



THE NEW YORK STATE PUBLIC EMPLOYEES FEDERATION TESTIMONY

“To examine how the COVID 19 pandemic has changed the delivery of health care and the impact on the health care workforce”

New York State Assembly Standing Committees on Health,
Higher Education and Labor

November 17, 2021

Wayne Spence, President

Good morning Chairpersons Gottfried, Glick and Joyner 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 impact of the COVID 19 pandemic on the delivery of health care and the impact on the health care workforce in New York State. 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. PEF members are the frontline workers who care for the state's most acute patients at New York's public hospitals, mental health and other state-operated health care facilities. PEF 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 HEALTH CARE SERVICE DELIVERY FOR AT-RISK NEW YORKERS

The health care 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 health, mental health and other 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 closure of Downstate University Hospital and the Rockland Children's Psychiatric Center. However, it is increasingly clear that the continued outsourcing, consolidation and closure of programs and services operated by the Department of Health (DOH), the Office of Mental Health (OMH), the Office for People with Developmental Disabilities (OPWDD) and other agencies, coupled with the continued reduction of staff, are disproportionately 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 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 health, mental health and other needed delivery systems and left too many New Yorkers and their families alone to deal with their problems.

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 providers are prone to program consolidation and closure based on any number of factors including: 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 Staffing Reductions

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.

2010 vs. 2020 Staffing for Major State Agencies that Deliver Health Care to Clients

	Staffing 2010¹	Staffing 2020²	Diff	Percent Decrease
OCFS	3,750	3,268	-482	-13%
OASIS	941	900	-41	-4%
OMH	17,566	14,640	-2,916	-17%
OPWDD	23,973	20,371	-3,602	-15%
DOH	3,593	2,513	-80	-2%

PEF members working in the state’s health care service system do not make widgets, they treat ailing New Yorkers with health, mental health, developmental disabilities, substance abuse and other issues. This can often be 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. So, how can the state deliver a consistently high level of care 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

¹ 2010 New York State Workforce Management Report; <https://www.cs.ny.gov/businesssuite/docs/workforceplans/2010.pdf>
² 2020 New York State Workforce Management Report; <https://www.cs.ny.gov/businesssuite/docs/workforceplans/2020.pdf>

state instituted a hiring freeze in the spring of 2019 and there are currently approximately 7,000 fewer state staff as a result. 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.

(c) Abuse of Mandatory Overtime to Meet Staffing Needs

Instead of hiring appropriate staff and developing strategies to retain these highly sought-after professionals, the state has relied on overtime and contracting out to meet its staffing needs. In 2020, state employees worked more than 19 million hours of overtime at a cost of over \$850 million. As you can see in the chart below, this is not simply a product of the COVID-19 pandemic – overtime for the entire state workforce is up 78% since 2010.

2020 OVERTIME USAGE BY MAJOR STATE AGENCIES³

Agency	Total OT Hours Worked 2020	Percent OT Employees of Agency	Average OT Per Pay Period	Average Hourly OT Pay Per Employee	Cost to State	% Change 2010 – 2020
DOCCS	4.2 M	34%	16	\$53.70	\$224 M	114%
OPWDD	4.6 M	45%	19	\$33.44	\$156 M	65%
OMH	3.1 M	35%	23	\$40.64	\$129 M	53%
SUNY	1.7 M	8%	12	\$42.95	\$73 M	45%
All Agencies	19 M	17.6%	16	\$44.53	\$850 M	78%

³ NYS Comptroller Report: [NYS Agency Use of Overtime 2020; https://www.osc.state.ny.us/files/reports/special-topics/2021/pdf/overtime-2021.pdf](https://www.osc.state.ny.us/files/reports/special-topics/2021/pdf/overtime-2021.pdf)

It is not just the amount of overtime that causes problems, but the inability to plan around work schedules because so much of the overtime is mandated on the same day at the end of the shift. While we are very thankful for the “nurse staffing committee” law that was passed this year, it only applies to hospitals defined in Article 28 of the Public Health Law. We believe this is a tremendous step in the right direction as it will allow nurses to better balance work and family. However, this law does not apply to the nurses at OMH, OPWDD, DOCCS and other agencies which rely heavily on mandated overtime to cover shifts. We believe this nurse staffing committee law should be expanded to cover nurses in other state agencies to ease the burden on nurses and to increase the quality of care for clients.

(d) Use of “Agency” or Contract Nurses to Meet Staffing Needs

The labor market for nurses and other skilled health care professionals is so tight that the state has been forced to rely on “agency” or contract nurses to meet staffing needs. Contract nurses are employed on a short- or long-term basis to support existing nurse teams. Many of these workers come from out-of-state, have no connection to the facility or the clients and earn \$250 per hour for their work. They do not maintain standard caseloads and often demand the most favorable shifts before on-boarding. As you can imagine, it is incredibly demoralizing for the state’s nurses at OMH, OPWDD, OMH, etc. to see their co-workers earning multiples of their hourly overtime earnings as they are repeatedly asked to work more and more.

The fundamental question for policymakers is whether or not this is a sound management practice that ensures the continuity of quality care. The workers we

represent are overwhelmed and feel the overtime burden hurts them and their families. They feel underappreciated and many are leaving to become contract nurses where they can earn many times their current salaries or they are moving to other, more traditional health care employers who better understand the marketplace and are willing to pay for their services.

How many staff could be hired with \$850 million? How could those resources be used to improve the continuity and quality of care or to increase the availability of services for New Yorkers in need?

The overreliance on overtime to meet long-term staffing needs also has broader implications on the culture of work at the state's hospitals, mental health facilities, homes for the developmentally disabled, and the ability of agencies to attract and retain talent, especially highly-trained workers in high demand fields (i.e., nurses, psychiatrics, etc.). How many vacancies do the SUNY Hospitals, mental health and other facilities have right now? How many vacant positions for nurses and other skilled positions that require higher education, professional training and/or licensure? We understand that facilities are being forced to reduce capacity and limit operations based on low staffing.

Unfortunately, most agencies do not provide detailed staffing reports to us, or relay what steps they are taking to meet their staffing needs.

II. PRESCRIPTIONS FOR IMPROVING STAFFING AND THE DELIVERY OF SERVICES

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

This is self-explanatory. We are in the middle of a health care and mental health crisis as evidenced by any measure. The state needs to focus on its core mission of delivering services to 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 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 to deliver those needed services.

For example, we are currently tracking closures or “suspensions of services” at more than 80 state-operated group homes administered by OPWDD since 2019. These closures have and will displace hundreds of residents. The clients in these and other facilities rely on the state’s nurses, therapists and other professionals to maintain their health and quality of life. These facilities lie directly in the continuum of care for these residents. These residents will either be transferred to a nursing home or back with their parents, many of whom are elderly and unable to adequately attend to the needs of their severely handicapped children.

(b) Develop Statewide Emergency Staff Attraction and Retention Plan

In July, DOH advanced a grant proposal on behalf of OMH, OASAS, OPWDD and the Department of Aging under the American Relief Act to secure funding to support staff attraction and retention for community-based agencies. The grant proposal equates to almost \$1 billion in additional funding sought by the state to support staff attraction and retention in private 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 state-supported, community-based programs and services, but we have not seen a similar attraction and retention proposal from any of the state agencies to address their own acute staffing

issues. In fact, PEF has developed legislation that we believe would help the state attract and retain nurses and help to develop a pipeline for new people to enter the profession. The “Nurse Employment, Enhancement and Dignity Act” would provide the following for all state-employed nurses (S.6424 by Sen. Rivera/A.7385 by Asm. Joyner):

- (1) Hazard pay (\$2,500 + 35 hours): This plan would provide \$2,500 payments, plus a week of additional vacation time for state-employed nurses. This is a simple recognition of the selfless service of our nurses and their families and the concept derives from the benefit afforded to many private sector nurses who rendered service during the height of the pandemic; and
- (2) Loan Forgiveness Program: Provides a \$1,000 annual loan forgiveness benefit for all state-employed nurses to support their continuing education and credentialing requirements; and
- (3) Annual Tax Credit: Provides a \$500 annual tax credit for state-employed nurses to recognize their service; and
- (4) Preferred Entry into SUNY/CUNY: Gives state-employed nurses preferred entry into the nursing programs administered by SUNY and CUNY to assist them in maintaining their professional credentialing.

The state has already received more than \$12 billion in unfettered federal support through the American Relief Plan and thanks to the actions of the Legislature, the state is seeing a revenue surplus. Unfortunately, few of these resources have been dedicated to addressing the ongoing staffing shortage. We believe that a substantially similar program should be developed and funded so the state can be a more competitive employer in the current market.

(c) Hazard Pay

Under the grant proposal advanced by the DOH 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 state agencies would advance a grant proposal for this benefit when their 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 (S.496 by Senator Gounardes/A.6559 by Asm. Abbate).

(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. While our members love the work they do, they are telling us that they can no longer afford to work for the state – the hours, the low pay, the marginal pension benefits, etc. They see the agency nurses in their facilities and they know that they are not being paid a market rate. The state needs to develop some tools right now to retain these workers or they too will leave. This, in turn, will continue to diminish the quality and availability of services for New Yorkers.

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, psychologists, psychiatrists, and many other titles in DOH, OMH, OPWDD and other agencies. The pandemic and ensuing labor shortage have only heightened the disparity. We believe that the 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. Defined benefit plans serve to retain workers as they must hit specific criterion to maximize benefits (i.e., age, years of service, etc).

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 for both groups when the benefits are uniform across job categories and departments 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 IV.

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.

- (1) **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 required contributions to the retirement plan increase. This is patently unfair. If OMH is mandating overtime and understaffing its facilities, the Legislature

should reinstitute the standard 3% contribution for all staff regardless of income to level the playing field.

- (2) **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. Again, this significantly lower benefit as compared to other staff at the same worksite, serves as a disadvantage to staff retention.

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) Health and Mental Health Services for Incarcerated Individuals in the State Correctional System

In addition to being charged with rehabilitating individuals convicted of crimes, the state's prison system must also care for the health and mental well-being of the incarcerated population. According to conservative estimates, 15-20% of the state's incarcerated population suffers from some form of significant mental illness.⁴ 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 and other health issues within the state and local correctional system.⁵

To address these challenges, DOCCS employs 440 nurses systemwide and has 693 nurse vacancies. The vacancy rates for doctors and other clinicians runs at around 20%. Given the numbers of individuals in the state's correctional system in need of

⁴ "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>

⁵ <https://www.treatmentadvocacycenter.org/fixing-the-system/features-and-news/2506-danger-for-the-mentally-ill-at-rikers-island>

health and mental health treatment, the state needs to immediately expand the 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 health, mental health and other 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, DOH, or other agencies to develop or implement any community-based health, mental health programs or other 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.

We implore the Governor and the State Legislature to increase the number of health, mental health and other professionals and programs inside the state’s correctional system so that we can address issues on the front end of the rehabilitation process. Additionally, we implore the Governor and the State Legislature to dedicate additional public dollars through DOH, OMH and other agencies to develop additional state-supported programs and services to support formerly incarcerated individuals in their communities so we can maximize the opportunity for success.

(f) Greater Agency Transparency and Oversight

We are very thankful to have such excellent leadership from Chairpersons Gottfried, Glick and Joyner, as well as the rest of the Assembly majority 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 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 other stakeholders and move immediately and collectively to address those gaps to the extent practicable under the law.

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

We thank Chairpersons Gottfried, Glick and Joyner and all of the members of the Assembly Standing Committees on Health, Higher Education and Labor 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 these issues in the coming legislative session.

Sincerely,

Wayne Spence
President
NYS Public Employees Federation