

14



**TESTIMONY BEFORE THE JOINT FISCAL COMMITTEES  
OF THE NEW YORK STATE LEGISLATURE  
RELATING TO THE 2012-2013 EXECUTIVE BUDGET  
MENTAL HYGIENE FUNDING**

**February 14, 2012**

**Submitted by:**

**NEW YORK STATE REHABILITATION ASSOCIATION**

**Presented by:**

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## **INTRODUCTION**

Thank you to Senator DeFrancisco, Assemblymember Farrell and all members of the joint fiscal committees for permitting the opportunity to offer views on portions of the Executive Budget related to mental hygiene issues. I am Jeff Wise, president and chief executive officer of the New York State Rehabilitation Association.

NYSRA is now in its 34th year as a statewide trade association of not-for-profit providers of services to New Yorkers of differing abilities. Our providers and their direct-care staff are key components of the state's delivery system of services and supports to people with developmental disabilities, mental health diagnoses, learning disabilities, and other conditions. Our approximately 100 provider agencies deliver services that include vocational rehabilitation, residential care, day programs and many other person-centered services.

## **GENERAL RESPONSE TO THE EXECUTIVE BUDGET**

Governor Cuomo has presented an Executive Budget that is ambitious on many fronts. Some aspects of the proposed budget for SFY 2012-2013 are worthy of NYSRA support. But, as is generally the case with any budget, there are elements of the plan that raise questions and concerns. That is not surprising given the sweeping reforms that are taking place in New York State with regard to systems change in many areas, including services to people with disabilities. From a fiscal perspective, we know that New York continues to confront many challenges, including a sluggish state and national economy, structural deficits that have accumulated over many years, and changes beyond New York's control. Among these would be the current climate in Washington, which is not one that engenders a sense of encouragement when it comes to fiscal resources for states and their residents.

Whatever the fiscal or policy climate, serving people with disabilities is an essential responsibility that New York has long assigned a very high priority. However difficult the fiscal situations, however urgent the need to find efficiencies, transform systems, and adjust roles of various stakeholders, this high priority must always remain.

The proposed SFY 2012-2013 state budget thankfully interrupts a series of budget actions over the past 3 years that have resulted in overall cuts to most programs in the mental hygiene system. We commend the Governor for keeping his pledge, made last year when sacrifices were necessary to close a \$10 billion budget deficit, to work for a 4 percent increase in Medicaid spending overall in the coming fiscal year. We also commend the Governor and the Legislature for their joint efforts two months ago to revamp the state's personal income tax code, generating \$1.5 billion in revenue for the next fiscal year and assisting in closing a structural deficit estimated at \$3.5 billion.

Structural changes at a rapid pace, however, cause concern among all stakeholders in the field of disabilities. Both the mental health and the developmental disabilities systems in New York will see drastic changes as the state transitions all Medicaid beneficiaries toward a full managed care environment.

## DEVELOPMENTAL DISABILITIES

The DD system in New York State is embarking on a period that will undoubtedly bring dramatic changes to a system that serves nearly 130,000 New Yorkers. State officials are currently in negotiation with federal staff at the Centers for Medicare and Medicaid Services (CMS) on the upcoming Section 1115 Medicaid managed care waiver, termed the People First Waiver. Managed long-term care presents special issues that are distinct from issues in the acute health care realm. Although we have seen – and participated in – months of waiver design and planning, as yet the actual implementation and operation of the People First Waiver is not truly known. Areas of concern include what appears to be a growing waiting list for residential opportunities.

- NYSRA urges the Legislature to be vigilant and engaged in monitoring with us the pilot programs that are put in place to test New York’s managed care environment for people with developmental disabilities. We ask that legislators urge their leadership and Committee Chairs to affirmatively engage with the Administration to ensure the waiver does not result in upheaval, fiscal dangers, and loss of services to individuals.
- NYSRA urges the Legislature to actively monitor Administration efforts regarding unmet need as demonstrated by waiting lists for services.
- NYSRA urges the Legislature to support OPWDD funding included in the Executive Budget to create new residential and non-residential opportunities. Consideration should always be given to finding additional resources, when possible, to even further strengthen this effort.
- NYSRA urges the Legislature to preserve, even expand, funding for employment opportunities for people with disabilities. Employment should be a priority; funds should not be eroded.
- NYSRA urges the Legislature to support any Administration efforts to transition individuals out of institutional, state-run facilities and into community-based services. Such a transition will serve the interests of finding efficiencies while continuing to guarantee quality supports.

## MENTAL HEALTH

New York has begun its transition to managed care in mental health with the advent of Behavioral Health Organizations (BHOs). The purpose of these five regional organizations is to monitor service utilization, review length of stay, monitor and work to reduce readmissions, enhance engagement with individuals in outpatient treatment settings, profile performance by providers and work to encourage cross-systems coordination. The five regional BHOs have been contracted jointly by OMH and the Office of Alcohol and Substance Abuse Services (OASAS).

- NYSRA urges the Legislature to remain aware of the major changes happening in the behavioral health field and to engage actively with the Administration to analyze BHO implementation and any impact on services to individuals. Phase 2 of the BHOs will begin in 2013 and will include some form of risk-bearing Medicaid managed care for adults and children with serious mental health issues or substance use disorders.
- NYSRA urges the Legislature to support the Executive Budget's freeing up of capital dollars to begin increasing the number of supportive housing units available to New Yorkers. However, the state should consider further investment in upstate housing opportunities; reliance on NY/NY III is helpful, but needs also exist in areas outside of New York City.
- NYSRA urges the Legislature to prescribe specific reinvestment principles regarding a portion of the state savings due to institutional closures. The budget gives authority only to the Health Commissioner with regard to reinvestment. All commissioners should have authority to reinvest dollars from savings in their areas. A portion of savings in OMH should be reinvested in employment, education, family services, and other areas.
- NYSRA urges the Legislature to remove the proposed sunset date on COLAs for health and human services agencies. In contrast to past years when enacted COLAs were delayed, this Executive Budget proposes, essentially, a repeal of the COLA statute as of April 1. While we understand the need to forgo the COLA in this tight budget year, we believe the Legislature should retain the ability appropriate funds for such use in future years.
- NYSRA urges the Legislature to support grants to providers to assist in converting Information Technology (IT) systems to ensure the smoothest transition to Medicaid managed care in the MH/BH sector.

## **EXECUTIVE PROPOSAL ON COMPENSATION AND ADMINISTRATIVE OVERHEAD**

### **Existing State Mechanisms**

The not-for-profit agencies that constitute NYSRA's membership are community, mission-driven organizations governed by volunteer Boards of Directors. These Boards are populated by community-minded citizens and taxpayers who work to ensure that services and supports are delivered to New Yorkers who need them by responsible not-for-profit agencies. These agencies are subject – as they should be – to close regulation by the State government, whose interest lies both in the guarantee of service delivery to people in need as well as in protecting the public purse.

Our agencies operate under myriad rules, regulations, licensing requirements and statutes. Among these are the Not-for-Profit Corporations Law, the Estate Powers & Trusts Law, various Public Health statutes, the Mental Hygiene Law, Medicaid rules and regulations, and statutory and common-law provisions regarding fraud. State oversight of our agencies is seated in the Attorney General, the Office for People with Developmental Disabilities, the Office of Mental Health, and the Office of the Medicaid Inspector General. In various ways and to varying degrees, all of these State agencies prescribe – and proscribe – practices with regard to the operation of community-based agencies that provide services to people they serve.

These controls and this oversight regarding service providers are substantial. Not-for-profit organizations delivering service to needy New Yorkers are subject to audits from multiple agencies, quality assurance guidelines, and oversight that is designed to ensure both the efficacy of their services and their integrity of their operations.

Aside from the notable exceptions that have been the subject of recent publicity and attention, we are not aware that there is widespread abuse of the public trust by our agencies. We believe the abuses that have been reported – which are very few – are, in fact, extraordinary exceptions, newsworthy for their rarity. Existing mechanisms work to make this so. We believe it should be noted that one exception, publicized last summer, was itself the result of an investigation by the Office of the Attorney General that resulted in the departure of executives from the not-for-profit being examined. Existing protections do, in fact, work to identify and resolve such situations – as they should.

### **IRS Approach**

Given the significant role played by Medicaid in New York's systems of services and supports for people with disabilities, a great deal of federal oversight of provider operations is present on a regular basis. Providers are subject to a considerable federal, as well as State, scrutiny.

For the purposes of this hearing, however, perhaps the most pertinent requirements are those of the Internal Revenue Service (IRS) and its governing powers relating to not-for-profit status of our community service providers. For many years the IRS has applied an executive compensation analysis that focuses attention on not-for-profit boards, their governance principles

and the integrity of their operations with regard to setting salaries of agency executives. This is done both through statute and regulation.

Internal Revenue Code §4958 identifies highly specific requirements imposed on governing boards of not-for-profit corporations and their oversight. Moreover, Treasury Regulation 53-4958-6, read in conjunction with the authority in the above-cited statute, sets out a process regarding necessary and proper practices when establishing executive compensation for Internal Revenue purposes such as maintaining or revoking not-for-profit status. We advocate very strongly with our members to see that all boards of directors follow the statute and regulation closely.

Those that do comply – and such compliance must now be attested annually through submission by each agency of IRS Form 9990 – have a pathway that secures them in the knowledge that they are setting compensation amounts that the IRS will consider presumptively reasonable.

The IRS approach has virtues that more rigid provisions lack. Boards must exercise due diligence in studying comparative data that assists them in setting salaries. This ensures that executives are compensated after adjustments – up or down – that are consonant with the data the boards gather from similarly situated providers with similarly experienced, educated, and credentialed executives. This comparative data approach thus indirectly, but effectively, takes into account geographic factors, education levels of similar executives, other credentials, longevity of service, and the market value of such individuals. And, by requiring a board to take pains to document the comparative data study, the IRS thus has easily analyzed data in which to make a determination of reasonableness and to help ensure that boards do not act arbitrarily, in secret, or without proper basis for the compensation level it approves.

This approach also comports with a New York State manual of best practices that was recently prepared. The April 2010 “Report on Executive Compensation” published by the New York State Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD), speaks approvingly of governing boards’ reliance upon data from IRS Form 990 when setting compensation levels, as it is the most common public source of compensation data. The report also recommends comparing “similar jobs, at agencies of similar purpose, revenue size and geographic area.” The report reiterates these values by citing three key factors that influence executive compensation: size of agency budget, geographic region and “personal factors” such as education and an individual’s years of experience. Thus, the report endorses the same sorts of factors that the IRS expressly notes as criteria under its reasonableness tests.

The IRS approach protects taxpayers while it remains sensitive to the various real-world factors that well-meaning governing boards deal with when finding and compensating leaders. We believe it is far more effective than a “one-size” approach when seeking to balance the varied interests implicated by this issue.