



***The New York State Conference of Local Mental Hygiene Directors, Inc.***

***Joint Legislative Budget Hearing on Mental Hygiene  
SFY 2022-2023 Executive Budget Proposal***

***February 14, 2022***

***Testimony Presented By:***

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Conference Chair***

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***Commissioner, Rensselaer County Department of Mental Health***

Chairwoman Krueger, Chairwoman Weinstein, Senator Brouk, Assembly member Gunther, Senator Harckham, Assembly member Steck, Senator Mannion, Assembly member Abinanti and other distinguished Committee Members, thank you for this opportunity to testify before you regarding the SFY 2022-23 Executive Budget.

My name is Katherine Alonge-Coons and I am Chair of the New York State Conference of Local Mental Hygiene Directors (the Conference). I also serve as Commissioner of the Rensselaer County Department of Mental Health.

The Conference represents the Directors of Community Services (DCSs)/County Commissioners of Mental Health) for each of the counties in the State, also referred to as the Local Governmental Unit (LGU). The DCSs are county officials and have specific responsibilities and authority under the Local Services provisions of Article 41 of the Mental Hygiene Law (MHL) for planning, development, implementation, and oversight of services to adults and children in their counties affected by mental illness, substance use disorder, and developmental disabilities.

The role of the LGU/DCS in the community is critical and unique. As government partners, the DCSs work collaboratively with State Agency (OMH, OASAS, OPWDD) officials and all department levels within the county. This role provides the County Mental Health Commissioners with a drone's-eye view of the mental health, substance use disorder and intellectual/ developmental disabilities services systems, and linkages to all facets of the related services in the county. The people we serve never need just one service. Their needs are complex and extend beyond the scope of behavioral health care and into other distinct areas, such as housing, public benefits, the criminal justice system and the county jail.

**My testimony outlines the Conference's State Budget priorities for SFY 2022-23:**

- Implementation of 730 Competency Restoration Reform
- State Aid Funding to support Substance Use Disorder (SUD) and Medication Assisted Treatment (MAT) in County Jails
- Mental Hygiene Workforce Recruitment and Retention
- 988 Crisis Prevention and Behavioral Health Crisis Act
- Extension and Expansion of Kendra's Law
- Extension of APG Rate Methodology Extension
- Expansion of Joseph P. Dwyer Program Funding
- Bring it Home Campaign/OMH Supported Housing

## **Implementation of 730 Competency Restoration Reform**

The Conference seeks to amend the statutory framework that governs competency restoration. My colleagues and I, along with our partners at the NYS Association of Counties (NYSAC), ask for the Legislature's support for the inclusion of bill S.7461 (Brouk)/A.8402 (Gunther) in this year's final enacted budget. We applaud Chairs Brouk and Gunther for their commitment to this critical local issue through their introduction of this much needed legislation which will significantly alleviate the devastating fiscal impact to every county across the State, including NYC.

The SFY 2020-21 Enacted Budget included an assumption that allowed the state to begin charging counties 100% of the costs of restoring mentally ill defendants to competency. This policy action has resulted in tens of millions of dollars in new expenses for county governments.

Competency restoration are services provided to an individual charged with a crime who is found by a court not to understand the charges against them or is found to lack the capacity to participate in their own defense, due to an active mental illness or an intellectual disability. An incompetent criminal defendant cannot be tried for or plead to an offense unless and until they can be restored to competency.

People who enter the restoration process often have complex needs, which may include behavioral health conditions, cognitive and neurodevelopmental impairments, and often, an undiagnosed history of traumatic experiences.

While a component of restoration services may include some mental health treatment, the main purpose of these services is to allow a mentally ill or developmentally disabled person to be tried for a criminal offense. This is different from the goal of mental health treatment, which is intended to lead to recovery and the ability to lead an otherwise normal life. Judges who believe they are helping a mentally ill defendant to get "better" by ordering restoration are often operating under the mistaken belief that they are providing the defendant with traditional mental health treatment.

Defendants involved in the competency restoration system in New York State are commonly called "730s," referring to the state's Criminal Procedure Law Section 730, which governs the process. It is estimated that between one-quarter and two-thirds of all defendants committed for competency restoration under Section 730 end up going through the system multiple times on the same charge — hundreds of people each year.

Under current law, counties are required to pay for the full cost incurred for restoration services for those defendants admitted to state operated mental health facilities. Payments are made to the state, and in turn, directed to the General Fund. The statutory requirement of payment by the

counties to the state has been in place for over three decades and has resulted in county governments incurring tens of millions of dollars' worth of expenses. Additionally, there is no requirement for the state to consult with their county mental health departments on treatment planning, consequently all decision-making is left up to the state's behavioral health providers.

While the majority of these 730 defendants can generally be restored within 90-150 days, there have been several cases where defendants have been kept in restoration for periods of 3, 6 or even 10 years. Since the full cost of approximately \$1,000 per day is charged to the county, these excessive confinements are extremely wasteful of the county's limited resources. (This is not just due to the inability for counties to have any control regarding restoration services but is also because courts, defense attorneys and DAs are often more than happy to allow people to languish in a forensic mental health facility rather than moving them to an appropriate mental health outpatient service or risking prison time).

Additionally, these lengthy confinements have been declared by the U.S. Supreme Court to violate the Americans with Disabilities Act. In the case of Jackson v. Indiana, the court held that states may not indefinitely confine criminal defendants solely on the basis of incompetence to stand trial. If there is no such expectation for restoration, the case should be converted to a civil psychiatric admission, which would remove the burden of payment from the county, or the defendant should be allowed to return to the community, hopefully with proper supports.

As our communities continue to struggle with workforce challenges and increased service needs, particularly as a result of the pandemic, it was extremely important to also include language that provides an avenue for community-based reinvestment of any county savings resulting from the enactment of these reforms.

Enactment of this legislation as part of the final budget is critical to ensure that these high-needs individuals who are unable to be restored to competency receive the most appropriate treatment for their diagnoses and require the millions of dollars of expenditures currently being directed to the State's General Fund be sent back to the counties who will have local oversight spending authority to reinvest in critical services needed to support community-based care.

### **Increased State Aid Funding to the LGUs to Sustain Jail-Based SUD and MAT Programs**

The Conference applauds the Executive for the inclusion of \$8.75M for jail-based SUD and MAT programs in this year's budget proposal.

Over the past several budget cycles, the State has committed to provide \$3.75 million in State Aid funding to the LGUs to develop these much needed programs in consultation with the Sheriffs. Last year, your support provided for an additional \$5 million which was included through a

legislative addition to support the cost of the medications for the expansion of MAT throughout these jail programs.

Effective October 7, 2022, current law will require that all correctional facilities provide various SUD treatment and transition services, along with all forms of MAT.

While the Conference strongly supports these programs, we are greatly concerned about the level of funding needed to appropriately follow the provisions under the law. The Governor’s proposal of \$8.75 million is a significant step in ensuring access to these critical medications; however, the costs to every county will far outweigh the appropriated funding proposed. For example, Rensselaer County estimates the annual cost of buprenorphine alone at \$492,800. The county currently receives \$160,000 in State Aid to support the entire jail program, which includes all clinical supports.

As you know, counties continue to struggle with rising costs as a result of the pandemic and will be unable to support the costs associated with this new mandate without a significant increase to State Aid funding going forward.

The Conference therefore requests your support of an additional \$15 million in State Aid funding, for a total of \$23.75 million, as part of the final enacted budget.

State Fiscal Year	Appropriation Request
2022-23	<b>Total appropriation request is \$23.75 million</b> Executive Budget Proposal \$8.75 million + new \$15 million

**Mental Hygiene Workforce Recruitment and Retention**

The Conference strongly supports the Governor’s proposals to increase compensation to the mental hygiene workforce. Retention bonus payments for workers earning up to \$100k annually, for a maximum bonus of up to \$3,000 per employee, coupled with the 5.4% COLA increase for eligible human services programs should be enacted as part of the final budget. We also support the Article VII language that includes the requirement for the LGUs to account for the use of these COLA funds and the provision to authorize Agency Commissioners to recoup funding not utilized consistent with this proposed appropriation.

### **Implementation of the 988 Suicide Crisis Hotline**

The Conference strongly supports the Governor’s proposal that includes \$35 million this fiscal year, increasing to \$60 million to support the implementation of the 988 suicide crisis hotline, as well as the Article VII legislation to authorize expanded supports and services.

### **Extension and Expansion of Kendra’s Law**

The Conference strongly supports the extension of Kendra’s Law and AOT programs through June 30, 2027 (to expire June 30, 2022) and the expansion of criteria that includes individuals for whom AOT has expired within the last six months, allows for an examining physician who recommends AOT to testify by videoconference at the related hearing, and permits the DCS or his/her designee to require a service provider to release information concerning persons receiving AOT.

The Conference also supports the NYC Department of Health and Mental Hygiene’s (DOHMH) proposal to amend Mental Hygiene Law (MHL) § 9.60 to empower the LGUs to require the production of medical records from certain health care providers and other parties. The LGUs would need to keep the records confidential, using and disclosing them only as necessary to carry out responsibilities regarding the assisted outpatient program, or where authorized by law or a court.

Currently, when patient consent to the disclosure cannot be secured, a LGU often must resort to the time-consuming process of obtaining a court-ordered subpoena for the medical records. The ongoing COVID-19 pandemic has made obtaining a subpoena even more difficult. Remote court hearings take longer than in-person hearings, and hearings related to the assisted outpatient treatment program have been given lower priority than other mental-hygiene matters.

As a result, very few subpoena hearings have been conducted since March 2020, stymieing efforts by local government units to ensure that certain persons with mental illness have community-based services appropriate to their needs. Based on data from NYC DOHMH, fifteen percent of referrals from the community during the pandemic were closed because the Department could not obtain the requisite medical records to conduct an investigation and determine whether an assisted-outpatient-treatment order, or a less restrictive form of treatment, was warranted for a person with mental illness.

### **APG Rate Methodology Extension**

The Conference strongly supports the Governor’s proposal to extend provisions of law to ensure adjusted rates paid to Art. 31 and 32 providers align with current Medicaid Ambulatory Patient

Group (APG) methodology through March 31, 2027 and provides that rate provisions continue to apply to behavioral health crisis programs licensed by OMH and OASAS.

### **Expansion of Joseph P. Dwyer Program Funding**

The Conference strongly supports the Governor's proposal to include \$7.7 million to expand the Joseph P. Dwyer Programs statewide. These critical and successful programs provide vital peer support and counseling services to veterans who are transitioning from military to civilian life.

### **Increased OMH Housing Rates - Bring It Home Campaign**

The Conference strongly supports the Bring it Home Campaign and the Governor's proposal for a two-year commitment for an additional \$104 million (FY23 \$65 million, FY24 \$39 million) for existing community-based residential programs and Article VII language to extend property pass-through provisions to include OMH supported housing that expands allowable reimbursement to supportive housing providers for property costs such as, rent/mortgage payments, principal and interest on loans.

Thank you again for this opportunity to testify. I sincerely appreciate your consideration of these requests and look forward to working with you and your staff this budget cycle. I'll be happy to answer any questions you may have at this time.