

**TESTIMONY OF THE LEGAL ACTION CENTER**

**Joint Senate Task Force on Opioids, Addiction and Overdose Prevention**

**November 15, 2019**

My name is Christine Khaikin and I am a Health Policy Attorney at The Legal Action Center. I am joined today by my colleague Tracie Gardner who will assist in answering any questions.

Thank you to Senators Rivera, Harckham and Carlucci for convening this critically important task force which is a sign of New York's continued national leadership in combating this public health crisis.

The Legal Action Center (LAC) is the only public interest law and policy organization in New York City and the United States whose sole mission is to fight discrimination against and protect the privacy of people in recovery from drug dependence or alcoholism, individuals living with HIV/AIDS, and people with criminal records. LAC works to combat the stigma and prejudice that keep these individuals out of the mainstream of society, helping people reclaim their lives, maintain their dignity, and participate fully in society as productive, responsible citizens.

Since 1973, we have worked to advance reforms and strategies that reduce incarceration and improve outcomes for people at the nexus of criminal justice and health systems, such as protecting the rights of people who need addiction medication and evidence-based care in the criminal justice system. We also work to ensure access to treatment for millions of individuals with mental illness and substance use disorder (SUD) through insurance reforms including in the ACA, Medicare, and through federal and state Parity Laws.

In New York State, LAC works closely with the State Office of Alcoholism and Substance Abuse Services (OASAS) and a number of individual addiction providers across the State. In addition, LAC's Director and President, Paul Samuels, was appointed by the Governor in 2013 to chair the New York State Behavioral Health Services Advisory Council, which advises the State Office of Mental Health and OASAS on issues relating to the provision of behavioral health services.

Due to the wide range of issues The Legal Action Center works on, we have recommendations for addressing the overdose crisis in many areas. My recommendations today focus on addressing barriers to using insurance coverage for treatment and enhancing health care access within the criminal justice system.

Building on the groundbreaking reforms enacted over the past 5 years, 2019 solidified New York as a national leader by including in the budget the Behavioral Health Insurance Parity Reforms, a groundbreaking set of policies that makes several advances toward improving the ability to access life-saving substance use disorder treatment.

Despite these advances however, New Yorkers still struggle to access lifesaving addiction care. New Yorkers have trouble finding providers with available appointments who are in their insurance network. In fact, a December 2017 study by Milliman found that New Yorkers went out-of-network for care significantly more often for MH/SUD care than for medical surgical care, with the disparity increasing between 2013 and 2015.<sup>1</sup> They face delays in getting care because their insurer requires prior authorization, or their care is denied mid-way through treatment because their insurer says their treatment isn't medically necessary. People pay hundreds or even thousands of dollars out of pocket even when they have insurance, due to co-pays and co-insurance that are higher or charged more often for SUD care than for other medical care. High quality addiction treatment providers throughout the State are struggling because they receive sub-par reimbursement rates for behavioral health services compared to providers of physical health care, in fact, their reimbursement rates may not even cover their costs of providing care.

For some of these barriers, state and federal parity laws have made things better, but insurers are often not held accountable for violating the law. In other cases, additional legislation is needed. In all cases, insurance should help people access care, not prevent someone from receiving treatment and going on to live in recovery.

We call on this task force to address these issues by taking the following actions:

---

<sup>1</sup> Melek, S. P., Perlman, D. J., & Davenport, S. (2017, November 30). *Addiction and mental health vs. physical health: Analyzing disparities in network use and provider reimbursement rates* (Rep.). Retrieved March 12, 2018, from Milliman website: <http://www.milliman.com/insight/2017/Addiction-and-mental-health-vs-physical-health-Analyzing-disparities-in-network-use-and-provider-reimbursement-rates/>

- **Enact legislation to require true network parity between mental health and substance use disorder providers and medical/surgical providers.** The State must develop strong quantitative standards for networks of SUD and MH providers that consider patient to provider ratios, provider capacity and time and distance standards, as well as taking into account complex health needs or languages spoken other than English.
- **Insurance networks will continue to be limited if providers are not appropriately reimbursed.** The State must develop strategies to ensure parity of rate setting between substance use disorder (SUD) and mental health (MH) providers and medical/surgical providers and set rates that consider the especially complex needs of patients with SUD and mental illness. One strategy is to actually understand how reimbursement rates are impacting providers. Legislation recently introduced by Senator Carlucci, Senate Bill 6694, will create a workgroup to analyze reimbursement rates in Medicaid and commercial insurance for behavioral health services and whether they are adequate to ensure continued viability of providers in our state.
- **New York State regulators must focus on enforcing parity by investigating rate disparities and eliminating insurer strategies for delaying, denying and recouping payments.** In accordance with the Parity Reporting Act, plans were required to submit parity compliance data to DFS and it is critical that this data is analyzed and plans are held accountable for any violations of the law.

Thanks to Senator Harckham's leadership, two bills passed the legislature to remove prior authorization of all medications to treat substance use disorder in commercial insurance and Medicaid; those bills await Governor Cuomo's signature.

#### **Increase funding for the Behavioral Health ombudsman program known as CHAMP**

Thanks to the leadership of the NYS Legislature in 2018, New York's Community Health Access to Addiction and Mental Healthcare Project –CHAMP– became the nation's first independent ombudsprogram for mental health and substance use disorder treatment access issues. CHAMP, which is a joint project of OASAS and OMH, operates a hub and spoke network. Administered by the Community Service Society (CSS), CHAMP provides services to NY consumers and providers through a

helpline and network of three specialist organizations with expertise in specific areas of insurance and behavioral health (The Legal Action Center, The NYS Council for Community Behavioral Healthcare and Medicaid Rights Center) and five community based organizations (CBOs) across the State who provide on the ground support as well as community outreach.

Highlighting the huge void it has filled, the CHAMP Helpline has served over 1300 New York health care consumers and providers in just over a year. CHAMP callers face numerous insurance barriers such as an inability to find a treatment provider with an open bed, or repeated care denials.

With an increase of \$1.5 million to its budget for a total of \$3 million, CHAMP can reach more individuals through an expanded network of CBOs so that more New Yorkers can have services available to them locally. Additional funding could also extend the helpline hours, which are currently only available on weekdays from 9am to 4pm. Too many New Yorkers continue to be unable to obtain SUD care because of payment barriers from insurers, managed care organizations and others. Thanks to the legislature, this innovative approach can help individuals and families access the care they need.

#### **Provide those involved in the criminal justice system with appropriate care**

The criminalization of mental illness and substance use disorder has resulted in a disproportionate number of low-income New Yorkers of color landing in the criminal justice system instead of community health care settings. In 2018, 16% of the average daily jail population statewide had a serious mental illness, 59% had a substance use disorder, and 10% had complex mental health needs. We must continue to try to find ways to break the cycle of re-incarceration and relapse that costs an exorbitant amount in both lives and money lost every year.

While there have been significant reductions in the number of people incarcerated in NYS for drug crimes since the 2009 Rockefeller Drug Law Reforms, thousands of New Yorkers each year who should be eligible for diversion are still sentenced to state prison. New York must ensure individuals currently eligible for diversion are actually diverted. Further, New York State should expand the crimes eligible for diversion under Drug Law Reform to include Burglary in the 2<sup>nd</sup> Degree and Robbery in the 2<sup>nd</sup> Degree

where violence is not a factor. While these can be serious crimes, individuals may be serving needlessly long sentences when they could be better served by being diverted into treatment.

Improved SUD care within jails and prisons is also greatly needed. New York should pass legislation to establish a program to provide Medication Assisted Treatment at all jails and prisons throughout the state. These medications were introduced in early 2017 in the Rhode Island correctional system. A study published in the April 2018 issue of JAMA Psychiatry found a 60% reduction in overdose deaths between the first six months of 2016, before the program began, and the first six months of 2017 among individuals recently released from incarceration in Rhode Island.<sup>2</sup> They have been in use on Rikers Island for thirty-one years and DOCCS, as well as a number of local jails outside of New York City, have recently introduced or expanded programs providing medications to treat opioid use disorders. This is an important start. However, at a time when New York and the US are confronting an overwhelming opioid epidemic, resulting in tens of thousands of deaths per year, providing these medications to every individual who needs them is not only the humane thing to do. It is essential to saving lives.

A main issue thwarting effective jail and prison discharge planning is the lack of access to consistent transitional care. Treatment works best when it starts upon admission and certainly well before an individual re-enters the community.

Just last week New York State proposed to become the first state in the nation to obtain a waiver from the federal government of the Medicaid Inmate Exclusion to allow Medicaid to pay for specific and limited transitional care inside prisons and jails by submitting an amendment to the 1115 Medicaid Waiver to CMS. Paying for care inside jails and prisons via federal Medicaid is a critical element in addressing the State's overdose epidemic, especially in light of the high rate of death post-incarceration: an individual is 12 times more likely to die and 130 times more likely to die of a drug overdose in the first two weeks after release from incarceration compared to the general population. We urge this Task Force and the Legislature to support the State's application to for this waiver amendment. Coordinating the services between our criminal justice and health systems is imperative because, not only is treating

---

<sup>2</sup> Green TC, Clarke J, Brinkley-Rubinstein L, et al. Post incarceration Fatal Overdoses After Implementing Medications for Addiction Treatment in a Statewide Correctional System. *JAMA Psychiatry*. 2018;75(4):405–407. doi:10.1001/jamapsychiatry.2017.4614 <https://jamanetwork.com/journals/jamapsychiatry/article-abstract/2671411?redirect=true>

people the humane course of action by making individuals healthier and more productive, it's also undeniably smart policy that reduces crime and recidivism, saves money in both systems, and makes communities at large healthier and safer.

For our State to address the current overdose crisis most effectively, it is imperative to address barriers to insurance coverage and the nexus of health and justice. Thank you for convening this Joint Task Force and for the opportunity to provide input.