NEW YORK STATE OF OPPORTUNITY. | **Office of Mental Health**

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Governor	Commissioner	Acting Executive Deputy Commissioner

To: Karen Persichilli Keogh, Secretary to the Governor
             Elizabeth Fine, Counsel to the Governor
From: Ann M. Sullivan, M.D., Commissioner, Office of Mental Health
Re: Government Transparency Initiative
Date: October 20, 2021

The Office of Mental Health (OMH) oversees a large, multi-faceted mental health system that serves more than 700,000 individuals each year. OMH operates psychiatric centers across the State and also regulates, certifies and oversees more than 4,500 programs, operated by local governments and nonprofit agencies. The mission of OMH is to promote the mental health of all New Yorkers, with a particular focus on providing hope and recovery for adults with serious mental illness and children with serious emotional disturbances. We recognize the critical role that community and government partners play in ensuring that we meet the mental health needs of New York's children, adults, and families, and that an open and transparent government allows for public participation, instills confidence in the process, and provides accountability.

As part of Governor Hochul's pledge to usher in an era of greater transparency and accountability in New York State government, we conducted a full assessment of OMH's policies and practices and identified ways that we can increase transparency.

The following is a summary of our findings and recommendations:

<u>Summary and Recommendations</u>

- **Making additional information available to the public on your website, or through the use of social and/or other media, while upholding the State's commitment to language access;**

    <u>Summary:</u>
    OMH is constantly exploring ways to improve the navigability of our website in order to make information more accessible to the public.

    Presently, a wealth of information is available on the OMH website, much of it on our homepage. Visitors can find Daily COVID-19 data on infections and confirmed deaths caused by COVID-19 among the patients, clients, and staffs of our psychiatric centers, as well as information about:

- OMH Statistics & Reports
- The OMH Transformation Plan
- Meetings, Webcasts and Webinars of the Behavioral Health Services Advisory Council
- The Statewide Comprehensive Plan
- General Mental Health Information and Resources
- Public Notices
- Information about OMH Facilities

Recommendations:
OMH is constantly exploring ways to improve the navigability of our website in order to make information more accessible to the public.
- The Public Information Office will explore reorganizing the agency's homepage in order to make information that is most important to the public more prevalent and accessible.
- We will also utilize our social media platforms to better promote the data, reports and other significant information available to the public on the OMH website.

- **Ensuring the timely preparation of legally mandated reporting and identifying ways to make useful information available to the public;**

Summary:
OMH is currently responsible for producing and sharing approximately a dozen reports with the legislature. The most notable are:
- Statewide Comprehensive Plan
- Sex Offender Management Treatment Act
- Suicide Prevention Activities
- Assisted Outpatient Treatment
- Monthly Status on Census at OMH Psychiatric Centers and Community Reinvestment

OMH will identify reports that are not posted on its public website or are not archived and will evaluate the appropriate steps to share more information with the Legislature and the public.

Additionally, OMH has streamlined our internal process to ensure the timely approval and dissemination of all reports.

Recommendations:
- Increase posting of reports to ensure transparency
- Continue to explore ways to streamline the internal review process to ensure the timely approval and dissemination of reports

- **Ensuring the use of Project Sunlight database in accordance with the Public Integrity Reform Act of 2011;**

Summary:
OMH has assembled a team consisting of Intergovernmental Relations, Counsel's Office, and Human Resources to examine and update all guidance, memos, and training requirements associated with Project Sunlight. The goal of this initiative is to update the following:
  - How staff are designated as reporters.
  - How and when staff are notified of their responsibilities associated with Project Sunlight.
  - How often training is required.
  - How compliance will be monitored and measured.
  - All documents and memos will be updated.

Recommendations:
  - Provide annual training on Project Sunlight and what OMH employees need to do to comply.
  - Issue reminders regarding compliance.
  - Update the database of employees that need to comply with Project Sunlight on an annual basis.
  - Issue a Frequently Asked Questions (FAQ) about Project Sunlight and how it applies to the agency.

- **Improving response time for all Freedom of Information Law requests, including by tracking monthly backlogs of outstanding requests and new requests, and by proactively posting frequently requested information or completed requests online;**

Summary:
  - The OMH Records Access Officer (RAO) currently tracks the backlog of requests which, for the most part, occur when additional review of priority records is requested.
  - In the last month, the Chamber FOIL group has streamlined the review of priority FOILs, making the review process more efficient.
  - OMH has streamlined our internal process to identify and discuss priority FOIL requests.

Recommendation:
  - Additions to both the OMH and Open FOIL websites to clearly show that clinical records are not available under FOIL. These requests make up a significant portion of the FOIL requests made to the agency and these records are not subject to FOIL.

- **Complying fully with Executive Order 8.95 "Using Technology to Promote Transparency, Improve Government Performance and Enhance Citizen Engagement" regarding Open Data NY;**

  Summary:
  - o OMH is in compliance with Executive Order 8.95 "Using Technology to Promote Transparency, Improve Government Performance and Enhance Citizen Engagement" regarding Open Data NY. We currently provide updates to Open Data NY on twenty-two (22) OMH datasets.

  Recommendation:
  - o While we are compliance with E.O. 8.95, OMH continues to explore other areas where data can be made available through Open Data NY.

- **Posting documents required for meetings open to the public at the same time the agenda is posted, to the extent practicable;**

  Summary:
  - o The OMH Commissioner currently chairs the Most Integrated Setting Coordinating Council (MISCC) and serves as an ex-officio member, along with OASAS, of the Behavioral Health Service Advisory Council (BHSAC). Both Councils meet at least quarterly and are comprised of committees that meet as necessary.
  - o Since 2017, when OMH Commissioner Sullivan assumed the responsibility of chairing the MISCC, the meeting agendas and relevant documents are posted to the website two weeks prior to scheduled meetings, to the extent practicable. The meetings are also video recorded with the recordings posted to the website for public review.
  - o The BHSAC meetings are video recorded with a copy of the recording posted to the OMH website.

  Recommendations:
  - o In advance of scheduled BHSAC meetings, OMH and OASAS will collaborate to post the agenda and a bulleted list of projects and regulations to be discussed at upcoming meetings.
  - o Following BHSAC meetings, OMH and OASAS will post the approved minutes and recordings as soon as possible.
  - o OMH will continue to explore ways to make documents accessible in advance of meetings that are open to the public.

- **Reducing or eliminating the costs associated with providing data or records;**

  Summary:

- o OMH continues to explore ways to reduce or eliminate costs associated with providing records. To that end, OMH provides electronic records at no-cost and encourages clarification and discussion on larger requests in an effort to refine the request and reduce the size and costs of records being produced. While the majority of records are released electronically, printed records are subject to nominal fees. In an effort to further reduce or eliminate costs, we recommend the following.

Recommendations:
- o Provide direct links to newly available records in the FOIL Subject Matter List.
- o Provide links in the Open FOIL NY website to Agency Subject Matter Lists and possible documents links.
- o Create an internal OMH review that would determine whether records that have been FOILed routinely should be publicly posted on the OMH website.
- o Continue to encourage clarification and discussion on larger requests in an effort to refine the request and reduce the size and cost of records being produced.

- **Updating records retention policies, including ensuring the timely transfer of pertinent records to the State Archives;**

Summary:
- o The New York State Office of Mental Health Records Management Officer and Health Information Management/Medical Records Department follow the rules and guidelines dictated by New York State Archives for Historic and General Records Retention and Disposition. For Medical and Patient Records, they follow New York State Mental Health Law 33.13 and FOIL laws.
- o The guidance documents used for retention of Historic and General records is "a living document" meaning, it is under regular review, updated and added to as needs arise, such as with current pandemic protocols, and as storage options change. Annual mandated training is also provided to agency staff to provide general operating practices in records maintenance and retention regarding their personal or bureau space to ensure records are under constant review for relevance and need for organization, retention or disposal following dictated regulations.
- o OMH Central Office's records director works routinely with NYSED regarding any needed retention/disposition schedule modifications, including those related to transfer of patient records to archives.

Recommendation:
- o OMH will conduct a review of the policy and schedules, and further revisions as necessary, will be undertaken.

- **Increasing participation of agency personnel in community events and town meetings and providing new avenues for public participation in government decision-making.**

Summary:
OMH conducts a wide range of community and stakeholder events, meetings, and town halls to increase public participation in government decision-making. This includes monthly stakeholder meetings, town halls, focus groups, and presentations on various policy and funding decisions such as COVID-19 mitigation and vaccination efforts, developing a comprehensive crisis response system, funding workforce development initiatives, and other critical issues that impact New Yorkers. The Commissioner and agency staff, including regional staff from our Field Offices, Psychiatric Centers, and Suicide Prevention Office, are also invited to and attend community events and meetings regularly. Furthermore, our regional staff, including individual and family advocates, have regular contact with local government staff, providers, consumers, and families to ensure that the agency's decision is informed by local community input.

Recommendations:
OMH leadership and staff recognize that there are always opportunities to enhance public participation and engagement with policy and funding decisions related to mental health services. The COVID-19 pandemic offered us an opportunity to re-examine how we deliver services remotely and also engage the public through virtual meetings and conferences. While we recognize the value of in-person meetings, especially at the local level, the ability to conduct virtual meetings allowed us to engage a wider and more geographically diverse audience.

With the benefit of these lessons learned, OMH will continue to explore new avenues for public participation and engagement, such as:
  o Identify ways to increase participation in community and stakeholder meetings through promotion efforts on our website, social media, newsletters, and at other community and stakeholder events and meetings.
  o Increase staff participation at local community and town events to better promote OMH services and engage stakeholders in the decision-making process.

Additional Recommendations

We also identified additional avenues for greater transparency and accountability as follows:

- **Behavioral Health Medicaid Managed Care and Parity Compliance:**

Summary:

Pursuant to Medicaid Reform Team (MRT) recommendations, the State continues to carve in the behavioral health benefits into Medicaid Managed Care for adults, children and dual

eligible Medicare enrollees. While the State has been working to achieve full compliance with the statutory requirements, there is relevant consumer information that was not posted during the transition, such as factual information on Medicaid spending, compliance with the statutory and contract protections, recoveries issued pursuing to the Medical Loss Ratio and Behavioral Health Expenditure Targets, and the statutory reinvestment requirements.

Additionally, a multi-agency effort between the Office of Mental Health (OMH), the Office of Addiction Services and Supports (OASAS), the Department of Health (DOH), and the Department of Financial Services (DFS) to increase access and coverage for behavioral health services has led to greater parity in access/coverage for medical/surgical services. However, there is more that can be done to better inform New Yorkers, especially individuals and families seeking treatment, about the continued disparities in coverage between medical/surgical services and behavioral health services through the transparent reporting of information to the public. The State should be transparent by proactively posting all Medicaid and parity compliance data relating to consumer access to Behavioral Health benefit.

Recommendations:

OMH will develop a dedicated page on our agency website where consumers can access reports and information on Behavioral Health Managed Care, including parity violations, citations related to lack of compliance, and the status of behavioral health expenditure targets and recoupment. Additional information follows:

- Behavioral Health (BH) Medicaid Managed Care (MMC) citations:
  Since 2019, the State (OMH and DOH jointly) has issued 87 citations to MMC Plans for failure to pay claims or failure to provide adequate evidence that there is sufficient access to BH services (Mental Health Parity). By the end of this calendar year, the number of BH MMC citations will grow to 115 and the State will continue to issue citations and pursue regulatory action for non-compliance. We have been working with the DOH to publicly post these citations to ensure transparency and maintain consistency with the standard practice occurring in many other states. We recommend and will work with DOH to post these citations and will also post this information on the new dedicated OMH webpage.

- Mental Health Parity reporting data:
  OMH and DFS have worked together to collect Parity data from health insurers which reveals where there are potential violations that are restricting access to BH care. This information will inform the public and demonstrate that the State is monitoring this issue. DFS should continue to publish this information on their website as soon as the reports are available and working with the State's multi-agency team to improve the way this information is posted to be helpful for consumers. OMH will also post this information on our new webpage.

- o Behavioral Health (BH) Medicaid Managed Care and Fee For Service Spending: While the State continues its work to fully comply with the statutory requirements of the behavioral health transition to MMC, it is imperative that we publicly post any factual information on Medicaid spending, compliance with statutory and contract protections, recoveries issued pursuant to the Medical Loss Ratio and Behavioral Health Expenditure Targets, and statutory reinvestment requirements. We recommend and will work with other state agencies to post this information, including on the new OMH webpage.

- o BH Medical Necessity Criteria Reviews: NYS statute requires that OMH, under the direction of the Commissioner, must review and approve all Behavioral Health Medical Necessity Criteria used by health insurers (with comprehensive benefit packages) to approve or deny care. OMH has collected and is examining this information. Once determinations are finalized, we will be working to bring insurers into compliance with OMH's published acceptable standards, known as the Guiding Principles. We will post the results of these efforts including the scoring and justifications given to insurers to correct and improve their Medical Necessity Criteria and its application.