



New YORK STATE CONFERENCE OF LOCAL MENTAL HYGIENE DIRECTORS, INC.

An Affiliate of the New York State Association of Counties

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July 12, 2012

Sue Watson
NYS Office of Mental Health
44 Holland Avenue
Albany, NY 12229

(delivered by email)

Dear Ms. Watson:

Thank you for the opportunity to provide comment on the proposed Part 14 NYCRR Part 513 regulations to implement Executive Order #38 by Governor Andrew M. Cuomo. The New York State Conference of Local Mental Hygiene Directors, Inc. (The Conference) is a statutorily incorporated organization consisting of the Directors of Community Mental Hygiene Services for New York State's 57 counties and the City of New York. Our members are responsible for the planning and oversight of community mental hygiene services; many of our members are also direct services providers.

These proposed regulations seek to limit administrative expenses and executive compensation for providers receiving state aid or state authorized funds. The aim of this proposal appears to be to limit the inappropriate use of public funds for excessive payments to human service providers and certain persons employed by these entities. The ensuing comments will focus primarily on how your agency can measure administrative expenses without, to the extent possible, punishing good-faith providers; there is some concern that one-size-fits-all methodologies will make this difficult. The second and equally important priority in the promulgation of these regulations is in recognizing and leveraging the important role of local governmental units in the development of guidance and implementation of these regulations for providers for which we have joint oversight.

1. We support the exemption for local governmental units from these regulations. LGUs are established under State Mental Hygiene Law and are charged with ensuring that all people within their boundaries have access to a range of necessary mental hygiene services. Some of our members are also providers, and often do so in the absence of voluntary providers for a variety of reasons including the difficulty in sustaining clinics in rural and sparsely populated areas of the State. LGU providers are otherwise administrative and oversight bodies that legitimately would not be subject to the limitations proposed herein.
2. We support language stating that the State agency will be charged with collecting the administrative expense and executive compensation data for programs contracting with local governmental units or other local bodies, with the agency providing guidance to the LGU on

how this process will be expedited. We look forward to working with your agency to develop clear and proper guidance on this process.

3. We request that the mental hygiene agencies collaborate with the counties/New York City to provide boilerplate contract language for LGUs to use with their contractors (at the LGU's discretion) regarding the requirements that they comply with reporting under these regulations, and we recommend that the agency consult with the County or City when a contractor providing service in their jurisdiction seeks a waiver from these requirements.
4. In cases that non-compliance leads to any withholding of funds, this should not impact the timely passage of LGU funds through their state aid letters. Under OPWDD's new "roster" process for county-contract providers, for example, the LGU and other local providers will be penalized for a single non-compliant provider through the withholding of the entire state aid letter until the non-compliant provider completes their roster. This should not be the case under these regulations, and in developing sanctions against non-compliant providers the agency should ensure that localities and other providers receiving funds through local contracts are not penalized for the transgressions of unaffiliated organizations.
5. We are concerned that many of the administrative expenses as defined under this proposal are mandated by State and Federal rules, and can only be limited to a certain extent. For example, the interoperable electronic health record requirement under Health Homes, e-prescribing under I-STOP legislation, incident review panels and compliance activities in the Justice Center bill, and enhanced billing software to implement the Ambulatory Patient Group (APG) payment methodology. Furthermore, as the State moves forward to universal Medicaid Managed Care, programs will be required to augment clinical, billing, and utilization review staff to comply with MCOs' different billing and utilization management compliance standards.

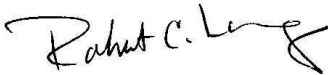
The proposed regulations combined with these mandates creates a "double-bind" in which providers may have to choose between investing in compliance to State and Federal laws, and limiting administrative expenses. As such, measurement of administrative tasks should take into account providers' good faith investments made out of compliance to other mandates.

6. We urge caution on the methodology the state agency used for benchmarking administrative vs. program service expenses: If the percentages proposed under the administrative cap are based on historical expense data, this very likely does not account for the very recent requirements that have inflated legitimate administrative overhead and created expense outliers- such as new billing systems, electronic health records, and HITECH and Medicaid compliance efforts. A deflated benchmark will make compliance with EO #38 regulations even more difficult in the prospective environment of infrastructure investments necessitated by the Affordable Care Act, Medicaid Redesign and other legislative and regulatory initiatives.

7. Related to the outlier issue in our benchmarking concern, we also urge caution in the prospective measurement of administrative expenses, given that large short-term expenses such as developing IT infrastructure, legal expenses from lawsuits or audits, etc. can inflate the numbers beyond the threshold for a given reporting period, even with a two-year averaging methodology.
8. Finally, there is a great concern which has been raised by local directors and fiscal staff that this proposal will require double bookkeeping: All of the providers we oversee and contract with use the Consolidated Fiscal Report (CFR), and there is concern that the categories of “administrative expenses” differ enough from the CFR that all providers will be required to keep two sets of books. Aside from the impracticality of this proposition, it would in itself increase administrative expenses associated with the mandated and redundant bookkeeping and reporting. We therefore recommend that the definition of administrative expenses for CFR purposes are reconciled with the definition of administrative expense for EO #38 purposes.

Thank you for your consideration of our comments, we look forward to working with you in ensuring that this proposal ultimately serves to strengthen the provider system that we jointly oversee as your local partners in government. Please feel free to direct any comments or questions to the staff of the Conference.

Sincerely,

A handwritten signature in black ink that reads "Robert C. Long". The signature is written in a cursive style with a large, stylized 'L' at the end.

Robert C. Long, MPA
Chair, NYS Conference of Local Mental Hygiene Directors, Inc.
Commissioner, Onondaga County Department of Mental Health

cc: Kelly Hansen, Executive Director, NYSCLMHD