

TESTIMONY OF THE LEGAL ACTION CENTER

Assembly Ways and Means and the
Senate Finance Committees
Joint Public Hearing on Mental Hygiene
Executive Budget FY 2016-2017

February 3, 2016

The Legal Action Center 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. The Center works to combat the stigma and prejudice that keep these individuals out of the mainstream of society. The Legal Action Center helps people reclaim their lives, maintain their dignity, and participate fully in society as productive, responsible citizens.

The Legal Action Center is the national expert on the federal privacy law protecting the confidentiality of those with histories of addiction. LAC was also one of the founders of and continues to co-chair and coordinate the Coalition for Whole Health, a national coalition bringing together advocates from the mental health and substance use disorder fields. The Coalition played a key role in advocating for passage of the federal Mental Health Parity and Addiction Equity Act (MHPAEA) and ensuring that parity for behavioral health services was a key component of the Affordable Care Act.

In New York State, LAC works closely with the State Office of Alcoholism and Substance Abuse Services (OASAS), the Alcoholism and Substance Abuse Providers of New York State (ASAP), as well as a number of individual addiction providers across the State. We also provide direct legal services to those impacted by addiction and work to ensure meaningful access to medication assisted treatment and other substance use disorder services, as required under the MHPAEA.

We applaud the recent budget and legislative steps taken by the Governor's Office and the Legislature to combat addiction and increase access to treatment for those who need it. We also strongly commend the Legislature for the numerous important steps it has taken to both raise

awareness of and confront the opiate epidemic that has struck the State with such force over the last several years. We strongly urge the Legislature to adopt the recommendations offered by our colleagues at ASAP. Additionally, we urge the Legislature to take the following steps to continue these critically important efforts:

- **Support and expand upon the Executive’s proposal to increase investments in prevention and recovery throughout the State’s addiction system;**
- **Support and expand upon the Executive’s proposal to connect individuals and families to needed treatment and provide them with the support they need to enter and succeed in treatment;**
- **Support the Executive Budget proposal to reallocate \$5 million in funding to help link those in the criminal justice system to the health care services they need and encourage the State to apply for a waiver from the Federal government and amend the Social Services Law to allow the State to use Medicaid funding to coordinate health services provided between inside jails and prisons and after release;**
- **Support implementation of the redesign of the State’s residential treatment system, thereby allowing the State to use Medicaid funding under its spending authority for the first time, and creating access to new federal funding streams;**
- **Support funding to increase housing opportunities for individuals who are currently or recently involved in the treatment system;**
- **Ensure enforcement of the new insurance requirements enacted as part of the 2014 package of legislation to respond to the opiate epidemic, as well as the requirements of the federal Mental Health Parity and Addiction Equity Act and the behavioral health components of the Affordable Care Act;**
- **Support the Governor’s pilot program allowing parole violators from New York City to receive opioid antagonist medication and call on the State to build on this pilot to eventually allow all those in the criminal justice system to receive any addiction medication that will assist them in maintaining sobriety and avoiding recidivism.**
- **Maintain funding for alternative-to-incarceration (ATI) and reentry programs and add \$20 million to expand ATI and reentry services to allow programs to assist underserved regions and offer needed services;**

Support and expand upon the Executive's proposal to increase investments in prevention and recovery throughout the State's addiction system.

The Governor's Budget includes funding for six new Recovery and Community Outreach Centers, in addition to the three existing centers, as well as 6 Adolescent Clubhouses.

When the RFP for the six new Recovery Centers went out, OASAS received many more applications than it had funding to support. This reflects the significant need for such Centers throughout the State to support individuals who are coming out of the treatment system or are otherwise in recovery obtain the services that they need to solidify and maintain their recovery so that they can live sober and productive lives in the community. In light of the significant need for such services throughout the State, particularly at this time of great need as a result of the opiate epidemic, we call on the Legislature to increase funding for these Recovery Centers so that individuals throughout the State who are in recovery have access to local services within their own communities to succeed and stay sober.

The Adolescent Clubhouses, meanwhile, are an important element in the State's prevention efforts. Addiction, particularly heroin and opioid addiction, are growing especially quickly among individuals under the age of 25, with New York's substance use disorder treatment system seeing a 126 percent increase in admissions over the last ten years among people aged 18 to 25 who are abusing opioids. We therefore urge the Legislature to increase funding for these Clubhouses to ensure that young people in all communities throughout the State have access to services that will help them avoid drug use and addiction. Such an investment will save lives, support families by helping them avoid addiction among their children, and save the State significant sums of money by avoiding later, more costly investments in treatment.

Support and expand upon the Executive’s proposal to connect individuals and families to needed treatment and provide them with the support they need to enter and succeed in treatment.

As mentioned above, the treatment system has seen a massive influx in young people (as well as other age groups). This increase reflects the huge need for treatment in the State, but also reflects the treatment capacity that New York has built over many years to absorb a large portion of this new need.

However, a common obstacle limiting the ability of individuals to obtain needed treatment is the ability to locate availability and figure out payment and other challenges. Families too face significant barriers to locating treatment availability for their loved ones, figuring out payment options once they locate the needed treatment, and encouraging their loved ones to accept the need or maintain their willingness to enter treatment. There is particularly strong anecdotal evidence about the difficulty of linking individual when they wind up in an emergency room as a result of their drug use – a time when they are often most open to the idea of seeking help – to needed care. As a result, many individuals leave the hospital without the support they need and return to old environments and behaviors.

Governor Cuomo’s budget includes a number of proposals to help people find available treatment options for themselves or their loved ones, figure out how to pay for needed treatment, and support the linkage to care, including family-support navigators, on-call peers and a treatment availability tool. These proposals are all very necessary for supporting individuals and families in locating and engaging in treatment, especially in times of crisis. We strongly urge the Legislature to support these

proposals, including through increased funding to ensure that the system has enough capacity to assist individuals and families throughout the State in figuring out what is often a new system and one that can be challenging to navigate, especially in a time of crisis.

Support the Executive Budget proposal to reallocate \$5 million in funding to help link those in the criminal justice system to the health care services they need and encourage the State to apply for a waiver from the Federal government and amend the Social Services Law to allow the State to use Medicaid funding to coordinate health services provided between inside jails and prisons and after release.

Last year, the Legislature allocated \$5 million in Medicaid funding to support efforts to connect those in the criminal justice system who have chronic health conditions to Health Home services in the community. Health homes are care coordination networks that provide comprehensive care management services to Medicaid recipients with multiple chronic health conditions, serious mental illness, and/or HIV/AIDS. As a result of certain obstacles, this funding was unable to be spent last year. In this year's Executive Budget, the Governor reallocated the money, to be spent over two years, and amended the budget language to remove the obstacles that prevented the allocation from being spent last year. We urge the Legislature to support this request, which will enable key linkage efforts that will result in reduced institutionalization, both in the criminal justice system through reduced recidivism and in the health care system through the reduced use of emergency rooms and detox facilities, and will also allow the State to realize significant financial savings.

Additionally, both Federal Medicaid rules and New York's Social Service Law §366(1-a) bar the use of Medicaid to pay for services inside an incarceration facility. However, numerous studies have

shown that the most effective strategy for connecting people to health care during their reentry from incarceration is to engage them in services as early as possible prior to their release. This period is essential for building the trust necessary for engaging these individuals – many of whom have had little previous interaction with the regular public health system – into community health care. The reallocation in this year’s budget will allow the State to begin investing in the necessary engagement and coordination. However, enabling the State to use Federal (and State) Medicaid funds for these services will allow this to be done in a much more comprehensive manner. Furthermore, because so much of the incarcerated population will be eligible for the increased federal match under the Affordable Care Act, most of the expense for this effort would come from the federal government, thereby generating significant savings for the State over the long term.

Therefore, we urge the Legislature to modify the Social Service Law to allow the use of Medicaid funds within prisons and jails pursuant to any federal authority the State is able to obtain. We also urge the State to seek a waiver or other federal authority to allow the use of Medicaid expenditures for individuals with significant medical needs in the 30 days prior to release. These steps would result in improved health outcomes, reduced recidivism, and significant financial savings.

Support implementation of the redesign of the State’s residential treatment system, thereby allowing the State to use Medicaid funding under its spending authority for the first time, and creating access to new federal funding streams.

Last year, New York became one of the first two states to ever obtain permission from the Federal government to use Medicaid dollars to pay for certain treatment services in a residential treatment facility with more than 16 beds - Medicaid normally cannot be used to pay for services in such

facilities as a result of the “Institutions for Mental Disorders” exclusion. In order to begin billing Medicaid for these services, the services must be offered through a new model of residential care. The State has already created a regulatory framework for this new model. However, a significant amount of work still needs to be done to bring this new framework into existence. The Governor has included implementation of residential redesign in his Executive Budget. We urge the Legislature to support this proposal, thereby allowing the State to develop new models of care to provide addicted individuals with the services they need in a more individualized manner using new federal resources, thereby generating significant financial savings to the State.

Support funding to increase housing opportunities for individuals who are currently or recently involved in the treatment system.

Housing is an essential component for ensuring that individuals are able to remain sober, address their health and mental health needs, obtain and maintain employment, and avoid involvement or re-involvement with the criminal justice system. Yet, as homelessness has increased in New York, those with addiction and have faced significant obstacles in obtaining safe and stable housing that will support their recovery, leaving many living in shelters, three-quarter houses or on the street.

The Executive Budget includes \$7 million in new funding for 300 beds targeting the addiction population over the next two years, as well as \$50 million to support ongoing and new residential beds for the mental health population. We urge that the Legislature support the targeting of new supportive housing units to those with addiction issues and mental health problems. We also urge the Legislature to provide resources to help single adults and families struggling with addiction and mental illness and who are homeless or at risk of homelessness to obtain access to the full spectrum

of housing options needed to help stabilize them, achieve and maintain sobriety, and succeed in the community.

Ensure enforcement of the new insurance requirements enacted as part of the 2014 package of legislation to respond to the opiate epidemic, as well as the requirements of the federal Mental Health Parity and Addiction Equity Act and the behavioral health components of the Affordable Care Act.

In 2014, the Legislature passed a package of 12 bills to combat the opiate epidemic confronting the State. One of the most significant pieces of legislation in this package created new protections to ensure that insurance companies would no longer deny individuals and families coverage for the treatment services they need to achieve sobriety. This new legislation complemented and supported the protections enacted by the federal government through the MHPAEA and the ACA. In fact, the Legislature had the foresight to explicitly incorporate the federal parity law into New York law, thereby making it illegal under both State and federal law for insurance companies to discriminate against people with substance use and mental health disorders. Furthermore, both the MHPAEA and the ACA gave enforcement authority to the states —specifically, to State Insurance Commissioners and Medicaid Directors.

However, both anecdotal evidence and numerous investigations by the New York Attorney General have made clear that insurers in New York have not achieved full compliance with federal and State parity laws. There are a number of steps that the State should take to ensure that all health insurance plans, both on the private market and in Medicaid managed care, comply with the requirements of

the federal parity law and ACA, as well as New York's 2014 insurance reforms and Timothy's Law (New York's mental health parity law).

Support the Governor's pilot program allowing parole violators from New York City to receive opioid antagonist medication and call on the State to build on this pilot to eventually allow all those in the criminal justice system to receive any addiction medication that will assist them in maintaining sobriety and avoiding recidivism.

As mentioned above, like many states throughout the country, New York has been hit hard by a growing opiate epidemic, with the epidemic growing especially quickly among young people under the age of 25. The risk of overdose and death is especially high in the weeks immediately following release from incarceration. Medication-assisted treatment has been scientifically proven to help appropriate people with opioid use disorders become and remain sober. The international scientific community, as well as various U.S. scientific bodies such as the National Institutes of Health, have long supported the use of effective and evidence-based medications to treat chronic opioid addiction.

In his State of the State, the Cuomo announced the first pilot program to provide medication assisted treatment to appropriate individuals from New York City incarcerated in a state facility for violating their parole as a result of relapse. We urge the State to support and build upon this program to ensure that all individuals in State and local incarceration facilities, and throughout the criminal justice system, have access to the medications they need to achieve and maintain their sobriety and avoid recidivism.

Maintain funding for alternative-to-incarceration (ATI) and reentry programs and add \$20 million to expand ATI and reentry services to allow programs to assist underserved regions and offer needed services.

The prevention, treatment and recovery support options described above will hopefully catch many people before they get themselves into trouble with the legal system. However, even with all these supports, a large number of people with substance use disorders will end up getting involved in the criminal justice system.

Over the last thirty years, New York has developed a very robust network of ATI and reentry programs. These programs have been critical to the State's success in simultaneously reducing crime, reducing the prison population and saving taxpayers many millions of dollars. They have had particular success in diverting individuals charged with drug crimes from incarceration to treatment and in supporting those with histories of addiction coming out of incarceration to obtain the services they need to be successful in reentering the community. However, in spite of the success of these programs, the vast majority remain concentrated in New York City and their impact has not been scaled into a statewide, comprehensive approach to reducing crime and recidivism and improving lives and communities. There remain numerous underserved geographic areas, both upstate and on Long Island, and large numbers of people who would benefit from ATI and reentry programming but do not receive these services. These needs are especially acute as a result of the State's opioid epidemic.

For decades, the Legislature played an essential role in keeping these programs operating. Three years ago, Governor Cuomo and the Legislature baselined funding for these services. This year, the

Governor has proposed adding \$1 million to support efforts to identify individuals who would benefit from diversion in underserved geographic areas, such as upstate New York and Long Island, as well as \$1 million to support the County Reentry Taskforces in helping to coordinate services for those being released from state prisons. The funding increases in the Governor's budget begin the process of bringing needed services to all parts of the State. However, significant additional funding is needed in order for these efforts to be successful. Furthermore, in order to offer services where they do not currently exist, providers are likely to need both startup funding and a commitment that operating funds will not disappear after a year or two, thereby forcing them to eliminate services to individuals who are benefiting from them. The Legislature has an opportunity to ensure that all New Yorkers have access to the services they need - \$20 million in new funding will begin to allow the creation of a truly statewide network of programs serving all those who can be safely diverted or are being released from incarceration.