP)**.
- \$74 million for OMH and \$37 million as the result of the **recoupment of funds paid to MCOs** that have failed to meet Behavioral Health Expenditure Targets required in their contracts with the state.

The NYS Council **SUPPORTS** the following executive budget proposals related to access to care for New Yorkers in need of mental health and/or substance use disorder services through the public mental hygiene system:

- **Increased access to methadone and other controlled substances**, including buprenorphine, as emergency treatment for substance use disorders by authorizing emergency medical technician-paramedics to administer to relieve acute withdrawal symptoms, and permitting providers to distribute 3-day supplies of buprenorphine.
- **OMH Supported Housing** - \$11.9M to increase stipends for 18,000 OMH Supported Housing units.
- **OASAS Mobile Medication Units**: \$2.5 million to expand the number of Mobile Medication Units (MMUs) that provide medication and other clinical services to those with opioid use disorders.
- **OASAS OTPs**: The FY 2026 Executive Budget includes \$300,000 in annual funding to provide **technical assistance to Opioid Treatment Programs (OTPs)** throughout the State through the creation of MAT Technical Assistance Center.
- Adds \$3M to the OASAS budget for expansion of **street outreach teams**, including integration with OMH's Safe Options Support (SOS) teams in high need areas.
- Adds \$2.8M for OMH to add **street medicine and street psychiatry** to Safe Options Support (SOS) teams across the state.
- Adds \$3 million to OASAS for **additional staff and operating costs**.

The NYS Council **SUPPORTS** the following executive budget proposals related to scope of practice issues that impact the ability for practitioners to perform at the top of their scope and in doing so, provide critical services to New Yorkers waiting for/receiving care:

- **Standardize Applied Behavioral Analysis (ABA)**. In January 2023, New York's Medicaid program began covering ABA services for eligible members under the age of 21. The Budget ensures the viability of the ABA benefit by aligning with the national Behavior Analyst Certification Board's direct supervision rules and adjusting reimbursement methodologies so that ABA providers are compensated equitably with their experience.
- **Allow Paramedics to Administer Buprenorphine**. To combat opioid use disorders more effectively, the Budget includes legislation allowing paramedics to administer buprenorphine.
- **Allow Practitioners to Dispense a Three-Day Supply of Opioid Use Disorder Medication**. Governor Hochul will introduce legislation to align with Federal regulations more fully by allowing all hospitals, including those with a full-time pharmacy, to dispense a 3-day supply of medications.

The NYS Council **SUPPORTS** the following executive budget proposals related to health insurance barriers impacting access to care:

- **Commercial Rate Mandate Compliance** - Provides \$1 million for additional staff to monitor compliance with Part AA – the new Commercial Rate mandate. OMH will provide network monitoring and surveillance and will work with DFS and DOH on compliance enforcement through citations and/or fines.
- **Update and Improve Network Adequacy Requirements** (for plans purchased through NY's Marketplace) - The Budget provides funding for the Department of Health to undertake a comprehensive review of New York's network adequacy standards, including considering regional variations, and increased enforcement of plan compliance through monitoring and penalties. This will ensure that consumers enrolling through the Marketplace have meaningful and timely access to the healthcare providers they need.
- **Strengthen Managed Care Contracting and Performance** - The Medicaid Model Contract between Managed Care Organizations (MCOs) and NYS spells out the services and benefits which MCOs must provide to Medicaid beneficiaries. The Budget creates a more robust process for holding MC plans accountable for their performance by imposing additional fines on plans who fail to meet Medicaid Model contract requirements.
- **MCO Penalties** - Would authorize DOH Commissioner to impose enhanced penalties (ranging from \$250 to \$25,000 per violation) on MCOs for failure to meet obligations and performance standards. The Commissioner may elect to impose penalties as an offset against payment due to the plan. Penalties shall be paid out of the administrative costs and profits of the plan and penalties cannot be passed on to providers or subcontractors.
- **Managed Care Organization (MCO) Tax** - In December 2024, the State secured CMS approval to implement a new Managed Care Organization (MCO) tax to leverage additional Federal resources. The Budget includes language to codify the structure of the proposed tax and establish a plan for spending tax receipts over the next three (3) years. **However, the Financial Plan assumes only two years of MCO tax revenue, totaling \$3.7 billion in net State Share benefit and it does NOT set aside resources for mental health and substance use disorder system needs despite our participation in Medicaid managed care.** At the present time the FY 2026 Budget includes \$1.4 billion State-share, which represents the first-year installment of targeted investments, including:
 - \$500 million to support the remaining Global Cap deficits, to ensure that the State does not need to make significant provider reimbursement or service reductions.
 - \$305 million to support investment in hospitals, including increases to hospital outpatient rates, support for new investments in hospital quality, continued support for the hospital maternal quality programs, and additional assistance to critical access and sole community hospitals.
 - \$300 million to expand operating support under the Safety Net Transformation Program to ensure resources are available for additional transformative projects.
 - \$200 million for nursing homes, assisted living programs, and hospice programs.
 - \$50 million to support an increase in the Medicaid physician fee schedule to bring Medicaid reimbursement closer to the Medicare level.
 - \$50 million to continue funding for the Mainstream Medicaid Managed Care Quality Program.
 - \$10 million to support enhanced rates for Federally Qualified Health Centers and D&TCs in the first year of funding. This includes both FQs and D&TCs.

The NYS Council also **SUPPORTS** the following executive budget proposals:

- **Advance Health Equity for Justice-Involved Youth** - To ensure a smooth transition back into the community for incarcerated juveniles, the Budget would expand Medicaid coverage to provide pre- and post-release services for juveniles in carceral settings under 21 years of age and up to 26 for those formerly in foster care. Eligible young people will receive targeted case management services, including physical and behavioral health screenings and diagnostic services to help bridge the coverage gaps related to re-entry.
- **Establish Hospital-Based Peer Bridger Services and Expand INSET** - New York will commit \$4 million to create a hospital-based peer Bridger program and fund expansion of Intensive and Sustained Engagement Teams (INSET). Research has shown that peers with lived experience are effective in engaging individuals with mental illness and can help service recipients manage crucial transitions of care. The hospital-based peer Bridger program will operate in Article 28 hospitals and help facilitate the transition of individuals leaving inpatient care and transitioning back into the community. INSET provides voluntary, peer-led support to individuals on their recovery journey via 24/7 multidisciplinary teams, led by peer specialists, which offer trauma-informed, culturally responsive care tailored to individuals' unique needs.
- **Expand Teen Mental Health First Aid for High School Students** - OMH will utilize a new \$1.5M investment to expand its teen Mental Health First Aid (tMHFA) training. Specifically, these funds will be used to train both teens and adults who work with teens to identify, understand, and respond to signs of mental health and substance use challenges, including the impacts of bullying and school violence.
- **Improve Maternal Mental Health** - The FY 2026 Executive Budget provides \$1.5 million to expand maternal mental health services. OMH will integrate behavioral health services into OB-GYN practices in underserved communities, ensuring accessible and comprehensive care for mothers.
- **Create Comprehensive Clinical Assessment Hubs** - The FY 2026 Executive Budget supports the creation of clinical assessment hubs staffed by multidisciplinary clinicians with an investment of approximately \$1 million. These hubs will provide specialized evaluations for children with complex behavioral and clinical needs, ensuring accurate diagnoses and connecting them to individualized services without requiring hospitalization.
- **Expand Clubhouses and Youth Safe Spaces** - The FY 2026 Executive Budget commits \$10 million to establish up to seven new clubhouses and four Youth Safe Spaces across New York State. Clubhouses are member-driven programs that provide individuals with serious mental health conditions access to social support, life skills training, employment resources, and a sense of community. Youth Safe Spaces provide a place for young people to access behavioral health wellness resources, foster positive relationships with their peers, and receive support in a comfortable setting, alongside friends and community members. support, life skills training, employment resources, and a sense of community. Youth Safe Spaces provide a place for young people to access behavioral health wellness resources, foster positive relationships with their peers, and receive support in a comfortable setting, alongside friends and community members.
- **Part O, Opioid-Related Proposals:** Update New York's controlled substance schedules to align with those of the DEA; Authorizes EMTs to administer buprenorphine to relieve acute withdrawal symptoms; and Permits providers to distribute a 3-day support of buprenorphine. Also removes stigmatizing language in various sections of law replacing "an addict or habitual user" with a person with a substance use disorder."

The NYS Council **OPPOSES** the following executive budget proposal:

- **Involuntary Commitment and Assisted Outpatient Treatment (AOT)** - Would amend the involuntary commitment standards in existing law to clarify the circumstances when a person with mental illness may be committed; Permits psychiatric nurse practitioners to make one of the necessary commitment certifications and requires clinicians to consider certain factors; Amends Kendra's Law to allow an individual's domestic partner to request AOT and updates the standards for re-entry into the program after an order expires; Upon admission to a hospital or received as a patient in a comprehensive psychiatric emergency program, the hospital or program shall make reasonable efforts to identify and promptly notify any community provider of mental health services that maintains the client on its caseload, and such provider shall be notified and included in discharge planning.

Increasing the use of forced treatment does not solve the real issues in the mental health system. Coercive policies further stigmatize and push people away from services, when New York should be investing in proven, voluntary solutions that empower individuals and support their long-term recovery.

New York already has models that work, including Intensive and Sustained Engagement Teams (INSET), Peer Bridger programs, Housing First initiatives, and Clubhouse expansion—many of which have been funded by the Governor and Legislature. These services must be scaled up, not overshadowed by coercion-driven policies.

- **Discontinue Prescriber Prevails** - The Budget removes the prescriber prevails provision, which mandates that Medicaid approve prior authorization for a prescription drug, regardless of whether the clinical criteria are met. Prescriber prevails is a crucial patient protection that allows patients and their health care providers to have the final say over medication decisions. Without it, Medicaid patients could be left without protection in a time when accessing the right health care is more important than ever.

The elimination of prescriber prevails language would be detrimental to New Yorkers who have often spent years working with prescribers to find the correct medications / combination of medications that will successfully address symptoms associated with serious mental illnesses. Biological differences require the ability for prescribers to work with clients to identify the appropriate combination of medications for the individual without interference by the state. Ultimately, elimination of prescriber prevails language will cost the state scarce resources as clients are forced to try alternative medications that will interrupt their recovery.

Coverage for Children's Mental Health and SUD Services Consistent with Coverage under the NY Medicaid Program

In addition to the above, the NYS Council wants to bring to your attention the disparate availability of critical services to address the youth mental health crisis. This has resulted in persistent waiting lists for outpatient and home-based care that range from several weeks to many months with some children and youth forced to live in hospital emergency rooms while awaiting an appropriate referral for follow-up care upon discharge from the hospital. We are requesting that the state require regulated commercial insurance and child health plus to provide coverage for children's mental health and SUD services consistent with coverage under the NY Medicaid Program.

Given recent changes at the federal level combined with the likelihood that the new administration may try to roll back insurance coverage protections and funding impacting vulnerable and disabled

Americans the most, New York State must act now to ensure our children, youth and families have the care they need.

Last year, New York State made history by enacting a new law that ensures in-network community-based mental health and substance use disorder provider agencies licensed by OMH and/or OASAS are reimbursed by commercial insurers at rates comparable to those paid by the NYS Medicaid Program for the same services. While the new law opens the front door to care for thousands of New Yorkers with commercial insurance who have struggled to find a community provider that can afford to provide it, the new law does not address mental health and substance use disorder coverage disparities that currently exist between Medicaid and commercial insurance benefits packages. For example, Children and Families Treatment Support Services (CFTSS) and Home and Community Based Services (HCBS) are two important services that offer a flexible array of non-acute care including therapy, rehabilitation services, and family and youth peer support within a child's home and community. These important services are required to be available to children, youth, and families with Medicaid coverage but not families with commercial insurance.

We ask that you prioritize a proposal, submitted by the NYS Council and numerous other organizations, that would require commercial insurers to provide the same broad range of services to children, youth and families with commercial insurance as those that are currently available to children, youth and families with Medicaid insurance.

Carve Out BH Outpatient Services from the NYS Medicaid Managed Care Program

The NYS Council also requests that the members of the NYS Legislature prioritize a proposal supported by 17 state associations and coalitions that are in support of a carve out of these services.

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 250 citations have been issued against MCOs for three primary issues:

1. failure to pay the government mandated Medicaid rate,
2. failure to oversee the third-party vendors insurers are permitted to deputize to act in their stead, and
3. 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 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.

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.