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

Joint Legislative Budget Hearing on Mental Hygiene
2017-2018 Executive Budget Proposal

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Testimony Presented By:

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Executive Director

Chairwoman Young, Chairman Farrell, Assemblymember Gunther, Senator Ortt, Assemblymember Rosenthal, Senator Amedore and Committee Members, thank you for this opportunity to provide you with our feedback and recommendations on the 2017-18 Executive Budget.

My name is Kelly Hansen and I am the Executive Director of the New York State Conference of Local Mental Hygiene Directors.

The Conference of Local Mental Hygiene Directors was established pursuant to Article 41 of the Mental Hygiene Law, and our members are the Directors of Community Services (DCSs) for the 57 counties and the City of New York. The DCSs are appointed to lead the Local Governmental Unit (LGU) which is the part of local government with the statutory responsibility for the planning, development, implementation and oversight of services to individuals living in our communities with mental illness, substance use disorders and developmental disabilities.

Behavioral Health Transformation Funding Cut

The 2014-15 Enacted Budget provided for an investment of $115 million annually in Medicaid funding to prepare behavioral health providers for the transition to Managed Care and to build the necessary system infrastructure. Last year's Enacted Budget reduced the state's investment in Medicaid funding for the support of this transition from $115 million to $95 million. This year, the Executive Budget proposes to reduce the annualized behavioral health Medicaid investment even further from $95 million to $85 million. While the Executive proposes that this reduction is just for one year due to a delay in the implementation of the six new behavioral health services for children under State Plan Medicaid, we are very concerned that such a reduction will severely affect the success of the transition. Under children's Medicaid Redesign, the children's behavioral health system is undergoing major reforms, including the establishment of children's health homes, the transition of children's services to Medicaid Managed Care, the expansion of State Plan Medicaid services for children and an increase in the availability of Home and Community Waiver Program services for children. While it surely makes sense to delay implementation because the 1115 Waiver and the State Plan Amendments are not approved, it makes no sense to reduce workforce development and other provider readiness funding which is needed to successfully implement the children's Medicaid Redesign. We therefore urge the Legislature to restore this harmful cut in funding.

Community Reinvestment Resulting from Closures

Closures of State Psychiatric Beds

The Conference is pleased to see that for the fourth consecutive year the Executive proposes to reinvest savings back into the community related to the closure of state

psychiatric beds. In 2017-18, the Executive Budget proposes to reinvest $5.5 million in new funding (fully annualized to $11 million) into the community related to the closure of 100 state psychiatric beds. This funding would bring the total amount of reinvestment funding committed by the state since SFY 2014-15 to $92 million annually. Under New York State Law, it is the job of the LGUs to annually develop and implement local comprehensive plans to serve county residents with mental illness, substance use disorders, and developmental disabilities. Therefore, the LGU will ultimately be responsible for meeting the needs of people returning to the community and is in the best position to help determine how any community reinvestment dollars should be spent.

It is important for the Office of Mental Health (OMH) to continue to work closely with the Directors of Community Services to invest this funding into priority community-based services with a regional focus to successfully transition individuals from psychiatric centers back into the community.

OPWDD Developmental Center Closures

The Executive Budget indicates that OPWDD expects to transition 156 individuals from state developmental centers and intermediate care facilities into the community in 2017-18 and provides for $24 million in funding to support the creation of additional community-based services for these individuals. While the Conference supports the efforts by the Executive to expand community services for OPWDD clients and agrees that individuals with developmental disabilities should be served in the least restrictive and most integrated settings as required by law, we are very concerned that individuals are being discharged from state institutions before the proper services are available in the community and without ongoing communication with the Local Governmental Units.

Article 41 of the Mental Hygiene Law requires that LGUs develop local plans that identify the services and resources that are available and those that must be added, in order to facilitate a successful and safe transition to the community for people with developmental disabilities. The LGUs have the expertise and knowledge of the community that OPWDD needs to successfully transition people into the community.

We ask that language be included in the budget that would require that OPWDD adopt a model of sharing information and collaborating with LGUs, families and other stakeholders to facilitate a transparent process and to ensure that adequate community based services are available to meet the needs of individuals with developmental disabilities before they are transitioned into the community from institutional settings.

OMH State-Operated Outpatient Clinic Reductions

According to the Executive, OMH would review clinic treatment services at all 85 state-operated facilities. "Reductions would be targeted to low-performing facilities and remaining resources would be redirected to nearby clinics with higher productivity and

capacity." It is critical that LGUs are an integral part of the process of deciding what services are needed in local communities and that such reallocation of services be accomplished primarily with regard to local need rather than to duplicate or provide unneeded services in order to preserve the current workforce.

Redesign of Service Dollars Administration

The Executive Budget proposes to standardize the oversight and monitoring of Service Dollars to ensure that funds are used consistently with OMH guidelines. Service Dollars are used for unmet emergency and non-emergency client needs and are vitally important for filling in service gaps, especially for the non-Medicaid population. OMH anticipates a state savings of $3 million from the redesign of Service Dollars Administration. These funds are often the only source of providing emergency services to the uninsured clients in our communities. Given what we see as the relatively small amount of funding currently provided we think this reduction will cause major problems for many communities. It is important for the LGUs to have input in any changes made by OMH in the use or funding of Service Dollars.

Supported Housing Community Beds

The Executive Budget proposes to close 140 state-operated residential beds and invest $4.6 million to open 280 new community-based, scattered site supported housing beds in the same geographical areas. Access to housing is critically important. Many counties have wait lists for the state-operated residential beds which provide a very high level of care. We are concerned that these new community-based supported housing beds being proposed by the Governor will not include the intensive services needed to serve a very high-need population. It is important for the LGUs to be consulted about the need for housing in their communities and before any state-operated residential beds are closed.

We do support the Executive's proposal to include $10 million in new funding to preserve access and enhance support for existing supported housing and single residences occupancy (SRO) programs.

Extension of Medicaid Managed Care APG Government Rates for OMH and OASAS Clinics

The Conference supports the Executive proposal to extend the Medicaid managed care ambulatory patient group (APG) rates for OMH and OASAS licensed clinical services and Child Health Plus behavioral health clinical services from June 30, 2018 to March 31, 2020. We have some concern that this extension is tied to providers meeting certain benchmarks for the development of Value Based Payments (VBP). Therefore, we support the Governor's language to allow the Commissioners of DOH, OMH and OASAS to waive these requirements if meeting these VBP arrangements create a financial hardship for providers.

Health Care Regulation Modernization Team

The Executive Budget recommends the establishment of a Health Care Regulation Modernization Team modeled on the Medicaid Redesign Team (MRT). This multi-stakeholder group would be tasked with providing guidance on a fundamental restructuring of the statutes, regulations and policies that govern the licensure and oversight of health care facilities and home care to align them with delivery system reforms. A major area of focus would include streamlining and simplifying the provision of primary care, mental health and substance use disorder services in an integrated clinic setting. The Governor would appoint up to 25 voting members on the Health Care Regulation Modernization Team. OMH and OASAS should share an equal leadership role with DOH in the running of this new endeavor. While we commend the Governor for the concept, we are concerned that the interests of the behavioral health community may not be properly represented and we would recommend that the membership include the chair and another representative from the Behavioral Health Services Advisory Council and a representative from the Conference of Local Mental Hygiene Directors.

Second Statewide Health Care Facility Transformation Program

The Executive Budget includes $500 million in capital funding to create a second round of the Statewide Health Care Facility Transformation Program to support capital projects, debt retirement, working capital and other non-capital projects that facilitate health care transformation and expand access to health care services. At least $30 million would be allocated to community-based health care providers, including Diagnostic and Treatment Centers, Art 31 and Art 32 OMH and OASAS clinics, primary care providers and home care providers. We believe that since the transformation essentially means that more and more people are being moved into our communities, a greater share of this funding should also be committed to community-based health care and would ask that language be added to the budget to require that at least 25% of all monies allocated be committed to the community.

Jail Based Restoration to Competency Programs for Felony Defendants

The Executive Budget would amend Section 730.10 of the Criminal Procedure Law (CPL) to allow volunteering counties to establish jail based restoration to competency programs for felony defendants. Currently, felony defendants who have been determined to lack capacity to understand the charges against them or assist in their own defense are transferred to an OMH psychiatric center or an OPWDD developmental center to undergo treatment in an effort to restore them to competency. The costs for defendants who are court ordered into state inpatient custody under CPL 730 are currently paid by the state and county each paying 50 percent of the daily cost. The Executive estimates that the per bed costs to restore these defendants in a jail-based setting would be roughly one-third of the cost of a state facility.

However, there are other issues to consider besides cost. First, we believe in general that a local jail is an inadequate and inappropriate setting for a defendant to be restored to competency. Unlike state hospitals, jails cannot obtain court orders to medicate over objection of an individual which would be a significant barrier to restoring an individual to competency. Most jails have neither the physical space nor the appropriate level of clinical staff to conduct restorative treatment. They are not set up to do restoration and would require significant ramp-up costs which are not provided for adequately in this proposal.

In order for counties to establish jail based restoration units the local sheriff's department would have to agree to them. At this time, we are not aware of any county sheriff who is interested in creating these units in their jails. The Executive is estimating a state savings of about $2.2 million related to this proposal which we believe to be inaccurate.

As an alternative, the Conference has for many years supported legislation that would require that a county should only be responsible for a share of CPL 730 costs for the first 30 days of treatment. Given that all courts are now unified into a single statewide system, that the state has custody of all individuals receiving treatment under a CPL 730 court order and that we are seeing many of these defendants coming directly from state operated facilities, we believe there is no reason that counties should be held accountable for costs that are completely out of their control. Many of these defendants are alleged to have committed an offense while in state prison and are then brought before a court in the county in which the prison is located. If they appear unfit to assist in their defense they are committed to a state forensic facility giving the state the ability to bill the county for thousands of dollars to pay for the treatment of that individual who has no nexus with the county other than that the state prison is located there. We want to thank Senator Ritchie and Assemblyman Ortiz for sponsoring this bill (S.1912/A.3254). We would suggest that inclusion of such a provision rather than the Article VII provisions recommended by the Executive would much better serve the needs of local governments.

We would also suggest that a workgroup which includes representatives of the Sherriff, judiciary, the district attorneys, public defenders and the LGUs as well as OMH and OPWDD be established to address what we believe to be a misuse of the CPL 730 process. We believe that if all of these groups worked together, many defendants who are now committed under 730 orders could well be diverted from the criminal justice system at an earlier stage of the proceedings. Such diversion would not only better serve these 730 defendants but would also free up forensic capacity needed by individuals locally incarcerated whose mental illness requires a forensic bed, referred to as 508s who currently cannot access a bed because the 730s take priority. A collaborative effort to create diversion and reduce the number of 730s in the first instance would save both the state and local governments millions of dollars that are now effectively wasted by attempting to "restore" people who will never reach that goal.

Combat Heroin/Opioid Abuse

The Executive recommends about $200 million in the OASAS budget and another $25 million in HARP premium reinvestment savings be used to address the growing heroin and opioid epidemic in communities across the state. According to the Executive, OASAS funds would continue to support heroin and opioid abuse prevention, treatment and recovery programs. The Conference is supportive of the current efforts by OASAS to combat heroin and opioid abuse, and we would also recommend that the state allocate funding for the treatment of chemical dependency in jails.

One -Year Deferral of Human Services Cost of Living Adjustment (COLA)

The Conference opposes the Executive Budget proposal to defer the 0.8 percent human services COLA for one year. From 2010 – 2014, not-for-profit employees did not receive a COLA which represented an almost 10 percent loss in wages. Recruiting and retaining qualified workers to care for our most vulnerable populations is becoming increasingly difficult due to depressed salaries and diminished benefits. Studies show that clients receive the highest quality of care when their providers are well trained, experienced, and stay in their positions long enough to develop longstanding relationships. With providers facing the phase-in of the minimum wage increase and the implementation of the new state overtime exempt salary thresholds, it would be a great disservice not to fund a 0.8 percent human services COLA.

Local Governmental Unit (LGU) Administration Funding

As the state transforms the behavioral health system through Medicaid Redesign and continues the downsizing of the state psychiatric hospitals and developmental centers, the LGUs are being given more and more responsibility for assuring the proper reintegration of high-need clients into the community. However, local governments are not being given any additional resources to fund these additional responsibilities.

For example, the Local Governmental Unit (LGU) is responsible for administering the Assisted Outpatient Treatment (AOT) Program at the local level, and each county is required by statute to have an AOT coordinator. Since its inception, this program has never been fully funded by the state. In the last few years, many counties have seen a rise in the number of AOT cases due to an increase in the number of people with serious mental illness being discharged from state prisons and state psychiatric centers under an AOT order. While the number of individuals receiving AOT has increased, there has been no additional funding for the LGU to administer this program. As more work is being asked of the LGU to plan, coordinate and oversee services for high-need clients in the community, we believe there should be an increase in the state share of LGU administration.

I thank you for the opportunity to address you regarding the Conference's thoughts and concerns about this year's budget and can provide you with any further information or answer any questions at this time.