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

NYS Office of the Attorney General, Public Hearing

Access to Mental Health Care for People with Serious Mental Illness (SMI) in Western New York

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Testimony Presented By:

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Chair

&

Niagara County Director of Community Services (DCS)

Attorney General James, I appreciate this opportunity to testify before you regarding access to mental health care for people with Serious Mental Illness (SMI) in Western New York.

My name is Laura Kelemen and I am the Director of Community Mental Health & Substance Abuse Services for Niagara County and Chair of the New York State Conference of Local Mental Hygiene Directors (the Conference).

The Conference was created pursuant to section 41.10 of the Mental Hygiene Law and its members are the Directors of Community Services (DCS) for the city of New York and each of the other counties in the state. DCSs serve as the CEO of the Local Governmental Unit (LGU), defined in the statute as the portion of local government responsible for mental hygiene policy and responsible for the planning, development, implementation, and oversight of services to adults and children in their counties affected by mental illness, substance use disorder, and intellectual/ developmental disabilities.

As such, DCSs have linkages to all of the various health and social service systems in their jurisdictions and have a unique view of the needs of and problems facing the people they serve. Most often, these needs are not limited to a single service but are complex and extend beyond the scope of behavioral health care and into other distinct areas, such as housing, school/employment, public benefits, food/social needs, and the criminal justice system, including the county jail.

It is the local community mental hygiene system that must pick up the pieces when others fail to understand the implications of fiscally driven and ill-conceived policy decisions. Planning of local services requires more than simply identifying needs and barriers to access. It requires the development of strategic and innovative solutions at the state and local level that target racial disparities and socio-economic challenges, and are supported through continued State investment. It also requires qualified, trained, and available workforce to carry out the designed services.

The foundations of our community mental health system are crumbling due to lack of workforce and inadequate funding. We continue to try to expand our range of services, with reduced staff – and to what end?

Across Western New York, our outpatient mental health clinics, the core of our system, are struggling with workforce. Programs across our area, including in Cattaraugus, Niagara, Orleans, and Genesee Counties, have reported 25 – 45% staff vacancy rates for Master's level therapist positions during the past year, while demand for services has

risen. Programs have decreased or eliminated same-day access to services. While programs will continue to see individuals with acute needs, others have experienced longer wait times for service, or longer wait times in between appointments. Agencies have scaled back on satellite locations – for example, 28% of currently established school satellites in Niagara County are currently not operating due to vacancies. The result, highlighted in the Governor's State of the State Book, is that more than 40% of adults and nearly 50% of children/youth who experienced mental health challenges were unable to receive necessary treatment.

Experienced clinicians are leaving for higher paying jobs in private practice or jobs in the telehealth industry. As one local DCS describes, "we are just a training ground for new graduates." Don't individuals served in the public mental health system deserve highly trained, skilled, and experienced practitioners? Workforce shortages create a vicious cycle. Staff left behind are overburdened, contributing to further burnout and attrition. The care of individuals receiving services is significantly disrupted when their trusted therapist leaves.

The outpatient behavioral health system needs higher reimbursement rates that will allow agencies to maintain reasonable units of service and case load expectations for their staff members, as well as statutorily driven annual cost of living increases, and continued reduction of administrative (including paperwork) burdens.

As need for services is increasing and entry into the "helping" professions is decreasing, a long-term approach to crafting solutions is also necessary. This includes the creation of job pathways beginning in high school, and,clear career development/advancement programs at the community college level, including scholarship opportunities and easily accessible student loan forgiveness programs.

New York has seen significant reductions in bed capacity at state inpatient facilities. The development of the envisioned community programs (CORE and CFTSS), necessary to support individuals with significant mental health needs in the community, has not occurred at the rate and scale needed. Often times, this is due to lack of staffing and inadequate reimbursement rates and methodology.

Without adequate community wraparound services and outpatient clinic treatment programs, individuals in crisis end up needing emergency services or, worse yet, interfacing with the criminal justice system.

The burden, exacerbated by the pandemic, is squarely placed on our local 9.39 emergency departments/CPEPs as well as on our Article 28 Inpatient mental health

treatment programs. These programs are also experiencing severe work force shortages.

Western New York experienced troubling reductions in Article 28 inpatient bed capacity and emergency department resources prior to the pandemic. Staffing shortages and inadequate reimbursement were key factors in the closure of 12 children's and adolescent inpatient beds in Niagara County in 2019 and the now four-year-old "temporary" reduction in adult inpatient beds in Niagara. Twenty (20) additional adult beds were closed when TLC Lakeshore Hospital in Irving closed in 2019. Beds off-line secondary to COVID has only exacerbated the problem.

Our emergency departments are bearing the brunt of the broken community mental health system and the inadequate inpatient capacity. Emergency Departments are designed to assess and connect people to the correct level of care in an expeditious manner. With fewer available beds, individuals who require inpatient care experience longer stays in emergency departments and thus are unable to get timely treatment. Emergency Departments are required to ensure a safe discharge for individuals who do not meet inpatient criteria. Especially for individuals with complex needs, the lack of available community resources results in longer stays in the ED. Lengthy stays in emergency departments exacerbate mental health symptoms, and subjecting those in crisis to extensive wait times for treatment is simply cruel and inhumane.

The Conference is pleased to hear the Governor's plans during her State of the State Address to invest $1 billion into the State's mental health systems in an attempt to counteract decades of divestment in these critical services. We applaud the Governor's agenda as outlined in the State of the State Book. This agenda is clearly designed to support New Yorkers who are struggling with mental health concerns, helping them to get connected with housing, mental health treatment and supports, ultimately to achieve health and stability in the community.

However, we advise caution, coupled with thoughtful locally-driven planning, when approaching the development of new services or the expansion of existing services. We MUST shore up the foundations of our mental health system, hospitals, and outpatient treatment before we continue to attempt expansions. If we don't do this – the system will continue to collapse.

The State must recognize and address the current crisis faced within our behavioral health workforce. Without appropriate investments and long-term sustainable solutions that support the recruitment and retention of mental health workers, any local service investments will be unrealized and continue to fail individuals with mental health needs.

Without strong core mental health services and workforce, individuals in crisis are all too often interacting with the criminal justice system. The number of individuals with suspected mental health conditions interfacing with law enforcement and the court system continues to rise. Requests for competency examinations under CPL 730 are up more than 20% in Western New York compared to pre-COVID. We cannot condone a system of care where the criminal justice and court system is the entry point for "treatment." Unfortunately, the DCSs are seeing massive increases in the issuance of 730 competency restoration orders that place individuals with serious mental illness (SMI) into State forensic facilities at 100% of the cost to counties. This syphons millions of dollars from county budgets needed for critical community-based resources into the State's General Fund. The statute governing this process is severely antiquated and the increased use of these orders as a means of "treatment" needs to be addressed this budgetary cycle.

Finally, the recent ruling related to Olmstead, which caps the population of individuals with mental health diagnoses in senior facilities at 25%, is having significant reverberations in the system. It has created a backlog of individuals who are stuck in the community, aging in place without adequate support and physical care. It is unjust. Individuals who have mental health and co-occurring physical health concerns are facing community reintegration barriers, as they cannot step down from higher levels of care due to lack of "mental health" beds in senior facilities. The goal was to prevent trans-institutionalization when de-institutionalization was in play. It has created another set of roadblocks.

It is imperative that our state partners work more closely with the county departments of mental health to appropriately plan for and derive sustainable solutions to address these treatment, funding, and workforce needs. It is clear, now more than ever, that a top-down policy approach does not adequately allow for the best outcomes. Proper development of mental health policy should involve strategic local planning and ongoing collaboration with county mental health departments. This increased collaboration will without a doubt significantly offset the breakdown in the behavioral health care system we are witnessing today.

Recommendations for Consideration:

1) Support the enactment of S.7461-A (Brouk)/A.8402-A (Gunther) to restructure the State's CPL 730 law;

2) Approve an annual 8.5% COLA investment for 2023 and in perpetuity for the human services workforce;

3) Reexamine reimbursement methodology for outpatient mental health treatment programs. Significantly increase reimbursement rates such that agencies can maintain reasonable units of service and case-load expectations for their staff members and continue to reduce administrative (including paperwork) burdens.

4) Halt the closure of Inpatient Hospital and State PC beds. Establish a clear process and timeline for the restoration of beds taken offline prior to or, as a result of, the pandemic. Establish fiscal incentives for reopening off-line beds and penalties for failure to reopen.

5) Examine the structure of and reimbursement for 9.39 Emergency Departments and CPEPs. Provide State Aid reimbursement for the embedding of Certified Peer Specialists into EDs and CPEPs.

6) Create a public-facing Inpatient Treatment bed availability locator through the Department of Health, similar to those offered by NYS OASAS for their programs/services. Additionally, create a daily reporting system of hospital systems that can be easily accessed by the county mental health officials and crisis services providers that shows current and anticipated (next day or two) bed capacity, including any beds taken off-line.

7) Continue to address insurance parity to ensure all New Yorkers have access to mental health treatment. Set a minimum number of days that all insurance companies **must** reimburse for Inpatient Treatment prior to requiring utilization review. This will allow social workers and treatment providers to engage in treatment versus negotiation with insurance companies.

8) OMH's PC admission criteria and referral process via the Health Commerce System (HCS) should be reassessed for a smoother system transition from hospital inpatient to State PC. The process currently in place was established several years ago as an OMH pilot across NYS to be reviewed and evaluated to ensure that no bottleneck affects hospital to state PC referral process. The pilot

has revealed it is time to update and review that process to avoid delayed access to state PC beds.

9) Establish programs to address workforce shortages both for the short-term and for the long-term. This includes the creation of job pathways beginning in high school, and at the community college level, and clear career development/advancement programs at the community college level, including scholarship opportunities and easily accessible of student loan forgiveness programs.

10) Allow the workforce gaps to be addressed prior to significant further system expansion. State and Local Governments must work effectively together on targeted strategies to address service gaps while minimizing impact to staffing on other existing services.

Thank you again for the opportunity to provide comments today. I am happy to answer any questions you may have at this time.