



**JOINT LEGISLATIVE PUBLIC HEARING ON
2020-2021 EXECUTIVE BUDGET
PROPOSAL: MENTAL HYGIENE**

FEBRUARY 3, 2020

**TESTIMONY BY:
LAURI COLE, LMSW
EXECUTIVE DIRECTOR**

Good afternoon. Thank you to the chairs and members of the committees for this opportunity to provide testimony on behalf of mental health and substance use disorder/addiction prevention, treatment and recovery providers across New York. I am Lauri Cole, Executive Director of the NYS Council for Community Behavioral Healthcare (NYS Council). We are a statewide membership association representing about 100 behavioral health organizations that provide mental health and substance use disorder/addiction prevention, treatment, recovery and harm reduction programs and services for tens of thousands of New Yorkers each day. Our membership includes community-based agencies, hospitals, and counties providing a broad array of behavioral health services.

The NYS Council's primary mission is to ensure access to and continuity of care for children, youth, individuals and families seeking services from the public mental hygiene system. We appreciate your efforts over the years to support the behavioral health community and to ensure that the role of community-based organizations (including our behavioral health care members) is recognized within the State's health care delivery system and payment reform efforts.

We come to you again this year with an urgent request that is essential if we are to stabilize our system of care and get out in front of two devastating public health crises—the Opioid Epidemic and increasing rates of completed suicides in certain populations that we serve. An historical lack of investment to community-based providers is jeopardizing the entire human services sector where access to and continuity of care are now inconsistent at best in many communities across the state. *We urge you to make a significant and ongoing investment in the human services sector so that we, as a state, can continue to address the myriad health issues our clients face each day.*

Our testimony today highlights various high priority areas but all of our concerns relate in one way or another to the historical lack of funding in our sector and the negative consequences this is having on the overall health and wellbeing of all New Yorkers. Our core belief is that New York must immediately protect and enhance access to care for vulnerable children and adults who rely on mental health and substance use disorder/addiction treatment service providers as their primary connection to all of their treatment and recovery needs.

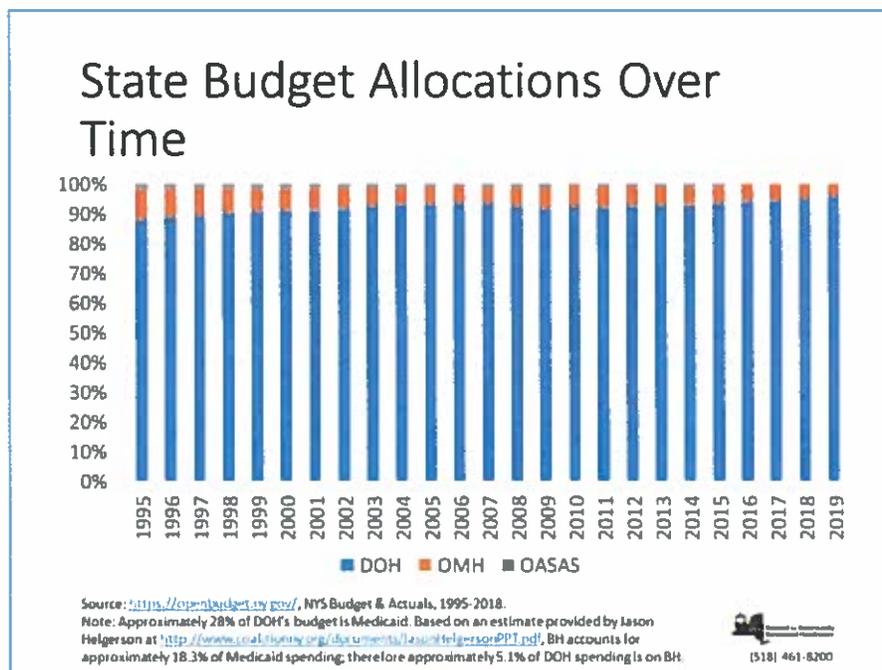
PRIORITY: "3For5 Campaign" – Investment in the Human Services Sector

The NYS Council has joined with more than 40 organizations, representing thousands of agencies across New York that deliver services to over one million vulnerable New Yorkers, to ask State decision makers to provide a long term – *and long overdue* – investment in the human services sector. These organizations provide supports and services for mental health, substance use, developmental disabilities, child welfare, foster care, aging, domestic violence, homelessness, food pantries and others. **We are requesting a three-percent funding increase every year for the next five years that will help to stabilize these organizations that are already at a tipping point due to severe workforce shortages, ever increasing operating expenses, and a long-term failure by state government to invest in our sector.**

The importance of these agencies cannot be overstated. But, despite the increasing need for our services, and our continued plea that financially we are at a breaking point, the Governor's

executive budget does not include funding necessary for the financial health of human services providers and the millions of people we serve. We recognize previous programmatic and workforce investment, notably the salary increases for direct care workers in the developmental disabilities, mental health, and addiction recovery fields and we are grateful for these increases, but more is needed to combat a decade long (and in the case of the mental health and substance use provider community a two-decade long) divestment. Our requested 3For5 funding is designed to increase rates and funding such that our organizations can begin to address the operational challenges they face, as well as the critical workforce shortages that are crippling them.

Existing statute includes an annual COLA increase for these providers however, over the last decade, only some of the human services sector has received these increases, and only sporadically. This has resulted in a loss of close to \$1 billion in promised financial support for the human services sector as a whole. Timely access to care, which is the foundation for being able to address a myriad of issues that, without intervention, become acute care emergencies, is in jeopardy. Many agencies maintain waiting lists for care, facilities are deteriorating, and agencies are unable to offer competitive, living wages to attract and retain the skilled staff necessary to deliver quality care and support.



These fiscal realities, unfortunately, are now contributing to increased homelessness, increased hospitalizations, and ultimately greater cost to taxpayers. Our agencies are the safety net for New Yorkers in greatest need. Many of our providers are now and by any yardstick in fiscal crisis. They are unstable and in danger of closing due to inadequate funding.

Again, we are asking that vital investments be made in our sector during the 2020-21 budget session. Specifically, we ask the legislature to commit to a three percent increase across rates and contracts each year for the next five years.

PRIORITY: Children's Behavioral Health

The children's behavioral health system is severely under-funded, and because of this, New York's children and youth are suffering as suicide is now recognized as the **second-leading cause of death for children ages 15 to 19, and the third-leading cause of death for children 5 to 15**. Despite the State's efforts to increase mental health and substance use disorder services for children and families and to improve access to care, inadequate funding for services and staffing has led to long waiting lists and a bottleneck of children and their families who are unable to access care.

We must prioritize children's mental health and substance needs across the state's investments and systems. The current behavioral health system for children is under-developed and sometimes unable to respond to the mental health crisis facing our most vulnerable citizens.

*Joining with other organizations as part of the **Campaign for Healthy Minds Healthy Kids**, the NYS Council asks that the State ensure timely access to necessary clinical services; make available a range of evidence-based interventions that have proven effective; and hold accountable the health plans and insurance carriers charged with and paid to deliver behavioral health services to New York's children. We also ask for a moratorium on funding cuts to children's behavioral health care as well as an increase in access to services through continued Medicaid redesign that recognizes changes that have taken place across the children's system since the children's redesign began almost 8 years ago.*

PRIORITY: Behavioral Health Parity Compliance Fund

The NYS Council has worked for many years to educate state leaders and lawmakers and to provide concrete evidence of the many barriers that prevent or delay access to and continuity of care for mental health and substance use disorder/addictions care recipients. We have also described in detail the consequences associated with delayed/denied care as well as delayed/denied reimbursement to the agencies that provide care. A lack of compliance with behavioral health parity laws is a prime and ongoing example of this.

We wholeheartedly support proposals that strengthen efforts to ensure compliance with behavioral health parity laws so New Yorkers are guaranteed the same access to mental health and substance use disorder/addictions care as they are physical health care. The Governor's proposal to establish the Behavioral Health Parity Compliance Fund demonstrates his support for New Yorkers with substance use disorder/addictions or mental health conditions, their right to access the services and coverage they are legally entitled to, and the complexities associated with utilizing mental health and substance use disorder insurance coverage.

This new proposal requires DOH and DFS, in consultation with OMH and OASAS to promulgate regulations to ensure compliance with State and Federal behavioral health parity statutes by October 1, 2020. The regulations would require health insurers to provide mental health and SUD coverage consistent with State and Federal behavioral health parity statutes, and the

regulatory framework would require the state to ensure adequate surveillance, monitoring and enforcement in the absence of compliance with these laws.

The proposal also includes continued funding of \$1.5 million to support the Behavioral Health Ombudsman Program, along with authority to utilize up to \$1.5 million in funds received from levying fines on the plans in the newly established Behavioral Health Parity Compliance Fund. As one of the partner organizations working on the state's first of its kind Mental Health and SUD Ombudsman Program(CHAMP) we can attest to the tremendous need for assistance for New Yorkers who are unable to access care, stay in care or receive the proper after care due to the incredible barriers some insurers put up in their efforts to avoid responsibility for care, and for comparable coverage for mental health and substance use disorder / addictions care as they do for physical health.

Finally, the proposal focuses attention on the continued problems our providers face when health plans willfully and inappropriately deny claims for reimbursement. This continues to be a very serious problem in our world that jeopardizes access to and continuity of care for far too many New Yorkers. We need better surveillance, monitoring and enforcement by state regulators to ensure full compliance all state laws and regulations governing timely access to care as well as timely payment of the organizations that provide that care.

The NYS Council vigorously supports this proposal and encourages the NYS Legislature to do the same.

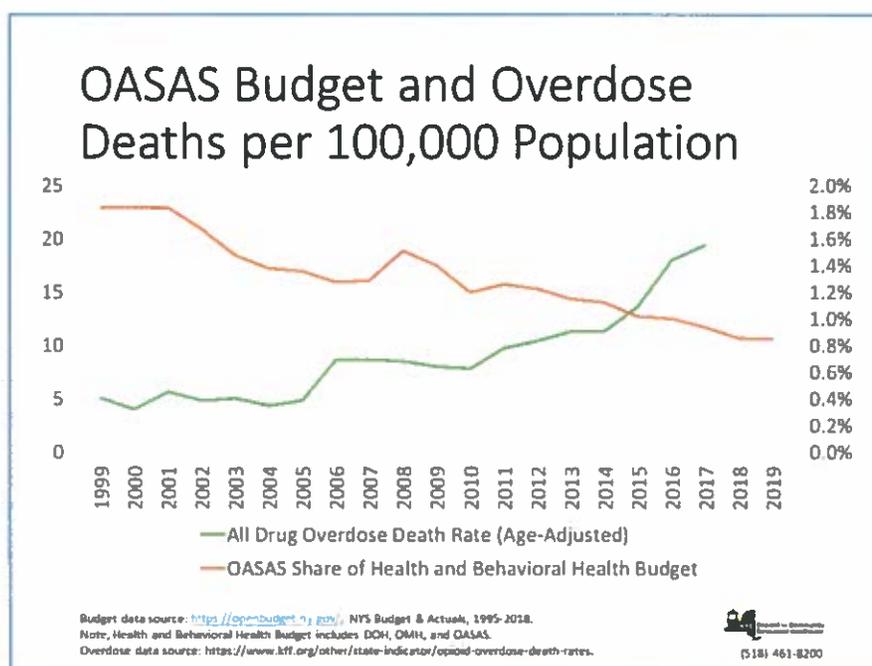
PRIORITY: Disparity in Commercial Rates

Mental health and substance use disorder providers are on the front lines every day providing treatment, and support to over one million New Yorkers. In order to decrease the profound impacts of the opioid epidemic, the increase in suicide completions, and the increase in homelessness and incarceration, we need a robust, healthy, community-based sector. But our sector faces a fiscal crisis due to inadequate rates across the board. In our sector there is a huge disparity between rates paid to providers serving New Yorkers with private health insurance as opposed to those with Medicaid insurance coverage. We have come before this body each of the last 12 years and requested a resolution to this situation. The Department of Financial Services must require the insurers it regulates to pay rates that are on par with the Medicaid Managed Care and Medicaid Fee for Service rates, and all rates must approximate the actual cost of care. DFS tells us it does not have the authority to require the insurers it regulates to pay rates that are on par with Medicaid rates that the Department of Health has stated are actuarially sound. **Unfortunately, this results in a two tiered system in which a client with commercial / private insurance may have a far more difficult time finding care since many providers cannot afford to accept rates from private health plans that are often 1/3-1/2 the amount paid by Medicaid for the same service delivered by the same individual at the same agency, the only difference being the insurance card in the pocket of the client seeking care.**

The NYS Council urges you to assist us to ensure access to timely care for all New Yorkers via payment of rates that are cost-based. No New Yorker should have to search endlessly for care due to the type of insurance benefits they have.

PRIORITY: Opioid Epidemic and Opioid Settlement Funds

As the state continues to face an Opioid Epidemic of profound proportions, we need to ensure that OASAS and its providers have the resources and funding to meet the demands for prevention, treatment, recovery and harm reduction services in every corner of the state. While we support the Governor’s proposal banning fentanyl analogs, this is not nearly enough. There needs to be an infusion of **new funds to support the OASAS and OMH workforces that are hemorrhaging staff due to an inability to recruit or retain qualified employees.**



It is very likely there will be funds available when the Opioid Settlement is settled. *We ask that this money be used to enhance the availability of prevention, treatment, recovery and harm reduction services for clients with substance use/addiction issues as well as those who are struggling with co-occurring disorders.* This will require significant investments in the programs and services that today are desperate for rate increases and other investments to include:

- Loan Forgiveness Programs to help attract and retain valued employees
- Scholarships to attract and retain mission-focused peers, direct care workers, and others to the field
- Funding to assist OASAS providers as they struggle to pay costs associated with marketing and advertising for qualified employees

PRIORITY: Healthcare Transformation Fund

As we have mentioned throughout this testimony, there is an overwhelming need for an immediate infusion of additional resources in the community-based provider sector and more than enough indisputable evidence that shows New York State is not adequately investing in the community based organizations that the sector relies onto keep vulnerable New Yorkers out of more costly acute care settings, and to assist them once they are discharged so that they do not return to the hospital.

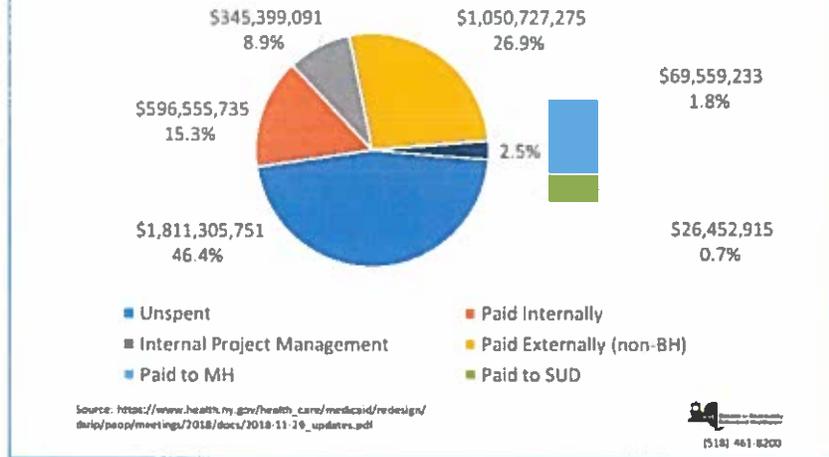
Yet another example of this is the State's Health Care Transformation Fund (HCTF) which was established "for transfer to any other fund of the state as authorized and directed by the director of the budget to support health care delivery, including for capital investment, debt retirement or restructuring, housing and other social determinants of health, or transitional operating support to health care providers." There is no specific language in the statute that delineates which type of provider this applies to, however, the funds to date have only been distributed to institutional care providers. To be precise, funds from the acquisition of Fidelis Care by Centene Corp., the CVS-Aetna merger and other business transitions were disbursed to hospitals and nursing homes with no similar state plan to assist the rest of the healthcare delivery system. We do not begrudge our hospital and nursing home colleagues the resources they need to remain vital. But we believe that all areas of the healthcare sector should and must benefit from these new resources.

The NYS Council has been leading a group of 23 regional and statewide associations that represent all areas of the community-based health and behavioral health continuum of care. *We have been working to secure a set aside of 25% from any future disbursements from this or any other account/s holding funds realized from settlements or business transactions in the healthcare sector, or from any other sources where the intent of the funds is to support the health care infrastructure or health care improvement. We are desperate for your support as we continue to elevate the lack of parity in the distribution of such funds which continue to come in to the state.*

PRIORITY: DSRIP Set Aside for Community-Based Providers

Community-based organizations have significant and growing needs to add new sites, renovate, and modernize existing physical plants, hire workers for new construction and renovation projects, restructure debt and access start-up funds. We seek to upgrade, enhance, and grow our programs and services in order to provide integrated care that is in line with the state's focus on the Quadruple Aim. However, we have historically received a tiny fraction of any funding from the State, as described above, as well as a fraction of the PPS DSRIP funds – 2.5% of the total funding.

How PPSs Have Used DSRIP Funds



The NYS Council is working with our partners at CHCANYS as well as a group of associations that represent community-based providers to ensure that 40% of any incoming DSRIP 2.0 funds be set aside and allocated for the community-based sector. We urge you to join us in this fight as we again seek parity in the distribution of new resources that may become available under the DSRIP 2.0 Initiative.

In conclusion, we are asking for your assistance to stabilize the entire human services sector, and particularly the behavioral health providers. Our priority areas seek to emphasize the historical lack of funding in our sector and the negative consequences this is having. We strongly believe that we must do everything within our power to protect and enhance access to care for vulnerable children and adults who rely on mental health and substance use disorder/addiction treatment providers as their primary connection to treatment and recovery from living with these complex challenges.

Thank you for your time and the opportunity to comment. And, thank you for your public service and your commitment to the behavioral health field. We look forward to working with you throughout the remainder of the legislative process.



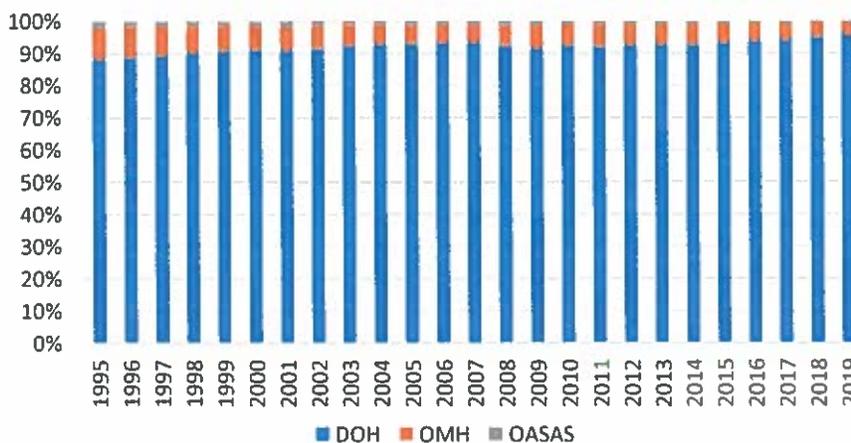
NYS Council for Community Behavioral Healthcare

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How Behavioral Health Providers Have Been Shortchanged

A story in a series of charts

State Budget Allocations Over Time

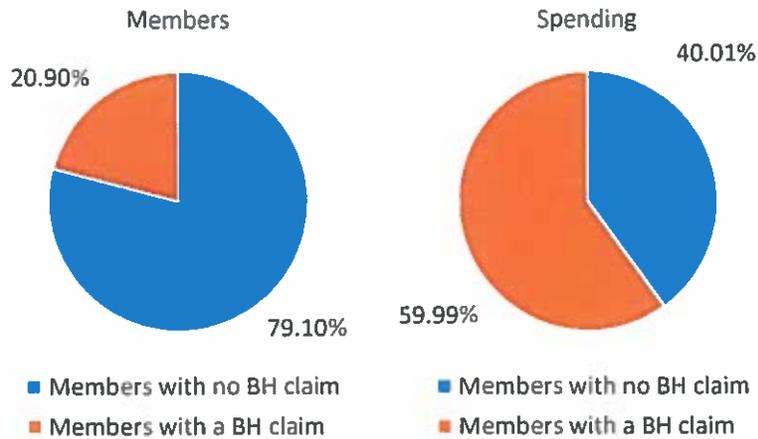


Source: <https://openbudget.ny.gov/>, NYS Budget & Actuals, 1995-2018.

Note: Approximately 28% of DOH's budget is Medicaid. Based on an estimate provided by Jason Helgeson at <http://www.coalitionny.org/documents/JasonHelgesonPPT.pdf>, BH accounts for approximately 18.3% of Medicaid spending; therefore approximately 5.1% of DOH spending is on BH.

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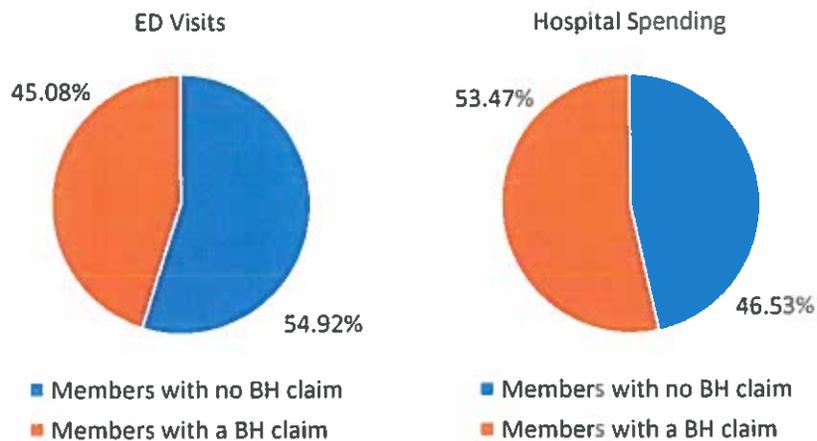
Medicaid



Source: Measuring Physical and Behavioral Health Integration in the Context of Value-Based Purchasing. Gregory Allen, MSW, December 7, 2016 available at <https://nashp.org/wp-content/uploads/2016/12/Allen-Slides.pdf>.

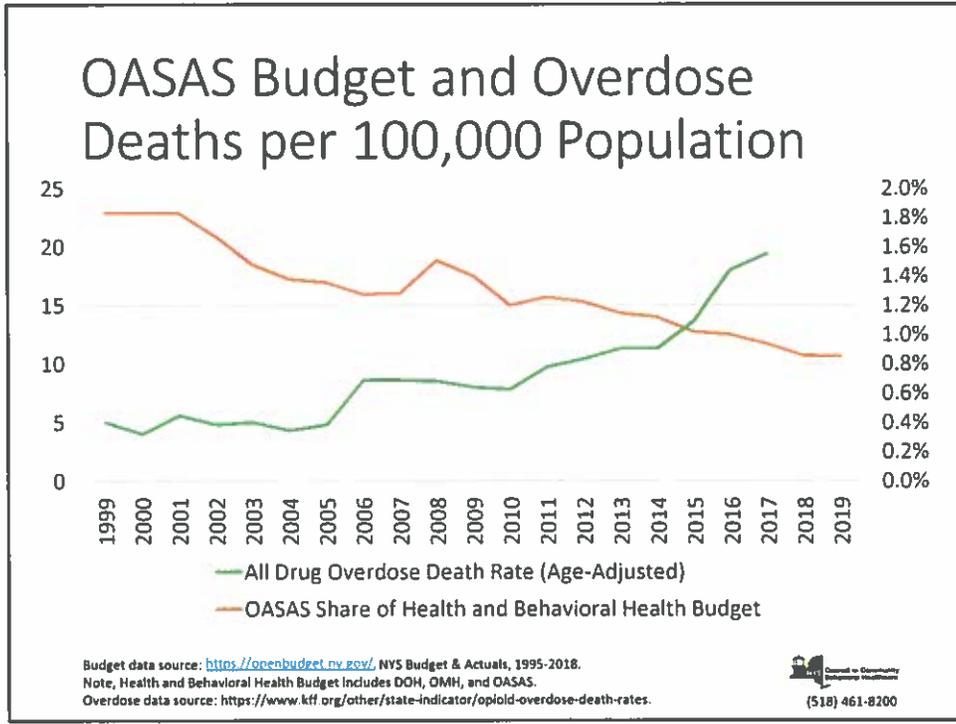
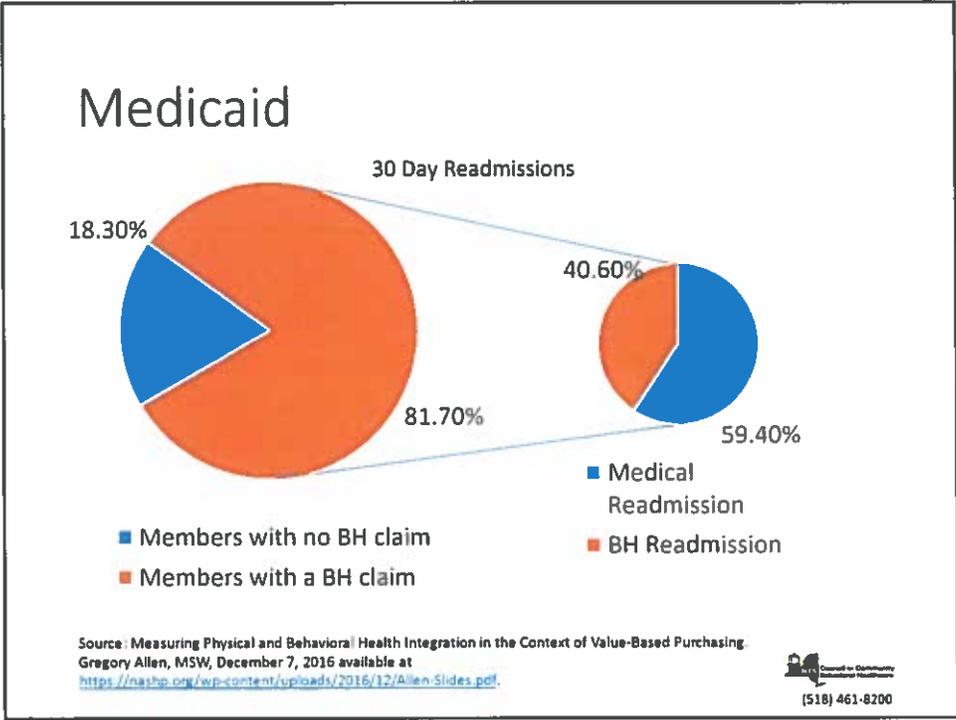


Medicaid

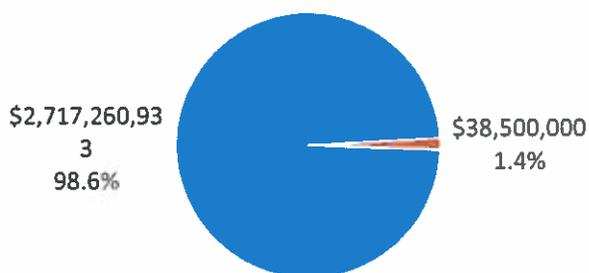


Source: Measuring Physical and Behavioral Health Integration in the Context of Value-Based Purchasing. Gregory Allen, MSW, December 7, 2016 available at <https://nashp.org/wp-content/uploads/2016/12/Allen-Slides.pdf>.





Capital Funding: HEAL NY (2006-2012)

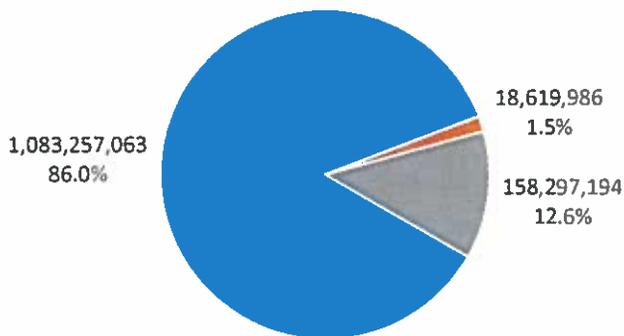


- Funds for which community BH providers were not eligible to apply
- Funds for which community BH providers were eligible to apply

Source: https://www.health.ny.gov/health_care/managed_care/appextension/docs/f-shrp_annual_report_oct_sept_2012.pdf



Capital Funding: Capital Restructuring Financing Program (2017)

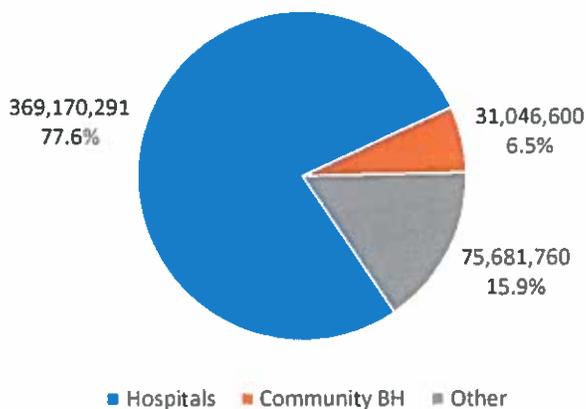


- Hospitals
- Community BH
- Other

Note: Other includes FQHCs, primary care providers, nursing and long term care facilities, and other social service providers.
 Source: NYS press release (2017). Governor Cuomo Announces Funding to Strengthen Health Care.



Capital Funding: Statewide Healthcare Facility Transformation Program Phase I (2017)

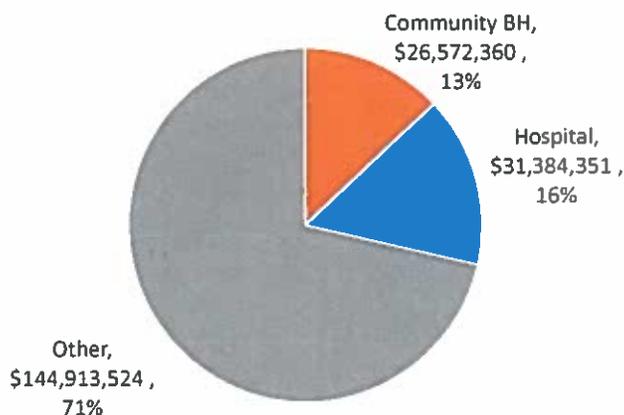


Note: Other includes FQHCs, primary care providers, nursing and long-term care facilities, and other social service providers.

Source: NYS press release (2017). Governor Cuomo Announces Funding to Strengthen Health Care.



Capital Funding: Statewide Healthcare Facility Transformation Program Phase II (2019)

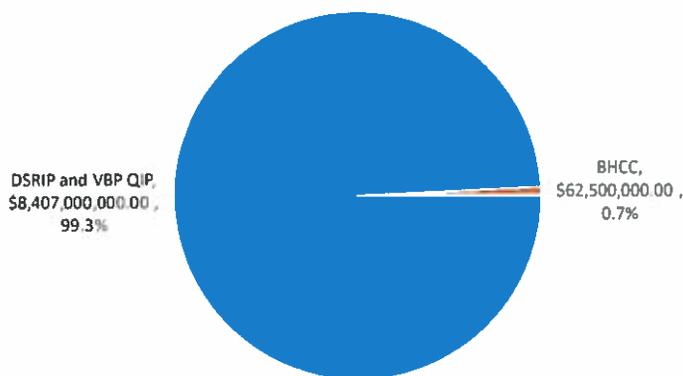


Note: Other includes FQHCs, primary care providers, nursing and long-term care facilities, and other social service providers.

Source: <https://www.governor.ny.gov/news/governor-cuomo-announces-204-million-funding-strengthen-and-preserve-access-high-quality-health>.



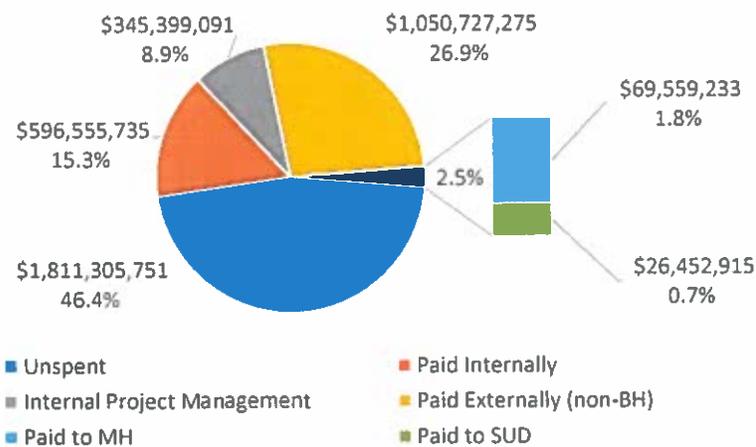
Transformation Funding: DSRIP, VBP QIP and BHCC (2015-2020)



Source: NYS Department of Health, VBP QIP Funding and Pairing Tables, September 2018.
<https://www.omh.ny.gov/omhweb/bho/bh-vbp.html> and
https://www.health.ny.gov/health_care/medicaid/redesign/dsrp/



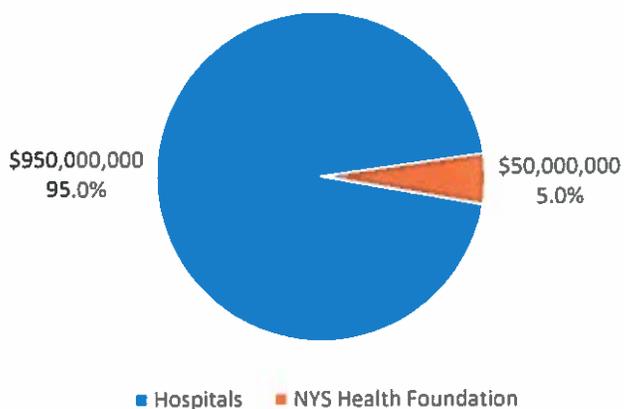
How PPSs Have Used DSRIP Funds



Source: https://www.health.ny.gov/health_care/medicaid/redesign/dsrp/paop/meetings/2018/docs/2018-11-29_updates.pdf



MCO Conversions: BCBS (2002)

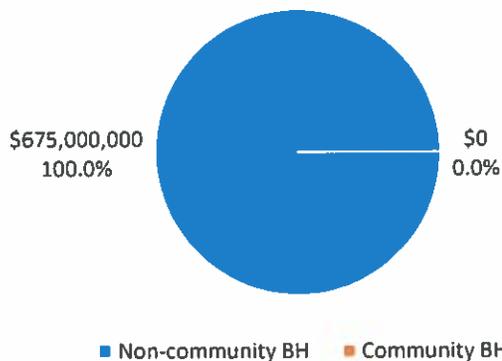


Source: <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.22.4.100>
Note: During calendar year 2017 and 2018, 3% of NYS Health Foundation's grants went to behavioral healthcare providers.



MCO Conversions: Fidelis (2018)

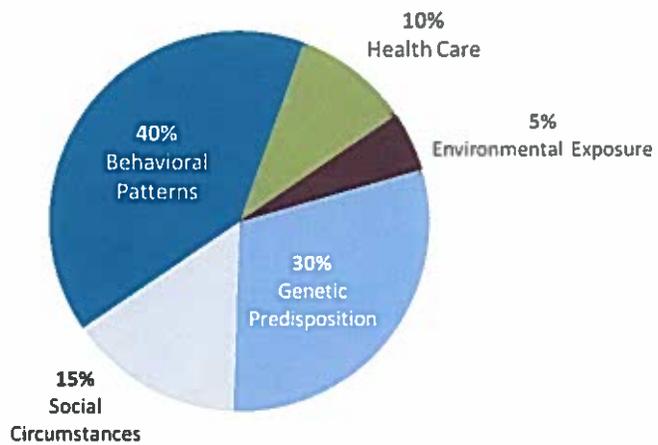
Portion of Fidelis Funds Allocated to Providers



LaMantia, J. Behavioral Health, Home-Care Providers Want a Piece of Fidelis Windfall, New York Association of Psychiatric Rehabilitation Services, Inc., Campanile, C. Cuomo quietly raises hospital Medicaid rates as election nears. *New York Post*, November 2, 2018.



What Impacts Health Outcomes?



Source: Schroeder, Steven A. We Can Do Better – Improving the Health of the American People. N Engl J Med 2007;357:1221-8

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