



THE NEW YORK STATE PUBLIC EMPLOYEES FEDERATION TESTIMONY

“Access to Mental Health Care for People with Serious Mental Illness”

Attorney General Letitia James

January 11, 2023

Wayne Spence, President

Good afternoon, Attorney General James. My name is Wayne Spence and I am the president of the 50,000-member strong New York State Public Employees Federation (PEF). I want to thank you for the opportunity to speak to you about access to services and care for those suffering from mental health conditions. 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 with mental illness. 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 SERVICE DELIVERY FOR AT-RISK NEW YORKERS

The mental health staffing and service delivery challenges facing the state are not new, but these challenges have certainly been exacerbated by the COVID-19 pandemic. Due to the efforts of the previous administration's self-described "transformation agenda," the state of New York has actively worked to divest itself from providing comprehensive services for the mentally ill, as most recently exemplified by the consolidation of the Hutchings Children's Psychiatric Unit at Hutchings Psychiatric Center into SUNY Upstate, the investment of \$21 million of taxpayer dollars for the establishment of 15 new, privately-operated Youth Assertive Community Treatment Teams¹ and another \$14 million into 14 new, privately-operated Assertive Community Treatment (ACT) teams.²

We are thankful that Governor Hochul highlighted an expansive vision for improved services and care for the mentally ill in her State of the State address and we look forward to seeing how she will move forward with this vision in the Executive Budget. We are heartened with the realization that the state needs to establish more inpatient stabilization beds and fortify out-patient services for the mentally ill. We remain hopeful that the Governor will take the appropriate steps to re-build the state-operated mental health safety net so that all New

¹ See also, <https://www.governor.ny.gov/news/governor-hochul-announces-21-million-funding-nations-first-assertive-community-treatment-teams>

² See also, <https://www.governor.ny.gov/news/governor-hochul-announces-funding-additional-innovative-effective-community-based-treatment#:~:text=ACT%20teams%20meet%20daily%20to,Yorkers%20living%20with%20mental%20illness.>

Yorkers can access needed services regardless of their circumstances, so we can coordinate cross-agency services including OPWDD, OASAS and DOCCS, establish a continuum of care for all New Yorkers who are suffering and so we can collect the data needed to calibrate the appropriate service footprint moving forward.

What is clear to us is that the continued outsourcing, consolidation and closure of programs and services operated by the Office of Mental Health, coupled with the reduction of staff and the physical beds dedicated to serving the mentally ill, are disproportionately harming low-income, uninsured, underinsured, undocumented and severely handicapped New Yorkers who suffer from acute mental illness, as well as those who suffer from co-occurring disorders.

In western New York, PEF members report seeing high inpatient readmission rates as patients are being discharged before they are ready and because there are few state-operated outpatient services available to monitor treatment efficacy and the patient's adherence to the treatment plan. Further undermining the continuum of care, Buffalo Psychiatric Hospital has closed 5 of the 9 outpatient clinics. This has resulted in a greater reliance on residential facilities for high-risk patients, much higher caseloads, fewer resources and limitations on the ability to conduct follow up care. The Butler Clinic, for example, now has over 800 patients. Employees are overwhelmed from the high case loads, chronically low staffing, increased violence from high-risk patients and an inability to deliver the inpatient/outpatient care needed to stabilize and treat patients successfully. This cycle, in turn, has led to high emergency room utilization, higher homelessness and more crime in the patient population.

While PEF believes there is a role for for-profit and not-for-profit providers in solidifying the state's mental health and social service safety net, these providers are not stable enough to serve as the primary vehicle of care for all of our mentally ill. We believe the previous administration's overreliance on the private provider network diverted too many resources away from the state's service delivery system and left too many New Yorkers and their families alone to deal with their illnesses.

It is interesting that Governor Hochul addressed this failure in her State of the State, "As of 2021, nearly half of children (3-17) in New York with mental or behavioral conditions did not receive treatment or counseling. Across the state, people face challenges finding the mental health services they need, from difficulty locating providers near them to long wait lists for appointments." Additionally, as highlighted by the Governor, last year, the state invested \$27.5 million to support increased reimbursement rates for inpatient psychiatric beds but today 850 beds remain offline.³ It is clear that even with additional resources, the private provider network doesn't have the means or the interest in addressing these needs.

³ Governor Kathy Hochul, 2023 State of the State, "*Achieving the New York Dream.*" pp. 50-56.

The major challenge facing policymakers is that the state has become too reliant on the private provider network to render care in many areas, including mental health. The fact remains that private providers have no duty or obligation to render care and are often unable or unwilling to care for clients with needs that are either beyond their capacity or who require longer-term, resource intensive treatments that challenge their operating margins. It is for these reasons that many of the most profoundly ill clients find their way to state-operated facilities and programs to receive care or simply remain in their communities without access to care. According to OMH, *“For those people whose illness is complex or results in substantial disability—or for those who lack insurance coverage or for whom mental health benefits are inadequate—more is often required. This is where the OMH ‘safety net’ is essential.”*⁴

The other problem with the continued over-reliance on private providers is that they are more prone to program consolidation and closure based on any number of factors, including staffing availability, utilization, and financing. When these programs and facilities close or reduce services, clients and their families are forced to scramble to find other treatment options. Those options often involve substantial travel to distant locations and/or treatment at state-operated facilities and programs.

Because of the failure of the “transformation agenda” initiated by former Governor Cuomo, as demonstrated by tangible and intangible factors such as the rise in suicides, crime and homelessness in every community across this state, PEF continues to advocate that New York “Fund Our Future” by expanding public services for the mentally ill and other at-risk individuals to ensure appropriate and continuous access to quality care for all New Yorkers with the goal of keeping affected New Yorkers in close proximity to their families and other support systems.

(1) **Bed Closures at OMH Reduce Access to Mental Health Services**

According to the 2020 Census, New York state grew by more than 1.6 million people in the two decades since 2000 and the state’s population is now approaching 20 million residents. The Treatment Advocacy Center, a national think tank and advocacy group for eliminating barriers to effective mental health treatment, recommends states maintain 50 in-patient beds for every 100,000 residents.⁵ According to this formula, New York state should maintain at least 10,000 in-patient residential beds. At the state level, we currently have approximately 3,273 funded beds – 2,203 for adults and 314 for youth.

⁴ See also, https://www.health.ny.gov/prevention/prevention_agenda/mental_health_and_substance_abuse/mental_health.htm

⁵ See also, <https://www.treatmentadvocacycenter.org/browse-by-state/new-york>

New York Population Growth Versus State-Operated In-Patient Bed Capacity⁶

	2015-16	9/2021	Change	% Change
Adult	4,055	2,203	-1,852	-45.7%
Children/Youth	528	314	-214	-40.5%
Forensic	1,469	756	-713	-48.5%
Total:	6,052	3,273	-2,770	-45.9%
NYS Population	18,976,457	19,835,913	859,456	+5%
NYC Population	8,008,278	8,804,190	795,912	+10%

According to OMH, private provider networks maintain 5,064 adult beds and 736 youth beds for a total of 5,800 privately operated beds across the state. This generates a total of 8,317 inpatient psychiatric beds statewide⁷. That is far below the needed amount in the best of times.

PEF is very thankful for the legislative efforts this past session to restore 100 of the more than 290 in-patient, youth and forensic psychiatric beds closed across the system as part of the 2021 state budget. While PEF appreciates these restorations, New York State has still closed more than 2,600 publicly-operated beds since 2015. 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.

For those with the most profound mental health issues, it is a matter of income. If you are a family of means, you may be able to find suitable treatment in your region or, if that isn’t available, you can afford the travel costs, food and lodging to seek treatment elsewhere. 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 from a private provider no matter how far you travel.

(2) **Continued Staffing Reductions Across State Agencies Equal Higher Costs and Cuts in Services**

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

⁶ See also, OMH Facility Performance Metrics and Community Service Report, September 2021 (Various Dates) Research units and Sexual Offender Treatment Programs (SOTP) were excluded.
<https://omh.ny.gov/omhweb/transformation/docs/2021/omh-monthly-report.pdf>

⁷ See also, OMH Facility Performance Metrics and Community Service Report, September 2021, pp. 20-22,
<https://omh.ny.gov/omhweb/transformation/docs/2021/omh-monthly-report.pdf>

NY State Staffing Allocation at OMH 1990 vs. 2021

Agency	Total Employees 1990	Total Employees 2021	Change in Employees 1990 - 2021	Percentage Change 1990 - 2021
OMH	39,933	14,157	-25,776	-64.5%

PEF members provide treatment for the mentally ill and the developmentally disabled. 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. Reductions in staffing don't only affect access to care, they affect the quality of care.

We thank Governor Hochul for her efforts to attract and retain state staff through specific programming like the Healthcare Worker Bonus program, Nurses Across New York program, changes to the Tier 6 pension plan and additional operating resources to OMH. But we need to do even more. The state needs to develop a strategy to meet its staffing needs so it can maintain critical services and operational continuity over the long term.

(3) Over-reliance on [Mandated] Overtime Hurts Staff and Clients

Instead of hiring appropriate staff and developing strategies to retain these highly sought-after professionals, the state has relied on overtime to meet its staffing needs. In 2020, state employees worked more than 19 million hours of overtime at a cost of over \$850 million.⁸ Staff at OMH alone worked an annual average of 220 hours of overtime compared to 148 hours in 2011.

OMH - Staffing Reductions and Increased Overtime 2011-20

	2011	2020	Difference	Percentage
Number of Staff	23,348	19,595	3,753	-16%
OT Costs	\$95.1 Million	\$156.7 Million	\$61.6 Million	+65%

The overreliance on overtime to meet long-term staffing needs also has broader implications on the culture of work in OMH and the Office for People with Developmental Disabilities (OPWDD) and the ability of these agencies to attract and retain talent, especially highly-trained workers in high-demand fields (i.e., nurses, psychiatrics, etc.). How many vacancies do these agencies have right now? How many vacant nursing and other positions that require higher education and

⁸ NYS Comptroller Report: NYS Agency Use of Overtime 2020; <https://www.osc.state.ny.us/files/reports/special-topics/2021/pdf/overtime-2021.pdf>

professional training? We understand that facilities are being forced to reduce capacity and limit operations based on low staffing. Unfortunately, the agency does not provide detailed staffing reports to us, nor relays what steps they are taking to meet their staffing needs.

We greatly appreciate the Governor's intention to bring the state workforce back to pre-pandemic staffing levels and her renewed emphasis on rebuilding the state workforce. It is long overdue and we look forward to seeing what specific steps the administration takes to address this challenge.

(4) **Distractions from Core Mission Leave Staff and Clients Scrambling for Services**

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:

(a) **Transfer of Hutchings Children's Psychiatric Center to SUNY Upstate**

In July 2021, OMH and SUNY Upstate announced the transfer of the children's unit at Hutchings Psychiatric Center (HPC) to SUNY Upstate. According to paragraph C of the March 31, 2017, Memorandum of Understanding authorizing the exploration of such transfer, the Commissioner of Mental Health was directed to undertake certain steps prior to proceeding with the transfer, including:

"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)

HPC is currently funded to provide 23 children's beds. SUNY Upstate has stated it will expand in-patient youth bed capacity to 29 beds. However, 11 of those beds will be reserved to create a new, special unit dedicated to serve youth from across the state with co-occurring diagnoses of mental health issues and developmental disabilities. HPC already

has a 30-bed capacity.⁹ Are we really qualifying this as an expansion? As previously indicated and as advanced by the Governor in her recent State of the State address, “As of 2021, nearly half of children (3-17) in New York with mental or behavioral conditions did not receive treatment or counseling.”¹⁰ For the families in the Onondaga, Cayuga, Cortland, Madison, and Oswego county service area, the availability of only 18 youth beds will certainly result in a further cut in services.

This announcement came four years and one pandemic after its authorization. PEF requested a copy of the evaluation for 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.

It is also important to note that PEF is not the only advocate sounding the alarm on the failures of our mental health system for New York’s children. As you are aware, litigation has been filed against the state by several plaintiffs claiming the state is not meeting its obligations under federal law relative to providing appropriate and accessible non-institutionalized care for youth with mental illness.¹¹ The complaint, filed on behalf of plaintiffs by the National Health Law Program, Disability Rights New York and Children’s Rights, asserts that New York’s failure to provide such mental health services violates the Medicaid Act, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act. They claim that Medicaid-eligible children do not maintain appropriate access to intensive home and community-based mental health services which subjects them to unnecessary risk of institutionalization. The plaintiffs are children who claim they have been forced in and out of institutions, hospitals and residential facilities due to inadequate alternatives in addressing their mental health problems.

⁹ <https://www.upstate.edu/news/articles/2021/2021-07-16-omh.php>

¹⁰ Governor Kathy Hochul, 2023 State of the State, “*Achieving the New York Dream.*” pp. 50-56.

¹¹ See also, <https://healthlaw.org/wp-content/uploads/2022/03/NY-CHILDRENS-MEDICAID-COMPLAINT.pdf>

(b) **Continued Legislative Push to Merge OMH and the Office of Addiction Services and Supports (OASAS)**

Around 30% of individuals with mental health issues also suffer from problems associated with addiction and substance abuse. In the 2020 Executive Budget, then-Governor Cuomo advanced a proposal to merge these two entities. The NYS Senate has continued this push. PEF opposes the merger of these agencies for a host of reasons, but more acutely because these two critical agencies will be fighting over a finite pool of resources to deliver services in the event of a merger. 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. This proposal was first advanced in the 2021 Executive Budget and to date we are unaware of any steps taken by the commissioners of OMH and OASAS to streamline these services for New Yorkers in need.

II. PRESCRIPTIONS FOR SUCCESS

New York cannot hope to address the mental health and addiction epidemic without providing significant additional resources to help New Yorkers access the help they need. The state is seeing an increase in the number of individuals with mental illness, as well as individuals who are afflicted with co-occurring disorders – mental health conditions and developmental disabilities, as well as mental health conditions and addiction issues. Despite this crisis, OMH has not developed enough intensive case managers, state-operated Assertive Community Treatment teams or in-patient capacity to provide needed stabilization services for those experiencing significant mental health and/or addiction issues.

This has resulted in fewer individuals with significant mental health and/or addiction issues getting immediate services and increased interactions between individuals in crisis and law enforcement officers across the state.

We know that the state-operated mental health system functions extremely well despite a chronic lack of resources and staffing. According to OMH’s own data, state-operated facilities have higher success rates following inpatient stays compared to their private sector counterparts even though they admittedly serve individuals with profoundly higher needs.

**Individuals Requiring Additional Support After In-Patient Stabilization or Other Services
Public and Private Providers, Year-Over-Year¹²**

		March 2022 (Period 4/21-6/21)		
		Adult	Child	Forensic
Readmission w/in 30 Days				
	State-Operated	11.8%	10.4%	2.5%
	Private	17.4%	10.6%	N/A
ER Visit w/in 30 Days				
	State Operated	9.8%	9.0%	4.5%
	Private	20.5%	14.1%	N/A

Expanding capacity is also critical to ensuring the continued safe and successful transition away from incarceration. Research indicates that approximately 50% of incarcerated individuals suffer from mental illness and/or addiction¹³. The state needs to maintain sufficient facilities to accommodate stabilization and addiction services and to provide statewide treatment options at every OMH in-patient facility for those suffering from mental illness and for youth with dual diagnoses of developmental disabilities and mental health issues. We are thankful that the state is requiring enhanced data collection, but PEF was disappointed that the new 9-8-8 system enacted as part of the budget will be operated by a private provider. PEF believes that the state is missing an opportunity to integrate care, calibrate services and track the progress of clients across the spectrum of public and private providers with this new system. The state should use this new system to ensure the integration of data and services available to address these crisis situations by increasing community treatment options and bed stabilization services at each of the state’s psychiatric centers to keep clients as close to their families as possible. It is a missed opportunity to advance mental health treatment across the state.

There are many other specific actions that policymakers could and should take to better integrate diagnoses and care, including:

- A. **Universal On-Site Diagnosis and Treatment:** The state needs to hire qualified, licensed staff at each OMH and OASAS facility to enable the immediate, on-site evaluation of all individuals who present for treatment. For those in crisis, this process will facilitate an immediate entry point for care and short-

¹² See also, OMH Facility Performance Metrics and Community Service Report, March 2022
<https://omh.ny.gov/omhweb/transformation/docs/2022/omh-report-mar-2022.pdf>

¹³ See also, “Incarceration Nation,” American Psychiatric Association, October 2014, Vol 45, No. 9
<https://www.apa.org/monitor/2014/10/incarceration#:~:text=Mental%20illness%20among%20today's%20inmates,rampant%20and%20often%20occurring.>

term stabilization or in-patient support, if needed. Developing this capacity will enable an expedited diagnosis of mental health, addiction or co-occurring disorders; facilitate the identification and implementation of immediate treatment plans; and allow for coordination of care between public and private providers of services predicated on the needs of the client. PEF is requesting \$10 million to meet these objectives.

B. Expand Capacity to Stabilize the Mentally Ill and Establish Regional Programming for Co-Occurring Disorders: The state needs to require each state psychiatric center to expand community-based mental health services and to re-open additional in-patient or short-term stabilization beds to support those suffering from mental illness and to treat those suffering from co-occurring disorders of mental health and addiction issues or mental health issues and developmental disabilities. Diagnoses of co-occurring disorders are on the rise, but state services have not moved fast enough to address this population. Too many New Yorkers, especially youth, are being forced into placements out-of-state to get needed treatment. These resources will help close the service gap for those with mental health issues, address the service needs of those suffering from co-occurring disorders, keep families in as close proximity as possible, support coordinated care between provider agencies (OMH, OPWDD and OASAS) and help gain new insights into the successful identification and treatment of these disorders. PEF is requesting \$30 million to meet these objectives.

C. Re-Invest in Supportive State-Operated Out-Patient Services for the Mentally Ill: The state has dramatically reduced the number of intensive case managers who provide community-based check-ins and wellness monitoring services to avert the need for crisis stabilization services.

Decline of Intensive Case Manager Staff at OMH 2010 - 2022

	2010	2022	Difference	Percent
Intensive Case Manager	249	161	-88	-35%

In lieu of making investments in established programs under OMH that are required to render services, the state has moved to privatize mental health services.

To date, the Governor has invested almost \$170 million in state and federal taxpayer dollars to build a new private provider network to deliver community-based mental health services, including: the establishment of Intensive Crisis Stabilization Centers (\$75 million), the establishment of 12 Supportive Crisis Stabilization Centers (\$71 million) and the establishment of 15 Youth Assertive Community Treatment Teams (\$21 million).

This transition away from state-operated services is problematic on several levels. First, the providers have no duty to provide services to every New Yorker who presents for such services. Many of the most profoundly mentally ill will still be referred by these providers to the state for care. Secondly, there is no guarantee that these providers will be able to maintain operational viability if their state/federal funding runs out or if they incur operational costs that they cannot meet. The state needs to develop a more comprehensive, universally accessible, publicly operated continuum of care for the mentally ill. Too often, patients receive stabilization services and are then released without additional follow up and/or support to maintain their treatment. Intensive Case Managers (ICMs) and Forensic ICMs at OMH work to provide follow up contact and intervention services with those suffering from mental illness. They check their well-being, whether they are taking appropriate medications and if they are maintaining their stability. The state desperately needs to expand this network of care. PEF is requesting \$10 million to hire and train sufficient community based intensive case managers operating in the Office of Mental Health.

D. **Building a Culture of Respect and Collaboration:** We are very thankful to have such excellent leadership in the State Legislature and Governor Hochul has certainly set a new, more respectful tone with her state agencies and her employees. However, like all large and diverse operations, there remain certain staff – administrative, professionals and supervisory – who conduct themselves unprofessionally in the workplace. To that end, we continue to field issues and concerns from members, especially our nurses and health care professionals, who feel that they are being bullied and abused by certain mid-level managers. We are not indicating that this is a widespread issue, but it is something that requires further consideration and action. PEF has drafted legislation to codify actions in the workplace that constitute “bullying,” cyberbullying,” and “abusive conduct” and this legislation would require all state employees receive training to identify such conduct with the hope of preventing it in the workplace and empower all employees to seek redress from such circumstances (2022: S.9437 by Senator Ramos/A.10367 by Assemblywoman Joyner). We hope that you will join with us in support of this legislation so that the state can be a model employer for all, so that we can educate all workers on what constitutes inappropriate conduct at the workplace and so we can re-build a culture of mutual respect and support across all the agencies as we collectively conduct the people’s business.

Thank you for the opportunity to share our concerns with you. We look forward to working with you to ensure that all New Yorkers have access to effective and affordable mental health services.

Respectfully Submitted,

Wayne Spence
President, New York State Public Employees Federation