



Testimony
Of
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New York State Rehabilitation Association
at the
Joint Legislative Budget Hearing
on
Mental Hygiene

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2014 Joint Legislative & Policy Agenda

The NYSACRA-NYSRA Joint Legislative and Policy Event
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NYSRA and NYSACRA have found common ground in many areas pertaining to their work on behalf of organizations that provide services and supports to New Yorkers with disabilities. In 2014, this collaboration has formalized, resulting in the two associations collaborating to advocate on behalf of their members on public policy, budget and legislation that positively supports people with disabilities. This action reflects the belief of both associations that collaboration is key – especially in an era of uncertainty and change. Therefore, we believe our collective efforts will strengthen our ability to impact public policy decisions and provide increased value to our member organizations and to the people with disabilities they support.

Governor Cuomo's 4th Executive Budget proposal calls for spending of \$142.1 billion for the 2014-15 State Fiscal Year (SFY), reflecting a 1.7% proposed increase from SFY 2013-14 spending levels, keeping overall spending below 2%. However, parts of the proposal call for significantly higher spending amounts, including a 3.8% increase in spending on education aid as well as a 3.8% increase on Medicaid spending falling under the global Medicaid cap (this excludes most Medicaid funding for developmental disability, mental health, substance use disorder services). Growth in two of the largest components of the state budget require that other areas of the budget will not grow, at least to the extent that they might if all areas of the budget were held to the same growth restrictions.

ANALYSIS

The Governor's budget proposal projects that the State of New York will realize nearly \$500 million in surplus in SFY 2014-15, putting the state on track to achieve a \$2B surplus by 2017. Such projections are based on a number of actions including:

- Approval of the \$10 billion Medicaid waiver proposal submitted to the federal Centers for Medicare and Medicaid Services
- Receipt of federal disaster preparedness funding
- Legislative approval of actions to reduce spending in certain areas of the budget

Included in spending reductions are cuts to the Mental Hygiene budget totaling nearly \$325 million. It also recommends deferring the planned cost of living adjustment for direct support professionals in human services agencies, at a savings to the state of \$75M, and includes no similar increase for direct support professionals in the OPWDD field.

Our Associations are concerned that rather than invest some of the anticipated \$500M budget surplus into the services and supports on which New York's most vulnerable residents rely and into compensation for individuals who provide such services and supports, the "Executive Budget proposes a multi-year tax reduction

plan for individuals and businesses, which has been sized to absorb the majority of the surplus that would otherwise occur..." (FY 2015 Executive Budget Financial Plan).

ACTION

NYSRA and NYSACRA applaud the investments in community-based services for individuals with disabilities in some areas of the Governor's budget proposal, yet believe that the anticipated budget surplus should be used to make investments throughout the systems on which New Yorkers with disabilities rely. Therefore, we call upon the State Legislature to pursue changes to the Governor's budget proposal in select areas that we believe will result in a more equitable and fair state budget for all citizens.

INVESTMENT IN SERVICES

The State of New York seeks vast systemic transformation in the delivery models for services to individuals with disabilities. NYSRA and NYSACRA embrace proposed reforms that are to the benefit of people with disabilities and the services provided by our member agencies. We strongly urge the State Legislature and Executive to consider investment of resources to allow for appropriate, meaningful transition, carefully planned and which outlines a viable long-term strategy. Such a strategy must:

1. Make the necessary up-front investments in the more integrated, alternative, models of service delivery that are desired.
2. Incrementally shift the existing resources necessary to make the new service delivery model viable.
3. Maintain the state government's commitment to the strategy long-term – to see the changes through to completion.

Through all of these stages, it is imperative to maintain options from which individuals may choose. Government must also pay close attention while in the transition process for the potential of negative consequences requiring the necessity to dramatically modify the overall strategy.

The service systems to both individuals with behavioral health needs and developmental disabilities are both in the midst of the largest transformation in a generation or more.

BEHAVIORAL HEALTH

The NYS Office of Mental Health has laid out a plan to fundamentally transform its state operated psychiatric hospital system of services from one that relies heavily on inpatient care to one that supports individuals with mental health needs to live in their community with supports and services they need to be healthy and safe. This plan, while controversial and likely to be modified, points toward a new mental health service delivery model in New York that aligns more closely with the expectations of

the Federal government. It will be more responsive to the needs and desires of individuals with mental health disabilities and their families for the types of services and supports they desire and need.

The Governor's executive budget proposal supports this transformation through a commitment to "pre-invest" \$25M in community-based mental health supports bolstering capacity in the community to meet needs as inpatient capacity comes down. These resources will be dedicated to expand community-based services based on the recommendations advanced by the RCE Teams, including:

- Crisis/respice capacity
- Home and community-based services waiver slots
- Supported housing
- Mental health urgent care walk-in centers
- Mobile engagement teams
- First episode psychosis teams
- Peer-operated recovery centers
- Family resource centers
- Evidence-based family support services
- Suicide prevention services
- Family concierge services
- Adjustments to managed care premiums to expand community support services in HARPs

This initial investment of resources will serve to "prime the pump," resulting in sufficient initial capacity to shift the reliance from institutional services to community-based. While this investment should be more significant, the \$25M represents a very good first step. Continuing the momentum, the Governor's budget proposal recommends "re-investing" \$110,000 for each state-operated inpatient bed into community-based services specific to the needs of the community.

In addition, the budget proposal calls for "re-investing" nearly \$120M in Medicaid savings from behavioral health services provided outside state-operated psychiatric hospitals – effectively serving to "pre-invest" in the system's capacity to transition successfully to a managed care environment. These investments include:

- \$20M to ensure system readiness for managed care through development of infrastructure and capacity
- \$15M to enhance clinic reimbursement to support integration of behavioral and physical health
- \$40M to preserve access to inpatient behavioral health services through a Vital Access Provider program
- \$10M to enhance reimbursement under the Health Home Plus model for individuals on Assisted Outpatient Treatment (Kendra's Law)
- \$30M for 1915 (i)-like services under Health and Recovery Plans (HARPs), including:
 - Rehabilitation
 - Peer supports
 - Habilitation
 - Respite
 - Non-medical transportation
 - Family support and training
 - Employment and education supports
 - Supports for self-directed care

The field of behavioral health services support these recommendations. However, it is crucial that community-based providers are afforded access to help build these community-based services and that maximum flexibility is provided as these investments are implemented. These proposals by the Governor stand as the first real commitment to the concepts of “re-investment” that the mental health community has seen in nearly a decade, since savings from the downsizing of the state-operated inpatient psychiatric hospital system were diverted to the state's General Fund, rather than go toward community-based services as the Community Mental Health Reinvestment Act intended. Additionally, investments in community housing options for individuals with mental illness are proposed, focused primarily on portions of the state where affordable housing is most scarce and on populations for which affordable housing has been quite difficult to obtain – including nursing home residents, adult home residents and individuals who are without a home. The success of this transformation will depend on the ability of New York State to maintain this commitment in out-going years – to “re-invest” resources from the downsizing state-operated inpatient capacity into the community.

DEVELOPMENTAL DISABILITIES

The NYS Office for People With Developmental Disabilities is under tremendous pressure from the Federal government to make vast transformations to services to individuals with developmental disabilities. The Executive budget includes efforts to continue the shift from large, institutional developmental centers to residential supports and choice of day activities and work in the community, which has been modestly underway for years. Additionally, the budget proposal continues efforts to return individuals with developmental disabilities to NYS from out-of-state residential placements. Supporting individuals seeking community supports, OPWDD has identified \$20M for services for individuals who are either new to the system (e.g. young adults transitioning from the education system) or have previously relied on other supports (e.g. family) or who have experienced a changing need (e.g. development of dementia).

This \$20M investment is appreciated, but is widely expected to be wholly insufficient to meet the demand for such community supports. While moving in the right direction, the initiatives appear only loosely related to the plans for system transformation articulated by OPWDD. The Executive Budget Proposal appears not to be adequately in sync with the plans articulated by OPWDD regarding system transformation.

There is no better example of this disconnect than with regard to “Employment Supports.” While OPWDD seeks approval from CMS for a plan to transition employment supports from traditional workshop settings to the community, it is simultaneously seeking to take reductions to workshop-based employment supports. There is ample support for enhancing more integrated, supported employment opportunities, but dismantling employment supports that some individuals with developmental disabilities have chosen and on which they rely – especially before viable alternatives and options can even be considered by such individuals – is not only flawed, but almost guarantees negative consequences for those individuals served.

NYS need not look any further than Rhode Island for a roadmap for what NYS needs to do on the employment front – much of which can be applied to all OPWDD services, as well as services beyond those specifically for individuals with developmental disabilities. After an investigation of Rhode Island's employment and day supports for individuals with intellectual and developmental disabilities, the U.S. Department of Justice clearly articulated that states must:

1. Not overly or unnecessarily steer individuals toward less integrated opportunities
2. Make sufficient investments to build up the capacity in more integrated employment opportunities
3. Educate individuals about their options
4. Allow individuals to make a choice from the available options

NYSACRA AND NYSRA SEEK INVESTMENT IN SERVICES:

COMMUNITY-BASED SERVICES IN THE OMH AND OPWDD SYSTEMS

Support:

- Governor's proposal for \$50 million for OPWDD community-based services resources for new (\$20M) and previous (\$30M) commitments made available based on needs of individuals.
- Governor's proposal for \$25 million for OMH "pre-investment" in community-based service capacity building and \$110,000 commitment for each inpatient state-operated bed closure reinvestment.
- Governor's proposal for \$120M re-investment of behavioral health services funding to bolster capacity to move to managed care environment.

Seek:

- An investment comparable to that proposed for behavioral health services to bolster the capacity of the developmental disabilities field to successfully transition to a managed care environment.

EMPLOYMENT SUPPORTS FOR INDIVIDUALS WITH DISABILITIES

Seek:

- Efforts to enhance supported employment and more integrated opportunities in the community, but not at the expense of other employment and day supports upon which individuals have chosen to rely (\$11M reduction).
- No reductions to funding for workshops, like those proposed by the Executive, while OPWDD transforms workshops into social enterprises, affirmative businesses and other more integrated employment options for people with developmental disabilities. Cuts to workshops at the beginning of the transformation process will result in failure to successfully transition and likely lead to loss of employment opportunities for people with developmental disabilities, altogether.
- Adequate time to provide transformation of employment supports and incentives to make such transformations.

HOUSING FOR PEOPLE WITH MENTAL HEALTH ISSUES AND DEVELOPMENTAL DISABILITIES

Support:

- Governor's proposal to improve accessibility of housing for individuals with mental health needs and substance abuse disorders through rental stipend increases (\$550/month, downstate) and additional housing units targeted to adult home, nursing home and homeless populations.
- Governor's proposal to continue downsizing state-operated Developmental Center and Psychiatric Center census and return individuals with developmental disabilities from residential out-of-state placements.

Seek:

- Additional resources to support individuals with developmental disabilities with residential needs, including those individuals no longer able to live with a family member or other support, and individuals transitioning from Developmental Centers. Also, a plan for re-investing savings associated with the downsizing of the Developmental Centers into community-based housing options should also be developed.

INVESTMENT IN PEOPLE AND HUMAN SUPPORTS

NYSACRA and NYSRA believe investments in the compensation provided to individuals who have direct interaction with and provide direct supports to individuals with disabilities pays great dividends in the quality of service that is delivered – largely through the ability to recruit and retain qualified people. The Justice Center for the Protection of People with Special Needs, initiated by the Cuomo administration, sought and achieved changes that significantly increased the expectations for excellence in service delivery to individuals with disabilities from direct support professionals.

The Executive Budget includes a proposal to expand the scope of duties for direct support professionals through an amendment to the Nurse Practice Act that would allow direct support professionals in non-OPWDD certified settings to perform the same duties direct support professionals in OPWDD certified settings currently provide under the supervision of a nurse.

Our associations strongly support this as it will provide the necessary flexibility to serve individuals with developmental disabilities in more integrated settings – in line with the directive from the Federal government and OPWDD's own goals. However, such change should be accompanied by investments to train and prepare both nurses and direct support professionals to serve in this new capacity. Such additional responsibilities must also be accompanied by investments in the compensation afforded to direct support professionals.

Unfortunately, the Executive Budget Proposal recommends deferring the planned cost of living adjustment for the human services sector and provides no comparable compensation increase for direct support professionals in the OPWDD field. An increase

in New York's minimum wage simply must come with an equivalent increase in funding for direct support professionals in the disability field in order to prevent these jobs from becoming minimum wage positions.

Expectations for excellence in service delivery and increased responsibilities should be matched with an expectation for increased compensation commensurate with the high quality and increasing responsibilities of such individuals. Unfortunately, no such compensation increases for those individuals who are most responsible for the quality of individual service delivery to individuals with disabilities has been provided in a number of years for all sectors – some of which have not seen an increase in nearly a decade. This failure to include a compensation increase for direct support professionals, as expectations increase and additional responsibilities are proposed, must be looked at in light of the Executive's proposed tax cut for businesses and individuals. If expectations for excellence in service delivery are to be realized, they must be accompanied by investments in compensation for the workforce of direct support professionals who provide such services – not only in 2014-15, but in future years as well.

Additionally, the direct support professional credentialing legislation vetoed in 2013 due to lack of appropriation authority should be included in the final 2014-15 budget. This legislation, when enacted, would ensure a highly qualified and skilled workforce of individuals are available, trained and prepared to provide the high quality direct support services to individuals that are demanded by government. This legislation would ensure that compensation remains commensurate with the expectations for excellence going forward.

NYSACRA AND NYSRA SEEK INVESTMENT IN PEOPLE:

THE DIRECT SUPPORT WORKFORCE

Seek:

- A restoration of the planned human services cost of living adjustment for direct support professionals and a comparable investment for direct support professionals in the developmental disabilities field. Research and experience prove that a well-trained and compensated workforce improves the lives of the people being served.
- A dedicated pilot program to credential direct support professionals and create opportunities for career ladders for direct support professionals (\$5M), similar to A.7313-A/S.5102-A, which was vetoed by the Governor in 2013 given the Executive's recommendation to address the credential through the State Budget process.

NYSACRA AND NYSRA SEEK LEGISLATION:

NURSE PRACTICE ACT

The Governor's proposed change to the Mental Hygiene Article VII bill would amend the Nurse Practice Act to allow direct support professionals with the authority to perform functions that fall within the scope of practice of nurses under the supervision of a nurse in a non-certified setting. This change will extend the current ability of direct support professionals to perform such functions in OPWDD certified settings, thereby

