NYS Council for Community Behavioral Healthcare

Testimony before the Joint Legislative Budget Committee
Topic: Health / Medicaid Executive Budget Proposals
February 11, 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 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.

ACCESS TO CARE CRISIS FACING NEW YORKERS WITH MENTAL HEALTH AND/OR SUBSTANCE USE DISORDER CHALLENGES

In 2015, NYS leaders made the decision to carve mental health and substance use disorder services into the state's Medicaid managed care program. A decade later, all impacted stakeholders, other than the middlemen (MCOs) who are profiting from this scheme, are suffering under the weight of this failed social experiment. While (on the face of it) this may seem like a problem best resolved at the Mental Hygiene table, the fact that NYS Medicaid members are waiting for months and sometimes over a year to secure mental health and/or addiction services through the state's public mental hygiene system and specifically, through the state's **Medicaid managed care program**, is (in our opinion) a serious problem this Committee has the power to address. We are here today to again request your immediate assistance.

Across the state, New Yorkers continue to face significant wait lists as they search for low-cost, high-quality mental health and substance use disorder services in their local communities provided by voluntary agencies that work each day to deliver on the promises of the state's public mental hygiene system. There are numerous reasons for these delays and barriers to access this care, beginning with our inability to recruit and retain the staff we need to meet current demand. To be clear, we are largely unable to recruit essential workers due to inadequate reimbursement rates, coupled with sophisticated delay and deny tactics employed by Managed Care Organizations (MCOs) that will do anything to hold on to funds that were due to providers for services rendered months and sometimes years earlier.

The carve in of our services to the state's Medicaid managed care program has had serious and far-reaching consequences for care recipients, providers, and New York taxpayers. The majority of MCOs hired by the state to 'manage' outpatient behavioral health services are for-profit corporations. In large part, they fail to follow state laws, regulations, and contract provisions while New Yorkers wait for months to obtain care from a community-based provider who can serve them. To date, the state has issued more than 250 citations against

various MCOs who participate in the carve in of behavioral health services. However enforcement is anemic at best despite our constant complaints to the regulators including DoH/OHIP and DFS.

Providers are forced to hire on average 5 staff to work in their back offices chasing delinquent and inappropriate reimbursement from MCOs. Payment delays abound while providers are often forced to rely on agency credit lines to keep the lights on. I want to reiterate that MCOs are failing to pay claims on time and failing to implement state mandated COLAs and other Medicaid rate increases for many months and sometimes years after these increases are appropriated by the NYS Legislature.

New York State could save (at a minimum) $400 million/year by carving outpatient mental health and substance use disorder services from the state's Medicaid managed care program where (mostly) for-profit middlemen are permitted to keep (at a minimum) 11% of the funds they are paid by the state for profit and "administrative expenses." All this despite the fact that there is absolutely no value add associated with employing these companies. And adding insult to injury, state surveillance, monitoring, and enforcement is deeply inadequate, the state's complaint process is broken and deters providers from filing complaints against these insurers. All of this has left our sector in a perpetual state of chaos.

When insurers fail to reimburse providers on time and in full, these agencies are unable to pay adequate wagses 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.

We urge New York lawmakers in the strongest possible terms to level the playing field by removing insurer / middlemen from the equation and carve out outpatient mental health and substance use disorder services from the Medicaid managed care program. We urge this body and all NYS lawmakers to take action to return the responsibility for reimbursement of these services to the Medicaid Fee for Service system and reinvest the profits and administrative overhead expenses currently paid to insurers back into our systems of care. Given the fact that NYS has apparently decided to keep OPWDD services out of the state's Medicaid managed care program, we have to wonder why this failed experiment sits on the backs of Medicaid members who need and deserve mental health and substance use disorder services to address their needs while other vulnerable populations remain protected from MCO tactics. On the ground when you delay care for any reason, it is the equivalent of denying it. New Yorkers need and deserve better than this.

The New York State Council VIGOROUSLY SUPPORTS the following executive budget proposals:

- **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.

- **Authority to Fine Plans for Failure to Meet Contractual Obligations**
  This year's executive budget proposal on this topic presents a revised version of last year's proposal to establish authority for DOH to fine MCOs (defined as any Article 44 plan, including MLTC plans) due to failures to meet their contractual obligations as established in the MCO's Model Contract or other state or federal regulations.

  The main differences from last year's proposal are that:
  - The term "liquidated damages" is no longer used.
  - Instead of giving plans a right to appeal, plans would automatically get a formal hearing before a fine is assessed.
  - There is no 60-day timeline for plans to pay fines.

  Fines may vary from $250 to $25,000 per violation, as determined by DOH based on the severity of noncompliance, and each day of noncompliance may be counted as a separate violation. Each instance or day of failing to furnish required medical services to an enrollee may also be counted as a violation. DOH could collect fines through withholds of capitation payments as needed. Fines may not be "passed through" to any network provider or subcontractor [HMH, Part H, Section 9]. The Budget projects savings of $5 million per year from these fines.

- **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.

- **Aggregate Medicaid Rate Increase for FQHCs and DTCs.** The Budget proposes an "aggregate increase" of Medicaid payments to federally qualified health centers

(FQHCs) and diagnostic and treatment centers (DTCs) of $20 million for FY 2026. Unlike the similar increases for hospitals, nursing homes, and ALPs last year, these increases would be made ongoing (in FY 2026 "and thereafter") [HMH, Part F, Section 5]. These increases are to be funded by revenue from the MCO tax and may be suspended if funds are not available from that source [HMH, Part F Section 7].

- **Aggregate Medicaid Hospital Rate Increases and MCO Tax Resources.** The Budget proposes to make further increases to Medicaid hospital payments. In the FY 2025 Budget, Medicaid payments to hospitals were increased by 7.5% for inpatient and 6.5% for outpatient services, with a promised additional "aggregate increase" of $525 million overall for FY 2025, which has not yet been administered. These increases are to be funded by revenue from the **MCO tax** and may be suspended if funds are not available from that source [HMH, Part F Section 7]. Our association supports appropriation of these resources to the state's general hospitals.

The NYS Council SUPPORTS WITH MODIFICATIONS the following executive budget proposals:

- **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 executive budget proposal 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, despite the fact that the methodology for calculating the amount each MCO will pay in taxes is directly related to how many Medicaid managed care enrollees the insurers covers, the Governor's proposal does NOT set aside resources for mental health and substance use disorder system needs – this despite the fact that tens of thousands of New Yorkers with mental health and substance use disorder conditions are enrolled in the state's Medicaid managed care program.

  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 New York State Council implores this committee to set aside 25% of the resources New York will realize as result of this federal program, to address severe workforce shortages and rates that do not cover the cost of care – for licensed OASAS and OMH agencieslicensed, certified or otherwise regulated by the Offices.

The NYS Council OPPOSES the following executive budget proposal:

- **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.

CRITICAL PROPOSALS THAT WERE OMITTED FROM THE GOVERNOR'S EXECUTIVE BUDGET PROPOSAL BUT THAT SHOULD BE ADDRESSED:

Commercial coverage for Children's Mental Health and SUD Services must be consistent with current coverage requirements under the 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 requests 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, but that unfortunately was not included in the Governor's executive budget"

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.

For more information regarding this testimony, please contact Lauri Cole, Executive Director, NYS Council for Community Behavioral Healthcare.