NYS Council for Community Behavioral Healthcare

TESTIMONY ON THE 2015-2016 STATE BUDGET
SUBMITTED TO THE
JOINT LEGISLATIVE BUDGET COMMITTEE ON MENTAL HYGIENE

Submitted by Lauri Cole, Executive Director
New York State Council for Community Behavioral Healthcare
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Good Afternoon. My name is Lauri Cole and I am the Executive Director of the NYS Council for Community Behavioral Healthcare ("The Council"). I am here today representing 100 community based organizations that provide a broad range of mental health and substance use/addiction prevention, treatment, and recovery programs and services in local communities across New York. Our members are the general hospitals, counties, and freestanding agencies in your districts that provide critical safety net behavioral health services to some of New York's most vulnerable individuals.

First, let me begin by saying thank you for your ongoing support of the behavioral health community. As you know, New York State is undergoing a major reform of its health care system including both physical health and behavioral health services. We are witnessing the evolution of Performing Provider Systems that will focus on integrated care and the continued expansion of Patient Centered Medical Homes, Health Homes, and Accountable Care Organizations. A central focus of all of these models is the integration of care. Our behavioral health providers stand ready to accept these changes and challenges and look forward to a system ultimately better prepared to meet the needs of the entire health care population. We can only do this though with your assistance.

There are several areas I will focus on today but our two major priorities I want to bring to your attention are 1) ensuring protections for consumers and providers in managed care contracting particularly related to the "all products" clause, and 2) dedicated funds for behavioral health for interoperability to facilitate integrated care.

MANAGED CARE READINESS

Behavioral health providers are in the midst of a major transformation into managed care. The NYS Council and our member's support this transformation if it means improved care to patients with behavioral health needs under the new managed care model. We also support investments that are targeted to ensuring a seamless transition, as well as

adequate State oversight of this transition. We believe that to ensure the success of this transition, and to ensure that behavioral health providers are provided with a level playing field, the following areas need to be considered and we request your assistance as one of our top priorities.

Commercial Rate Parity

Over the last couple of years, the NYS Council advocated for, and the NYS Legislature supported, the inclusion of budget language that would ensure rate continuity during the transition to managed care by way of the payment of Ambulatory Patient Groups (APGs) "government rates" to Office of Mental Health (OMH) and Office of Alcoholism and Substance Abuse Services (OASAS) outpatient clinics for a period of time beyond the implementation of managed care. This transition will ensure a period of financial viability for providers as services all move into managed care.

We thank you for this support but now ask that you consider for this year an amendment to the NYS statute which would permit the Department of Financial Services to regulate commercial rates. While a transition period will be helpful, ongoing regulation of commercial rates will be necessary to ensure the continued viability of our behavioral health providers.

Mandatory Contract Language Changes

In addition to rate regulations, we also urge lawmakers to consider proposing a package of mandatory contract language changes/additions that we believe are critical as we continue our work to protect access to care for the behavioral health consumers served each day.

These include:

- Prohibition of the use of the "all products" clause in contracts between managed care plans and behavioral health providers, which have the effect of limiting access to care. In New York State, managed care organizations (MCO) are <u>not prohibited</u> from including "all-products" clauses in contracts with behavioral health providers, which requires the provider to participate in all products offered by the MCO (currently and prospectively), each with a separate fee schedule. The impact of these clauses is that it creates an "all or nothing" choice for the provider, either agreeing to contract with the MCO, or not contracting at all and losing all business with the MCO.

- Investigation and punishment of plans that are not following the law by paying APG "government rates" to OMH and OASAS outpatient providers. As noted above, the payment of government rates was secured in law several years ago but it is our understanding that not all plans are adhering to this law.

- Contracts must require payment of interest in cases of late payments by the plans. Delayed payments must not be accepted as it threatens the viability of providers.

- For children's providers, we propose the ability to contract using a pay per episode of care model rather than a per member per month for certain settings which we believe will incentivize step down care rather than truncated treatment for this most vulnerable population.

NEW BEHAVIORAL HEALTH FUND

As our second major priority issue, the NYS Council is requesting that the Legislature consider capitalization of a new behavioral health fund (utilizing one-time windfall money) designed to enable behavioral health providers to become interoperable and take advantage of recent changes to NYS telehealth regulations to the benefit of behavioral health clients across New York.

Such funds could also be used to make the following improvements thus enabling behavioral health providers to upgrade their facilities to meet regulations for the delivery of integrated services.

- Funds to purchase software upgrades to ensure electronic health record interoperability between behavioral health and primary care providers.

- Funds for Clinical Decision Support and Computerized Physician Order Entry Systems. This is especially needed for opiate treatment providers that are required to comply with medical and dispensing requirements as well as the new electronic prescribing requirements.

- Funds to bring non-Medicaid billing providers within compliance. This includes purchasing billing software for many OASAS residential providers, given the anticipated residential reform, in which they will bill Medicaid – many for the first time. This will also apply for future "i" service providers, many of which currently do not bill Medicaid, but excel in the delivery of recovery oriented rehabilitation services.

- Physical plant upgrades to comply with requirements in order to be authorized to deliver integrated services to include:
    - creation of new exam rooms (2/3's of which must ADA accessible);
    - fire protection upgrades;
    - HVAC upgrades;
    - new restrooms (must offer for staff and patients separately); and
    - closets for storing medical waste, linens, etc.

OPIOID / HEROIN CRISIS

The NYS Council was also pleased that the Executive Budget proposal includes an additional $5 million to enhance current funding to strengthen the state's response to the Opioid/Heroin crisis facing our state. We agree that education and outreach are critical components of a comprehensive response. We ask that you not only support this investment, but we also urge lawmakers to address the continued and increasing unmet treatment needs of the service system to include additional funding for the following:

- Strengthen Prevention in Schools and in the Community
- Increase availability of Early Intervention and Family Services
- Enhance Availability of Specialty Services for Veterans, Rural Communities, Adolescents/Young Adults, Medication–Assisted Treatment, Criminal Justice Involved individuals
- Strengthen Detox Services in Community Settings

VITAL ACCESS PROVIDER FUNDING

We thank lawmakers for last year's investment of $110 million to help prepare our behavioral health system for managed care and provide needed stability for agencies suffering from significant deficits associated with continued operation of outpatient clinics.

This year's executive budget includes additional funding which the NYS Council strongly supports and recommends that the Legislature approve. However, we also recommend that these VAP funds be further enhanced in this year's final enacted state budget.

The outpatient behavioral health system is under tremendous strain at this time. Outpatient clinics, and in some cases entire agencies, are crumbling under the pressures associated with ongoing operating deficits. Access to care will continue to decrease around the state as OMH outpatient providers continue to bleed financially. The VAP funds already allocated will assist up to 40 agencies across our system but many more are in trouble. We need additional dollars to assist these agencies as they consider plans to re-tool, consolidate, merge, or be acquired.

OASAS HOSPITAL-BASED DETOXIFICATION RATES

An important issue that we want to bring to your attention is related to a now four-year old problem in which our OASAS hospital-based members are not yet being reimbursed at APG rates. These providers are still being paid at the legacy rate resulting in tremendous losses for these organizations. While we understand that this is a Center's for Medicare and Medicaid Services (CMS)/NYS State Plan Amendment (SPA) issue, we need an immediate solution to this issue before these providers go out of business. We recommend that the State reimburse these providers using one-time windfall money and then re-claim the funds from CMS once the SPA is approved.

CHILD HEALTH PLUS RATE RE-SET

The Governor's Executive Budget proposal includes language to re-set the Child Health Plus (CHP) rates paid to OMH and OASAS outpatient clinics, to bring these rates in line with the Medicaid Managed Care rate currently paid for the same services. We urge the members of the Legislature to support this proposal that is critical to the continued availability of public mental health services for New York's kids. As enrollment in the NYS Health Insurance Exchange continues to increase, so does the number of children enrolling in Child Health Plus. Child Health Plus enrollees deserve the same level of access to the public mental health and substance use treatment system as any other beneficiary in New York and this language will help to ensure that.

NON-PROFIT INFRASTRUCTURE FUND

We were also pleased to see that the Executive Budget includes a proposal to set aside $50 million to establish a Non-Profit Infrastructure Fund, to assist human service providers around the state as they strive to remain solvent while simultaneously re-tooling to meet the changing demands of the healthcare marketplace.

The NYS Council strongly supports this proposal and respectfully requests the Legislature increase this pool of resources to the original request of $500 million in order to adequately assist the sector to update physical plant, health information technology, workforce, and other challenges facing it at this time.

WORKFORCE NEEDS: COLA

The Executive Budget continues a 2% Cost-of-Living Adjustment (COLA) from FY 2014-15 for direct care staff and direct service professionals and provides an additional 2% for these individuals along with clinical staff for FY 2015-16. We thank all lawmakers for prioritizing our workforce.

The behavioral health field, however, had gone without a COLA for five years during which time an earlier promised COLA was delayed. We request that our original request for $354 million this year be included in the final budget in order to "catch the field up" after the earlier promised COLA was delayed, costing the sector $17 million per year. This COLA funding is essential to stabilize the human services workforce at agencies that perform crisis functions in times of emergency, as well as ensure our providers have the funding, and thus ability, to recruit and retain skilled workers.

BASIC HEALTH PROGRAM

The NYS Council is pleased the state is pursuing the Basic Health Program (BHP), which will provide an affordable, comprehensive health coverage option for low-income people who fall just above Medicaid income eligibility. The Council supports the Governor's proposed funding for administration of the program.

New York has a long history of providing Medicaid coverage for immigrants. The NYS Council urges the Legislature to also provide state-only funding to ensure BHP coverage for all immigrants.

PRESERVE "PRESCRIBER PREVAILS"

The Legislature should oppose the proposal to eliminate the provision that guarantees that the prescriber of a prescription drug has the final say as to whether a person gets what was prescribed. This would have a detrimental impact on people with disabilities, including psychiatric disabilities, as well as anyone else who relies on specific prescription drugs and drug combinations.

SUPPORT THE MEDICAID MANAGED CARE OMBUDSPERSON PROGRAM

We encourage the Legislature to support $5 million in the Governor's budget to fund the Medicaid Managed Care Ombudsperson Program, now operationalized as the Independent Consumer Advocacy Network (ICAN). This program provides individual, independent advocacy and assistance for people with long term needs who are enrolled in managed care. Money allocated for out-years should be frontloaded in this year's budget to allow the program to serve more people, particularly as thousands of New Yorkers will begin receiving behavioral health services through managed care for the first time, many through the new model of Health and Recovery Plans (HARPs).

RESIDENTIAL REDESIGN INITIATIVE

The NYS Council supports the reallocation and additional proposed funding to continue the NYS initiated OASAS Residential Redesign Initiative. This Initiative is focused on matching patients to the phase of care that best meets their needs; attaining goals; and moving people towards community re-integration.

INTEGRATED LICENSURE

The Department of Health (DOH), OMH, and OASAS have proposed new regulations for "Integrated Licensure" which are intended to allow providers the ability to obtain joint licensure whereby they could offer multiple services in one location to best meet the needs of patients. The NYS Council strongly supports the intent of integrated licensure; however, the proposed new regulations do not streamline the current regulations, but in fact keep the existing regulations while layering new regulations on top. For example, the proposed new regulations would require existing OMH/OASAS licensed clinics to come into compliance with DOH physical plant standards in order to get an integrated service license. OASAS/OMH providers who have reviewed the new regulations have determined that they would incur substantial capital costs, unwarranted reductions in treatment capacities, and unreasonable approval time delays.

SOCIAL WORK LICENSING EXEMPTION

And finally, we also urge a continuation of the exemption of our sector from Social Work Licensing Law requirements. If there is not an extension of our exemption through 2020, the implementation of the Law will significantly disrupt implementation and continued success of DSRIP projects upon which vulnerable New Yorkers will depend for high quality care in communities across New York.

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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