THE NEW YORK STATE PUBLIC EMPLOYEES FEDERATION TESTIMONY

"To examine the capacity and long-term sustainability of the mental health workforce and service system in New York State"

New York State Assembly Standing Committee on Mental Health
November 9, 2021

Wayne Spence, President

Good afternoon Chairperson Gunther and other distinguished committee members. My name is Wayne Spence and I am the president of the Public Employees Federation (PEF). I want to thank you for holding this important hearing and for providing me the opportunity to speak to you on behalf of our 50,000 members about the current state of affairs at the New York State Office of Mental Health. Our union is made up of professional, scientific and technical experts who provide critical services to the residents and taxpayers of New York State. Serving as the state's frontline essential workers during the COVID-19 pandemic, my members have risked their lives and those of their families to maintain the continuity and quality of services to New York's most vulnerable citizens. Our members are the frontline workers who care for the state's most acute patients with mental illness. Our members take a great deal of pride in their work and the care that they provide to clients because they are professionals and they care about the welfare of their fellow New Yorkers.

I. CHALLENGES FACING EFFICIENT AND EFFECTIVE MENTAL HEALTH SERVICE DELIVERY TO AT-RISK NEW YORKERS

The mental health staffing and service delivery challenges facing the state are not new, but these challenges have certainly been exasperated by the COVID-19 pandemic. Due to the efforts of the previous administration acting through its own self-described "transformation agenda," the state of New York has actively worked to divest itself from providing intensive mental health services to the state's neediest residents for over a decade. Thanks to your work and that of so many of your colleagues, some of that damage has been mitigated, most recently with the rejection of the closures of Rockland Children's Psychiatric Center. However, it is increasingly

clear that the continued outsourcing, consolidation and closure of programs and services operated by the OMH, coupled with the reduction of staff and the physical beds dedicated to the mentally ill, are disproportionally harming low-income, uninsured, underinsured, undocumented and severely handicapped New Yorkers who suffer from acute mental illness.

(a) Over-reliance on the Private For-Profit and Not-For-Profit Provider Community

PEF believes there is an important role for private, for-profit and not-for-profit providers in solidifying the state's mental health and social service safety net. However, we believe the previous administration's overreliance on the private provider network diverted too many resources away from the public mental health service delivery system and left too many New Yorkers and their families alone to deal with their illnesses.

The fact of the matter is that private, for-profit and not-for-profit providers have no duty or responsibility to render care and are often unable to render care to clients with needs that are either beyond their capacity or which could undermine their fiscal and/or operational viability. The state does not provide adequate and reliable resources for these agencies to meet the demand.

Additionally, private, for-profit and not-for-profit providers are prone to program consolidation and closure based on any number of factors – staffing availability, utilization, financing, etc. When these programs and facilities close, clients and their families are forced to seek other treatment options. Those options often involve substantial travel to distant locations.

(b) Continued Closure of In-Patient Beds

According to the 2020 Census, New York state grew by more than 800,000 people from 2010 and the state's population now exceeds 20 million residents. The Treatment

Advocacy Center, a national think-thank and advocacy group for eliminating barriers to effective mental health treatment, recommends states maintain 50 in-patient beds for every 100,000 residents.[1] According to this formula, New York state should maintain at least 10,000 in-patient residential beds. We currently have 2,523 funded beds – 2,209 for adults and 314 for youth.

New York Population Growth Versus State-Provided In-Patient Bed Capacity

Year	New York Population	Total In-Patient Beds	Recommended Beds per 100,000	Difference
2010	19,378,102	4,958	9,500	-4,542
2020	20,201,249	2,209	10,000	-7,791
	+823,147	-2,749	+500	

To make matters worse, as evidenced again by its Executive Budget submission in 2020, one of the stated goals of the Office of Mental Health is to continue to reduce beds and services across the entire mental health system. Just last year and despite your valiant efforts, the final enacted state budget approved the closure of an additional 292 in-patient, youth and forensic psychiatric beds across the system. These closures came on top of the 2,500 other beds that have been closed since 2010. These bed reductions continue to dramatically impact New York's most vulnerable residents and families by forcing them to travel greater distances and pay higher costs to receive critical mental health services.

If you are a family of means, you may be able to find suitable treatment in your region or, if that isn't available, the travel costs, food and lodging costs to seek treatment

[1] See also, https://www.treatmentadvocacycenter.org/browse-by-state/new-york

are not as onerous as if you don't have those means. However, if you are uninsured, underinsured, undocumented, indigent or happen to have a highly resource intensive condition, you may not be able to get services by a private provider no matter how far you travel.

(c) <u>Continued Staffing Reductions</u>

A simple comparison of the 2010 and 2020 NYS Civil Service Workforce Management Reports reveals a disturbing trend in the reduction of staff that deliver state-supported mental health services to vulnerable New Yorkers.

NY State Staffing Allocation at OMH 2010 vs. 2020

	Staffing 2010[2]	Staffing 2020[3]	Diff	Percent Decrease	Proposed Reductions 2021
OMH	17,566	14,640	-2,916	17%	-446

PEF members working in the state's mental health system do not make widgets, they treat the mentally ill. It is an intensive endeavor that requires a coordinated program of progressive care involving multiple clinicians and professionals all working together to design an individualized treatment program for each client. Many times this process begins with basic, in-patient stabilization and then moves to outpatient treatment. There have been no medical, pharmaceutical or other innovations that mitigate the need for trained professionals to render direct care and treatment to state residents, regardless of their status, with mental illness. So, how can the state deliver a comparable level of care

[2] 2010 New York State Workforce Management Report; https://www.cs.ny.gov/businesssuite/docs/workforceplans/2010.pdf
[3] 2020 New York State Workforce Management Report; https://www.cs.ny.gov/businesssuite/docs/workforceplans/2020.pdf

given the reduction of professionals at its facilities? The answer is that it cannot and it does not.

Another important note is that the state's staffing crisis was created by the former Executive -- it is not solely the product of the current macro-workforce shortages. The state instituted a hiring freeze in the spring of 2019 and there are currently approximately 5,000 fewer state staff as a resul. So, while other healthcare employers offer incentives to attract and retain staff, the state has been systematically reducing staff and over-relying on mandated overtime to fill the void. Today, even with the hiring freeze lifted, the state has been unable find enough nurses and other professional staff to maintain its operations and several agencies are being forced to curtail operations due to low staffing.

(d) <u>Over-reliance on [Mandated] Overtime to Meet Staffing Needs</u>

Instead of hiring appropriate staff and developing strategies to retain these highly sought-after professionals, the state has relied on overtime to meet its treatment needs. In 2020, state employees worked more than 19 million hours of overtime.[4] Staff at OMH alone work an annual average of 220 hours of overtime compared to 148 hours in 2011. That is an increase of 33%! Moreover, total overtime costs for the state totaled $128 million in 2020. This is not sinply a product of the COVID-19 pandemic – on average,

[4] NYS Comptroller Report: NYS Agency Use of Overtime 2020; https://www.osc.state.ny.us/files/reports/special-topics/2021/pdf/overtime-2021.pdf

staff at OMH facilities worked 211 overtime hours in 219 and 185 hours of overtime in 2018.

How many staff could be hired with $128 million? How could those resources be used to improve the continuity and quality of care or to increase the availability of beds for New Yorkers in need?

The overreliance on overtime to meet long-term staffing needs also has broader implications on the culture of work in OMH and the ability of OMH to attract and retain talent, especially highly-trained workers in high needs fields (i.e., nurses, psychiatrics, etc.). How many vacancies does OMH have right now? How many vacant nursing and other positions that require higher education and professional training? We understand that facilities are being forced to reduce capacity and limit operations based on low staffing. Unfortunately, OMH does not provide detailed staffing reports to us, or relay what steps they are taking to meet their staffing needs.

(e) <u>Distractions from Core Mission</u>

The administration at OMH seems more focused on ancillary issues than addressing its core mission of caring for New Yorkers with mental illness in the middle of a public health crisis. In addition to advocating for bed closures, the agency has also engaged in other endeavors to either curtail or expand its jurisdiction into other areas. For example:

(1) <u>Transfer of Hutchings Children's Psychiatric Center to SUNY Upstate</u>

In July, OMH and SUNY Upstate announced the transfer to the children's unit at Hutchings Psychiatric Center (HPC) to SUNY Upstate. According to paragraph C of the March 31, 2017, Memorandum of Agreement authorizing the exploration of such transfer, the Commissioner of Mental Health was directed to undertake certain steps prior to proceeding with the transfer:

"The Commissioner of Mental Health shall ensure that such evaluation will determine whether Upstate could be used to deliver existing services for children currently provided at Hutchings; expand access to inpatient hospital bed capacity for children and improve coordination and delivery of medical and mental health services for children in Central New York." (Memorandum of Understanding, March 31, 2017)

While SUNY Upstate has stated it will expand inpatient youth bed capacity to 29 youth beds, HPC already has a 30-bed capacity.[5] This is an expansion?

This announcement came four years and one pandemic after its authorization. PEF requested a copy of the evaluation to review, but none has been produced to date. More importantly, however, is the fact that this transfer represents a fundamental abdication of OMH's core responsibility to administer and oversee the provision of mental health services to the state's residents. Neither OMH nor SUNY Upstate discussed the treatment plans for these youth with the clinicians who have been rendering their care in some cases for years.

(2) <u>Merger of OMH and the Office of Addiction and Substance Abuse Services</u>

Around 30% of individuals with mental health issues also suffer from problems associated with addiction and substance abuse. In the 2020 Executive Budget, the Governor advanced a proposal to merge these two entities. While PEF opposes the merger of these agencies, PEF fully supports the expansion and integration of any programs and services needed to ensure that any New Yorker who presents himself or herself to an OMH or OASAS facility or program has the ability to get evaluated on-site so that treatment, including the issuance of prescription medication, can be effectuated as soon as practicable. It has been a

[5] https://www.upstate.edu/news/articles/2021/2021-07-16-omh.php

year since this proposal was advanced, what steps have the commissioners of OMH and OASAS done to streamline these services?

II. PRESCRIPTIONS FOR IMPROVING OMH OPERATIONS AND THE DELIVERY OF CARE

(a) Moratorium on Facility Closures, Program Consolidations and Transfers:

This is self-explanatory. We are in the middle of a mental health crisis as evidenced by any measure. OMH needs to focus on its core mission of delivering needed mental health care for New York's neediest residents. The State Legislature has done an excellent job of securing new revenues and President Biden and our Congressional delegation have provided a major infusion of federal support to our state. We need to use these resources to focus our efforts on ensuring that every New Yorker who needs mental health services can access those services in their communities. If those services are not available or affordable from for-profit or not-for-profit providers, then it is the responsibility of the state, through OMH, to deliver those needed services.

OMH needs to stop efforts to absorb other agencies and entities, stop transferring its core functions and responsibilities to other agencies and get busy doing the work that they are charged to do.

(b) Develop Statewide Emergency Staff Attraction and Retention Plan

OMH advanced a grant proposal for itself and OASAS, OPWDD and the Department of Aging under the American Relief Act to secure funding to support staff attraction and retention. For OMH, more than $16 million in funding was sought to support staff attraction and retention in provider agencies, including specific proposals to afford:

- Targeted loan forgiveness;
- Tuition reimbursement;
- Hiring and signing bonuses;
- Longevity payments;
- Expanded student placements;
- Shift differential pay; and

- Expanded retirement contributions.

We understand some of these resources may be available for OMH-supported programs and services, but we have not seen a similar attraction and retention proposal from OMH to address its own acute staffing issue. We believe that a substantially similar program should be developed and funded so that OMH can be a more competitive employer in the current market.

(c) Hazard Pay

Under the grant proposal advanced by OMH on behalf of OPWDD, the state of New York, through OMH, is asking for $68.2 million in federal support to provide COVID-19 Workforce Performance Incentives for authorized providers. The grant application indicated that such an award would be used to provide "a supplemental one-time payment that will be made based on providers' attestation regarding the numbers of workers who qualify for the grants with the commitment that all will be paid to qualified workers. The payment will be tiered based on length of tenure and vaccination status of the employee (as per NYS vaccination policy December 2021). This funding would support over 100,000 current DSPs and Family Care Providers who worked during the pandemic and remain employed in the OPWDD service system, with an additional bonus if the worker is fully vaccinated in accordance with NYS vaccination policy as of December 2021. This supplemental payment will be available for workers." There is no other way to describe this grant other than "hazard pay."

We support all essential workers receiving appropriate financial and other recognition for their selfless and dedicated service during the pandemic. That said, we question why a state agency like OMH would advance a grant proposal for this benefit when its own staff, who served on the front lines during this crisis, have received nothing. It is this type of culture that undermines the morale of staff, especially those who worked so much overtime, got infected, became ill or spread the virus to family members while serving as essential workers for the state. We urge the Legislature to pass legislation to provide hazard pay to state employees who were deemed essential and were required to put themselves at risk coming to work during the declared state of emergency in connection with the COVID-19 pandemic.

(d) Pension and Salary Grade Reform

The State of New York was once a sought-after place to work. Public service was valued and public servants were respected. While state salaries were never equal to the wage compensation packages available in the private sector, the quality-of-life factor coupled with the pension plan benefits made the state an attractive destination for many professionals.

Salary Grade Review and Reform: While no one expects the state to offer top-end salary packages, for many of the professional titles we represent, state salaries are tens of thousands of dollars below market value. This applies to nurses, psychiatrists, and many other titles in OMH and other agencies. The pandemic and ensuing labor shortage have only heightened the disparity. We believe that the Office Division of Classification and Compensation in the Civil Service Department should be directed to undertake a thorough analysis of the current salary grade system and to make recommendations on how salary grades may be reformed to provide a more enticing entry point for younger professionals interested in state service.

Pension Reform: One of the major advantages of state employment is participation in the defined benefit plan. Workers prefer defined benefit pensions because they understand they will receive a set amount of benefit after a certain period of service. Defined benefit pensions, however, work most optimally when the benefits are uniform across job categories and departments and regardless of an employee's date of entry into the plan. It is for these reasons that we believe strongly that the Tier V and Tier VI plans should be improved to provide an additional inducement for professionals and staff to come into and remain in state service. We recommend the following improvements to more closely align Tier V and Tier VI with the Tier VI. (do we mean Tier IV?)

(1) **Five-Year Vesting:** the current Tier V and VI plans both include a 10-year vesting requirement, which means plan participants cannot accrue any benefit from the plan until they've worked for the state for 10 years. This vesting time is too long and serves as a disincentive to remain employed by the state, especially with the increasing demands being placed on staff.

(2) **Standardize the Mandatory Contribution at 3% of Salary:** In the Tier VI plan, the employee contribution rate increases as an employee's salary increases. As workers are forced to work more and more overtime, their contributions to the retirement plan increase. This is patently unfair. If OMH is going to mandate overtime and understaff its facilities, the Legislature should reinstitute the standard 3% contribution for all staff regardless of income.

(3) **Reinstitute the 2% Calculation at 20 Years of Service:** The Tier VI plan reduced pension plan benefits from 40% of salary to 35% of salary at 20 years of service. This too serves as a disincentive in retaining staff.

The New York State Employees' Retirement System is funded at 99+% and the employer contribution rate has been decreasing for several years. Now is the time to right size the benefits of the plan so that it can serve as an additional inducement to attract and retain sorely needed professional staff.

(e) Implement Real Programs and Services for the State Correctional System and to Support Formerly Incarcerated Individuals with Mental Illness

According to conservative estimates, 15-20% of the state's incarcerated population suffers from some form of significant mental illness.[6] Here in New York, we need to go no farther than Rikers Island to identify real life examples of where the state and localities have systemically failed to address mental health issues within the state and local correctional system.[7] Given the numbers of individuals in the state's correctional system in need of mental health treatment, the state needs to immediately expand the

[6] "The Prevalence of Mental Illnesses in U.S. State Prisons: A Systematic Review," by Seth Prins, 2014; https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4182175

[7] https://www.treatmentadvocacycenter.org/fixing-the-system/features-and-news/2506-danger-for-the-mentally-ill-at-rikers-island

number of staff and treatment options for incarcerated individuals so that needed care can be rendered during the course of their entire incarceration and in anticipation of release.

Moreover, as the state rightly continues to deinstitutionalize its prison system, it needs to redouble its efforts to ensure appropriate services are available for formerly incarcerated individuals. The recently enacted "Less is More" law provides no resources for formerly incarcerated individuals to seek or continue treatment upon release. Additionally, this new law specifies no role for OMH to develop or implement any community-based mental health programs or services tailored to meet the needs of formerly incarcerated individuals upon release and instead relies on private, not-for-profit providers to assist individuals with limited means in seeking treatment options. This, coupled with the elimination of the parole violations process, leaves parole officers not only understaffed to deal with the increase in clients, but without adequate, reliable resources to support their work and assist their clients who need help addressing their mental health challenges. This is a recipe for disaster.

We implore the Governor and the State Legislature to increase the number of mental health professionals and programs inside the state's correctional system so that we can address mental health issues on the front end of the rehabilitation process and to increase the number of parole officers so we can effectively deal with the increase in cases that will occur once "Less is More" becomes effective. Additionally, we implore the Governor and the State Legislature to dedicate additional public dollars through OMH to develop additional state-supported programs and services to support formerly incarcerated individuals in their communities so we can maximize the opportunity for success. At a minimum, the failure to enact or otherwise implement these needed reforms in advance of the effective date of "Less is More" unnecessarily puts communities at risk and undercuts the opportunity for formerly incarcerated individuals to have success upon release.

(f) Greater Agency Transparency and Oversight

We are very thankful to have such excellent leadership from Chairwoman Gunther and the rest of the Assembly Mental Health Committee members and we are hopeful

that Governor Hochul will stay true to her promise of ensuring that the executive agencies operate with greater transparency. And, while we believe that the new Governor will effectuate a major shift in the operation of state agencies, we remain concerned that many state agencies, including OMH, continue to overstep their bounds in certain areas while also stepping away from their direct responsibilities in others.

The commissioners and staff at the state agencies are appointed, not elected. We do not believe it is acceptable for agencies to move forward on any plans without direct input from and/or communication with our elected officials in the New York State Senate and Assembly. Additionally, where issues arise or where gaps in services and programs are identified, it is critical that agency leadership and staff communicate those issues to legislators and move immediately and collectively to address those gaps to the extent practicable under the law. For example, when the Executive advanced the merger of OMH and OASAS in last year's budget, the major overriding issue was the desire to coordinate care for the 30% of individuals seeking treatment at either OMH or OASAS facilities or at agency-sponsored providers who present with both mental health and addiction issues.

Under the proposed bill, the Commissioners were charged with developing a plan to merge the agencies to coordinate care for this specific population of individuals with dual diagnoses. PEF objected to the bill for a host of reasons and thanks to the New York State Assembly Majority, the bill was not ultimately approved. PEFs opposition to the bill was not in denial that an issue in the continuity of care exists, but rather the overreach of remedy being proposed by the agencies to address that specific issue and

the feeling that the agencies were leveraging the issue to accomplish other goals like staff reductions, facility closures, and service reductions.

This example raises a larger point regarding agency operations, transparency and oversight. As we approach the 2022 Legislative Session and in anticipation that this again will be an issue before the Legislature, we would like to know what specific administrative steps have been taken by the commissioner taken to address this issue? Has OMH hired more staff to assist in the identification and treatment of those with dual diagnoses? What is the status of the agency's efforts to integrate services with OASAS for this population?

In the end, we feel strongly that OMH and the other executive agencies should focus much more on working with stakeholders to develop solutions to problems in lieu of acting unilaterally.

We thank Chairwoman Gunther and the members of the Committee and staff for holding this hearing and for the opportunity to express our views. We look forward to continuing to partner with you and other stakeholders to address the continued mental health challenges so many New Yorkers face on a daily basis in an effective and efficient manner.

Sincerely,

Wayne Spence
President
NYS Public Employees Federation