



*New York State Assembly*  
**2011 ANNUAL REPORT**

*committee on*  
**MENTAL  
HEALTH AND  
DEVELOPMENTAL  
DISABILITIES**

*Felix W. Ortiz*  
*Chair*



*Sheldon Silver*  
*Speaker*

THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY



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December 31, 2011

Honorable Sheldon Silver  
Speaker of the Assembly  
Legislative Office Building, Room 932  
Albany, New York 12248

Dear Mr. Speaker:

It is with great pleasure that I submit to you the 2011 Annual Report for the Assembly Standing Committee on Mental Health and Developmental Disabilities. This year has marked the beginning of significant changes in both the mental health and developmental disabilities fields which will result in a vast transformation of the way service delivery is provided to individuals served by the Office of Mental Health and the Office for People With Developmental Disabilities. The Committee has closely monitored these changes throughout the year and will work diligently to ensure that the needs and rights of individuals with psychological and developmental disabilities are kept at the forefront throughout this process.

During the 2011 Legislative Session, the Committee reviewed bills which focused on strengthening consumer rights; requiring higher quality of care and safety for individuals served in the Mental Hygiene System; and changing public perception of stigmas that often surround mental health, chemical dependency, and disabilities.

On March 12<sup>th</sup>, the New York Times published the first of a sequence of articles depicting devastating conditions of certain group-homes operated by the Office for People With Developmental Disabilities which highlighted the need for systemic reform in the way New York State cares for its most vulnerable individuals. Under your guidance, the Assembly Committee on Mental Health and Developmental Disabilities partnered with the Assembly

Committee on Codes, and the Assembly Committee on Oversight, Investigation, and Analysis to further examine these publicized allegations. A series of public hearings were held across New York State in order to provide the Committees with further insight into concerns that individuals and their families face when participating in OPWDD services; issues providers encounter while working to ensure quality programs and residences; and the needs of an under-supported workforce.

The hearing series resulted in a legislative package of seven bills which focused on some of the key concerns raised at the public forums, and was an initial step towards improving the system as a whole. Of the seven bills, three have been signed into law. I can assure you that the Committee is steadfast in its commitment to continue to work with self-advocates, families, providers, and the agency itself to continue to improve the care of individuals with developmental disabilities.

In closing, I would like to thank you for your leadership and support to the Committee on Mental Health and Developmental Disabilities in what has been another challenging economic year for the State of New York. I look forward to 2012 as we continue to evolve current ideas and confront challenges to which we must find answers.

Sincerely,

A handwritten signature in black ink, appearing to read "Felix W. Ortiz". The signature is written in a cursive style with a horizontal line underneath the name.

Felix W. Ortiz  
Chair  
Assembly Standing Committee on  
Mental Health and Developmental Disabilities

**2011 ANNUAL REPORT  
OF THE  
NEW YORK STATE ASSEMBLY  
STANDING COMMITTEE ON MENTAL HEALTH  
AND DEVELOPMENTAL DISABILITIES**

**Felix W. Ortiz  
Chair**

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## I. INTRODUCTION

The Assembly Committee on Mental Health and Developmental Disabilities has jurisdiction over legislation affecting programs that provide services, care, treatment, and advocacy for individuals with various disabilities. The Committee focuses on ensuring that individuals with a mental illness or a developmental disability and those with multiple disabilities are provided appropriate and necessary services to live a fulfilling life and are protected from abuse or harm in institutional and community settings.

The Committee has legislative oversight of programs administered and licensed by the State Office of Mental Health (OMH) and the State Office for People with Developmental Disabilities (OPWDD). The Committee also has statutory oversight of the Commission on Quality Care and Advocacy for Persons with Disabilities (CQC-APD), the Developmental Disabilities Planning Council (DDPC), the Inter-Office Coordinating Council (IOCC), and the Most Integrated Setting Coordinating Council (MISCC). According to the Division of the Budget, the aforementioned agencies and the Office of Alcoholism and Substance Abuse Services (OASAS) are expected to serve nearly one million individuals in 2011-12, including 700,000 persons with mental illness, 260,000 persons with chemical dependencies, and 126,000 persons with developmental disabilities. The Committee also works closely with the New York State Assembly Standing Committee on Alcoholism and Drug Abuse, the Assembly Standing Committee on Veterans Affairs, and the Task Force on People with Disabilities.

During the 2011 session, the Committee reviewed a number of bills and addressed many issues aimed at providing quality services and enhancing protections for individuals with various disabilities. Some key legislation included a major legislative package of bills aimed at addressing core issues surrounding abuse in programs and facilities operated, certified, or licensed by OPWDD; amending the mental hygiene law to remove outdated terminology and references; reducing stigma faced by veterans with mental illness and their families; and preventing agencies from collecting fees associated with services and treatment on monetary settlements awarded to individuals or family members from a settlement or judgment of an action against the State for improper or negligent treatment.

This report describes the Committee's major legislative activities during the 2011 session.

## **II. STATE BUDGET HIGHLIGHTS**

The State continues to face record budget deficits resulting from the worldwide financial crisis of the last few years. Throughout the 2011 Legislative Session, the Committee was forced to grapple with the difficult task of determining priorities for the mental hygiene system within the difficult constraints imposed by the State's poor fiscal climate. Despite the restraints caused by the State's deficit for the 2011-12 state fiscal year, many important programs in the mental hygiene system continued to be funded. Within the Office of Mental Health and the Office for People with Developmental Disabilities, the following proposals and appropriations were enacted in the 2011-12 Budget:

### **A. Medicaid Eligibility for Individuals in an Institution for Mental Diseases (IMD) (\$200 million in savings)**

The 2011-12 Enacted Budget includes legislation to permit the Office of Mental Health (OMH) to suspend, rather than terminate, Medicaid eligibility for individuals who are served in a psychiatric hospital, or other facilities classified by the Federal government as Institutions for Mental Disease (IMD).

In 2010, the Federal Centers for Medicare and Medicaid Services (CMS) indicated that services for individuals in IMDs whose Medicaid eligibility is terminated would not count in the calculation for Disproportionate Share (DSH) payments, and would result in disallowances to states that terminate rather than suspend eligibility. In order to ensure these individuals were fully counted in the DSH payment calculations, the Legislature enacted this change.

### **B. Rightsizing Mental Health Facilities**

Facing difficult fiscal times, the Governor's proposed budget included drastic cuts to state agency operations including the rightsizing of facilities. The Enacted Budget includes the conversion of Brooklyn Children's Psychiatric Center to a community-based center for children with serious emotional disturbances. The 2011-12 Enacted Budget also authorizes OMH to right-size state mental hygiene facilities through the conversion of inpatient beds to Transition Placement Program (TPP) beds and where appropriate, closures of wards and facilities that are under utilized.

### **C. Establishing Funding for Adult Homes**

On September 8, 2009, United States District Court Judge Nicholas G. Garaufis, of the Eastern District of New York, ruled that New York State violated the Americans with Disabilities Act by housing more than 4,300 persons with a psychiatric disability in 28 adult care homes located in New York City. The Court ruled that such housing is segregation and is not the most integrated setting appropriate to the consumers' needs.

On September 7, 2011 the State settled this action. Under the terms of the settlement, no person with a serious mental illness may be placed in an adult home until that person first receives a revised Preadmission Screening and Resident Review (PASRR) Level evaluation and a Level II evaluation is performed. The State is also required to assess whether current adult home residents identified as suffering from a serious mental illness can be appropriately transferred to a community housing setting, and if so, the adult home will be required to initiate discharge planning to the most integrated appropriate community housing. The 2011-12 Enacted Budget provides for \$20 million to comply with a court order pursuant to DAI v. Cuomo.

#### **D. APPROPRIATIONS**

Funding for services offered by the Office of Mental Health and the Office for People with Developmental Disabilities as well as programs certified and licensed by such agencies have seen a significant decline as the result of the state and national economic recession. At the same time, both agencies have an immense need to expand services. Programs and facilities were asked to find ways to provide the same level of care and treatment while finding efficiencies and cost savings in their budgets. This has been done by examining and reforming the way that programs operate. Both agencies were committed to reducing any waste and duplicative functions occurring within the administration of their respective agencies to absorb cuts at the administrative level in order to mitigate the impact on the individuals receiving services. The Committee fought to alleviate the cuts to programs and services to ensure that individuals have access to the necessary care and treatment regardless of the state's financial circumstances.



### **III. SIGNIFICANT LEGISLATION**

#### **A. OVERSIGHT AND MANAGEMENT**

All residents in New York should have access to appropriate services, both for mental health disorders and developmental disabilities. Having access depends upon many factors, including transparency, coordination, and accountability. The committee recognizes the deficiencies in the mental hygiene system and strives to address them and to make the delivery of appropriate quality services a priority in the State.

#### **Providing Physicians in Rural Counties**

*A.873 Destito/ S.5245McDonald (Reported)*

Assisted Outpatient Treatment (AOT), or Kendra's Law, establishes a process by which a person is deemed by a court to be in need of outpatient care in order to live safely in the community. A physician is required to examine the individual and appear during the court process. The court appearances are required by law to be scheduled by the judge within three days of the receipt of the petition. These requirements can be onerous for smaller counties where there are few qualifying physicians. This bill would require that the Office of Mental Health make qualifying physicians available to appear in court for counties with a population under 75,000. This bill has passed the Assembly but was not acted upon by the Senate.

#### **Prohibiting Co-Mingling of Adolescents and Adults in OMH Residential Programs**

*A.8357 Titone/S.5678 Lanza (Chapter 188)*

It is important that families are assured that their children are safe and are receiving the best possible care when they are admitted to a facility operated by or a program licensed through the Office of Mental Health. This bill requires the Commissioner of the Office of Mental Health to promulgate rules and regulations prohibiting the co-mingling of adolescent and adult patients under certain instances in state-run facilities.

#### **Aligning Funding for State Inmates at OMH Facilities**

*A. 7495 Magee/S.4864 Griffo (Veto Memo 29)*

The Central New York Psychiatric Center (CNYPC) organization, located in Marcy, NY, is a comprehensive mental health service delivery system providing treatment to persons incarcerated in the New York State and county correctional system. CNYPC consists of a 226 bed maximum security inpatient facility and is the only state facility where patients may be involuntarily hospitalized pursuant to section 402 of the New York State Corrections Law.

Currently when an inmate of a state correctional facility commits a crime while incarcerated, the state is required to pay for fees associated with prosecuting the individual. Because CNYPC is unique in that the center receives DOCCS inmates in need of treatment, but is under the

jurisdiction of OMH, the state was not assuming the costs for state inmates in this instance, therefore leaving the local district to compensate this cost.

This bill requires the state to pay for costs associated with prosecuting state inmates at OMH facilities who receive state inmates in order to align the funding of these instances with what currently occurs in DOCCS facilities.

This bill was vetoed by the Governor, because it was included as part of local mandate relief in A.8518 (V. Lopez)/S.5856 (Skelos) which was Chapter 97 of the Laws of 2011.

## **B. CONSUMER CARE ISSUES**

Individuals diagnosed with mental illnesses or developmental disabilities are often reliant on providers and direct-care workers. As residents in a hospital or residential setting, the consumers should receive appropriate supports and quality care. The Committee continues its effort to empower individuals and their families to navigate the system, file complaints, or report abuse. Ultimately, the Committee works to ensure that consumers receive the best care in a safe and clinically appropriate environment that enables them to work toward and to sustain recovery or symptomatic improvement, and to enjoy a greater quality of life.

### **Providing Increased Legal Services for Individuals in Residential Health Care Facilities**

*A. 126-A Cusick/S.3423 -A McDonald (Passed Assembly)*

The Mental Hygiene Legal Service (MHLS) is a statutorily created entity that provides legal assistance to patients or residents of a facility where services to individuals with disabilities are provided. These facilities include psychiatric centers, developmental centers, institutes, clinics, wards, institutions, or buildings. Because of this definition the New York Court of Appeals ruled in Hirschfeld v Teller 14 N.Y. 3<sup>rd</sup> 344 (2010) that MHLS lacks jurisdiction to represent individuals with mental illness who have been admitted to nursing homes from psychiatric centers and psychiatric hospital wards. This bill would alleviate this situation by authorizing MHLS to provide legal assistance to individuals currently living in a residential health care facility who are admitted directly to such health care facility from one of the facilities listed above and who are receiving services for a serious mental illness.

### **Reducing Stigma for Veterans and Their Families**

*A.1070 Ortiz/S.4760 McDonald (Passed Assembly)*

As the Federal Government begins to withdraw troops from overseas conflicts, there will be a significant increase in the number of veterans returning to New York State looking to return to life after war. With this comes the challenge of finding work or returning to school, coping with physical injuries sustained overseas and transitioning back into life with family and friends.

In addition, many military personnel returning to New York have been exposed to or have experienced trauma while in combat, placing many of these individuals in high risk categories of triggering underlying conditions, such as Post Traumatic Stress Disorder (PTSD), substance abuse or other mental health issues. This is complicated further by the pronounced stigma that is associated with mental illness and substance abuse among military communities. Left untreated, combat-related mental health issues can manifest itself through substance abuse, the criminal justice system, and even suicide, destroying the lives of veterans and their families.

This bill is an attempt to reduce stigma about mental illness and substance abuse among military communities, and would require the commissioners of the Office of Mental Health (OMH), the Office of Alcoholism and Substance Abuse Services (OASAS), and the Director of the Division of Veterans' Affairs, to develop a public education initiative on mental illness and chemical dependency among service members, veterans, and their families.

### **Preventing State Collections on Lawsuits for Improper Care**

*A.4346-A Brennan (Passed Assembly)*

There has been a well documented practice in the mental hygiene agencies, specifically the Office of Mental Health, of billing individuals or families who have successfully sued the State for negligent or improper care in order to recoup payment for services accrued while under care of the state.

This bill would provide that when an action against the State for negligent or improper treatment in a Department of Mental Hygiene facility results in a settlement or a judgment for a monetary award, the Department would be prohibited from seeking recovery from such monetary awards for amounts relating to the provision of services or treatment within the facility.

### **Updating Mental Hygiene Law to Reflect Person-Centered Language**

*A.6840 Rodriguez/S.4467 McDonald (Chapter 37)*

Chapter 168 of the Laws of 2010 renamed the Office of Mental Retardation and Developmental Disabilities (OMRDD) to the Office for People With Developmental Disabilities (OPWDD). As a follow up to this significant legislation, A.6840 makes conforming changes to the Mental Hygiene Law by eliminating references to the terms "mentally retarded" and "mental retardation" and replacing these outdated terms with person-centered language.

## **D. OPWDD REFORMS**

On March 12, 2011, the New York Times published an investigative report on the care and treatment of individuals served in facilities and programs licensed by OPWDD. The report described incidents of severe abuse and mistreatment of residents with developmental disabilities receiving services in these facilities and programs.

The Assembly Committee on Mental Health and Developmental Disabilities, the Assembly Committee on Codes, and the Assembly Committee on Oversight, Investigation, and Analysis conducted a series of public hearings across New York State to examine the matter. From the testimony received, several key themes began to emerge. They included the call for a change in culture, the need for increased supports of the workforce, a review of current reporting procedures, and the need to move toward person-centered services. From this, the Assembly passed several significant pieces of legislation, three of which have been signed into law.

### **Increasing Inspection of OPWDD Facilities**

*A.6665-A Ortiz/S.5791 McDonald (Passed Assembly)*

Currently, the Commissioner of OPWDD is required to inspect each facility twice a year, one of which has to be unannounced.

This bill would require OPWDD to make at least three unannounced visits per year at each facility and program. The bill would also authorize any DDSO Board of Visitor member or any other individual approved by the commissioner of OPWDD to attend an inspection as an independent monitor. This bill passed the Assembly.

### **Limiting Mandatory Overtime**

*A.8127-A Ortiz/ S.5716-A McDonald (Passed Assembly)*

Members heard overwhelming testimony that direct support staff is working excessive amounts of overtime which in some cases can lead to hazardous working conditions for the employee and the individuals receiving care. This bill would establish a cap of 60 hours on the number of hours OPWDD employees are required to work to ensure patient safety and prevent staff fatigue.

### **Increasing Independence of the Ombudsman of DDSOs**

*A.8322 Schroeder/ S.5792 McDonald (Chapter 542)*

Currently, the ombudsman of each regional Developmental Disability Service Office (DDSO) is employed by OPWDD and is trained by the Commission on Quality of Care and Advocacy for Persons with Disabilities (CQC-APD). Charged with the responsibility to advocate for individuals being served by OPWDD, the Assembly looked to strengthen this role by requiring that the ombudsman be an employee of CQC-APD in order to increase the independence of this role.

### **Standardizing Training for OPWDD Employees**

*A.8323 Bing/ S.5794 McDonald (Passed Assembly)*

This bill would require OPWDD to standardize the training provided to personnel who care for individuals with developmental disabilities at state mental hygiene facilities. Under the bill, all providers operated or licensed by the state would be required to comply with the training

curriculum developed by OPWDD that establishes standards for the protection of people with developmental disabilities from abuse, neglect and maltreatment.

### **Eliminating Silent Resignations**

*A.8324 Ortiz/ S.5793 McDonald (Chapter 588)*

Silent resignations occur when employees have been permitted to "silently" resign in the face of abuse allegations, enabling them to work in other facilities and potentially victimize other individuals receiving services.

This bill would ensure that investigations into employee misconduct continue when an employee under investigation resigns and that notices of this policy would be provided to all current and new employees of OPWDD licensed facilities.

### **Expediting Crime Reporting to Law Enforcement**

*A.8325 Ortiz/ S.5795 McDonald (Chapter 558)*

Current law requires certain allegations of crimes occurring at state mental hygiene facilities be reported no later than three "working days." In some cases, this reporting could take up to five days and impact the ability of law enforcement to effectively investigate crimes.

This bill would require the district attorney or appropriate law enforcement officials to be contacted immediately but no later than twenty-four hours if it appears a situation has occurred where physical injury or unauthorized sexual contact has resulted; the welfare of an individual has been endangered, or a felony crime was committed.

### **Providing Additional Work History for Prospective OPWDD Employees**

*A.8330 Weisenberg/ S.5796 McDonald (Passed Both Houses)*

Members heard substantial testimony on the lack of information that can be obtained by providers on a prospective employee's work history. This lack of communication often times results in the rehiring of employees who have had substantiated reports of abuse in the past.

This bill would allow providers of facilities or programs licensed or certified by OPWDD to request additional background information of any substantiated report of abuse or serious neglect that the Office has on file of a prospective employee or volunteer.

## **IV. PUBLIC HEARINGS**

### **A. Mental Health Roundtable on Access to Services Provided by the Office of Mental Health (OMH)**

In January, the Committee held a roundtable discussion to assess current procedures set forth by OMH in identifying mental illness, and to evaluate access to treatment and supports for persons with a psychiatric disability. This discussion was prompted as a result of the January 8<sup>th</sup> shooting in Tucson, Arizona. In the aftermath of the Tucson shooting, many individuals who had interacted with the shooter, Jared Lee Loughner, expressed concern with his mental state. This caused many around the nation to wonder why he did not receive the mental health treatment he seemed to need.

The Committee felt it was necessary to bring together individuals from the mental health community in New York State to discuss current procedures and practice, and to identify any possible gaps in early detection and intervention. The panel consisted of representatives from the Office of Mental Health (OMH); the New York Association of Psychiatric Rehabilitation Services (NYAPRS); the Mental Health Association of New York State, Inc. (MHANYS); the National Alliance on Mental Illness (NAMI); and the University at Albany Counseling Center.

The discussion centered on the importance of early identification, diagnosis, and treatment. Suggestions were made on improving access to mental health information by school employees, increasing awareness on mental health issues by pediatricians; and, most importantly, reducing the stigma that surrounds mental illness so that individuals and families can seek appropriate care.

### **B. Access to Services for Individuals with Autism Spectrum Disorder**

On February 10<sup>th</sup>, the Assembly Committee on Mental Health and Developmental Disabilities and the Assembly Subcommittee on Autism Retention held a public hearing at Summit Educational Resources in Getzville, New York. The purpose of this hearing was to examine issues surrounding access and any gaps thereof to services provided through the Office for People with Developmental Disabilities (OPWDD) and the Office of Mental Health (OMH) for individuals with Autism Spectrum Disorders (ASD). The Committees heard from over twenty-five individuals including individuals diagnosed with ASD, parents, psychiatrists, medical providers, attorneys, and community service providers. Several recurring topics were discussed including the need for improved coordination between state agencies, specifically OMH and OPWDD in providing care; a strong desire for increased supports for families in order for parents to maintain employment while ensuring appropriate care for their child; and the need for state agencies to provide services in languages other than English.

The Committee worked throughout the 2011 Legislative Session to monitor concerns surrounding access to services for individuals with ASD and will continue to advocate for an increase in quality of services for this population that includes the ability for families to provide care for their children.

**C. Safety and Quality of Care in Residential Facilities and Programs Licensed by the Office for People With Developmental Disabilities (OPWDD)**

On March 12, 2011, the New York Times published an investigative report on the care and treatment of individuals served in facilities and programs licensed by OPWDD. The report described incidents of severe abuse and mistreatment of residents with developmental disabilities receiving services in these facilities and programs.

At the call of the Speaker, the Assembly Committee on Mental Health and Developmental Disabilities, the Assembly Committee on Codes, and the Assembly Committee on Oversight, Investigation, and Analysis conducted a series of public hearings across New York State. The purpose of the hearings was to examine state and regulatory oversight of residential programs licensed by OPWDD, review current investigative policies and procedures as they relate to incident reporting, and to explore additional safety and quality measures to protect the State's most vulnerable residents. After traveling to Buffalo, Farmingdale, and New York City, the hearing series concluded in Albany, where the Committee Chairs and other members of the Assembly were able to listen to testimony from a variety of stakeholders including the Commissioner of OPWDD, the Chairman of the Commission on Quality Care and Advocacy for Persons with Disabilities (CQC-APD), self-advocates, parents, providers, and workforce representatives. Witnesses who testified in all four locations provided an in-depth assessment of current frustrations with procedures, but also shared success stories of the agency's positive growth since the days of Willowbrook.

From the testimony received, several key themes emerged. They included the call for a change in culture, the need for increased supports of the workforce, a review of current reporting procedures, and the need to move toward person-centered services and away from the supply of services model.

As a result of the hearings, the Assembly developed a legislative package of seven bills. The package included: A.6665-A (Ortiz) to require increased inspections of OPWDD facilities and allow approved individuals to inspect facilities as independent monitors; A.8127-A (Ortiz) to cap the amount of mandatory overtime to sixty hours per week for direct care professionals working in mental hygiene agencies; A.8322 (Schroeder) to increase independence in monitoring quality of care by requiring that the DDSO ombudsman be an employee of CQC-APD rather than OPWDD; A.8323 (Bing) to provide a standard training requirement for employees; A.8324 (Ortiz) to require that investigations of alleged abuse or neglect continue when an employee named in the investigation resigns; A.8325(Ortiz) to require that certain crimes be reported to law enforcement immediately, but no later than twenty-four hours; and A.8330 (Weisenberg) to allow providers to request a work history background check from OPWDD of prospective

employees in order to mitigate the practice of rehiring employees that have been found to abuse or neglect individuals in previous reports of substantiated abuse.

The Committee will maintain its commitment to work with self-advocates, families, providers, and agency representatives to ensure that the safety of individuals served by the mental hygiene system continues to improve.

#### **D. Mental Health Treatment in Prisons**

The Committee on Mental Health and the Committee on Correction convened a hearing on December 6<sup>th</sup> to survey the implementation of the Special Housing Unit (SHU) Exclusion Law and to examine the recent increase in the number of suicides in state correctional facilities.

Signed into law in 2008, the SHU Exclusion Law requires that inmates diagnosed with serious mental illness be removed from segregated confinement and placed into residential mental health treatment units (RMHTU). Most provisions of the SHU Exclusion Law became effective on July 1, 2011. At the core of the SHU Exclusion Law is the requirement that all state prisoners placed into segregated confinement for disciplinary purposes receive an assessment by a mental health clinician. Inmates diagnosed with serious mental illness must be removed from segregated confinement and placed in a residential mental health treatment unit for therapeutic care. The SHU Exclusion Law also requires increased specialized mental health training for DOCCS staff and requires the Commission on Quality of Care and Advocacy for Persons with Disabilities to monitor and oversee all prison mental health programs and services.

In addition, the hearing also examined issues surrounding inmate suicide, including the role of mental health treatment in relation to prevention and the responsibility of the state in investigating inmate deaths. In 2010, twenty inmates committed suicide in state correctional facilities - twice the number of suicides that occurred in 2009 and the highest prison suicide rate since 1982. Eleven of these suicides were committed by inmates who had previously been diagnosed with a mental illness.

Committee members heard testimony from parents, siblings, and spouses of individuals who have spent time in the SHU. Members also listened to testimony from many individuals who played a crucial role in the passage of the SHU Exclusion Law including Disability Advocates Inc; the Legal Aid Society, Prisoner's Legal Services, Correctional Association, and Urban Justice Institute. Witnesses testified that while some significant progress has been made there is still much more that needs to be done. This includes a change in prison culture, the need to right-size SHU, a desire for an increased effort by OMH and DOCCS to ensure that timely and effective transitions to general populations are established, the limited scope to which OMH examines inmates for mental health services, a change in sanctions, and the need for outside training of hearing officers.



## V. OUTLOOK 2012

This year marked the commencement of significant changes in both the mental health and developmental disabilities systems in New York State. Many of these changes are a result of national trends toward inclusive healthcare, alleviating waste and fraud in benefits programs, and finding efficiencies in service delivery. There have also been several publicized events within the state that have forced New York to look at improving these systems in order to establish a higher level of quality in care and to protect the individuals they serve. The Committee will continue to work throughout the coming years to ensure that the rights and needs of our most vulnerable residents are kept at the highest priority during this process.

### **Mental Health Service Delivery through Behavioral Health Organizations and Health Homes**

In January, Governor Andrew M. Cuomo signed an Executive Order establishing the Medicaid Redesign Team (MRT). The MRT was given the task of providing guidance, advice and recommendations to the Governor on ways to save Medicaid dollars while improving medical outcomes. The MRT made several proposals regarding mental health reimbursement that were ultimately enacted in the budget. The following actions will have a significant impact on the mental health community:

#### Behavioral Health Organizations

The Medicaid Redesign Team found that individuals who receive SSI or TANF and have complex behavioral health needs which require mental health and substance abuse treatment use 15 times the amount of Medicaid services than the average beneficiary. As a result of this finding, the MRT recommended the establishment of interim regional behavioral health organizations (BHOs) to manage carved-out behavioral health services while moving towards a model similar to a managed care plan.

The first phase of this plan establishes regional behavioral health organizations (BHOs) to manage behavioral health services. The BHOs also serve a direct purpose in coordinating healthcare services with other supports services such as locating and maintaining housing. This reform is intended to produce savings over the next several years by reductions in costly emergency room visits and avoidable hospitalizations.

By 2013, the second phase of the plan is expected to be implemented and would require OMH and OASAS to select plans to manage behavioral health services which may be paid on a capitated basis.

## Health Homes

The 2011-12 Enacted Budget includes the development of health homes for high risk patients that are suffering from a serious and persistent mental health condition, two chronic conditions, or one chronic condition and at risk for another. Health homes are a network of providers that are designed to be person-centered systems of care that facilitate access to and coordination of an array of primary and acute physical health services, behavioral health care, and long-term community-based services and supports.

The focus of the program will be on the reduction of avoidable hospitalizations and emergency room visits, and therefore will work with BHOs in this regard.

The Committee hopes to continue to be part of discussions surrounding the changes in service delivery established by the MRT and will monitor the process to ensure that quality of care is not diminished.

## **Quality of Care in Programs for Individuals with Developmental Disabilities**

### Reducing Abuse and Neglect

Throughout the 2011 Session, the Committee has worked with relevant stakeholders in examining the current policies and procedures that exist within OPWDD in regards to alleviating incidents of abuse and neglect. In addition to public hearings on this issue and the legislative package of bills aimed at addressing consumer safety and quality of care, the Executive has made several significant changes to OPWDD's oversight role. Executive changes include appointing new leadership at OPWDD and CQC-APD, establishing a memorandum of understanding between OPWDD and the State Police, and working with labor unions on disciplinary procedures. The agency also created a centralized Incident Management Team which is charged with oversight of incidents of abuse in both the State and nonprofit provider systems; increased hiring standards for new applicants; and required employees to complete ethics and abuse prevention training.

While many of these changes are significant, there is still room for improvement. The Committee has always advocated for the safety of individuals served in the mental hygiene system, and will continue to work with individuals, families, providers, and the agency in these reform efforts.

### People First Waiver

Earlier this year, OPWDD announced that the agency would be working with the federal government to establish a new 1115 demonstration waiver, known as the "People First Waiver." The new waiver will provide New York with the opportunity to create an alternative approach to

the way programs are operated and funded. The goal of the waiver will be to increase efficiency and flexibility of service delivery.

OPWDD initiated the process by creating forums for public comment from relevant stakeholders across the state. OPWDD has established a Steering Committee and several subcommittees in order to guide the development of the waiver application for federal review. It is anticipated that several pilot programs will be established across the state within the next state fiscal year. While the new waiver process is intended to be a seamless transition where services are uninterrupted, the waiver is looking to reorganize the way programs are funded.

**APPENDIX A**

**2011 SUMMARY OF ACTION ON ALL BILLS REFERRED TO  
THE COMMITTEE ON MENTAL HEALTH**

<b><u>FINAL ACTION</u></b>	<b><u>ASSEMBLY BILLS</u></b>	<b><u>SENATE BILLS</u></b>	<b><u>TOTAL BILLS</u></b>
<b><u>Bills Reported With or Without Amendment</u></b>			
To Floor; Not Returning to Committee	3	0	3
To Floor; Recommitted and Died		0	
To Ways & Means	10	0	10
To Codes	4	0	4
To Rules	1	0	1
To Judiciary		0	
<b>TOTAL</b>	<b>18</b>	<b>0</b>	<b>18</b>
<b><u>Bills Having Committee Reference Changed</u></b>			
To Committee on Alcoholism & Drug Abuse	2	0	2
<b>TOTAL</b>	<b>2</b>	<b>0</b>	<b>2</b>
<b><u>Senate Bills Substituted or Recalled</u></b>			
Substituted			
Recalled			
Total			
<hr/>			
Bills Defeated in Committee			
Bills Held For Consideration With A Roll-Call Vote			
Bills Never Reported, Held in Committee			
Bills Having Enacting Clauses Stricken	5		5
Motions to Discharge Lost			
<b>TOTAL BILLS IN COMMITTEE</b>	<b>76</b>		<b>76</b>
<b>Total Number of Committee Meetings Held</b>	<b>7</b>		

**APPENDIX B**

**FINAL ACTION ON BILLS REPORTED BY THE STANDING COMMITTEE ON  
MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES IN 2011**

<b>ASSEMBLY BILL # SPONSOR</b>	<b>SENATE BILL # SPONSOR</b>	<b>FINAL ACTION</b>	<b>DESCRIPTION</b>
A.126-A Cusick	S.3423-A McDonald	Passed Assembly	This bill would provide mental hygiene legal services to certain patients or residents of residential health care facilities.
A.870 Destito	N/A	Passed Assembly	This bill would require mental hygiene entities to review fiscal management practice of service provider applications.
A.873 Destito	S.5245 McDonald	Enacting Clause Stricken	This bill would require the Office of Mental Health (OMH) to provide a licensed psychiatrist for an examination in an assisted outpatient treatment proceeding in counties that have a population less than 75,000.
A.1070 Ortiz	S.4760 McDonald	Passed Assembly	This bill would require the commissioners of the Office of Mental Health (OMH), the Office of Alcoholism and Substance Abuse Services (OASAS), and the Director of the Division of Veterans' Affairs, to develop a public education initiative on mental illness and chemical dependency among service members, veterans, and their families.
A.4346-A Brennan	N/A	Passed Assembly	This bill would provide that when an action against the State for negligent or improper treatment in a Department of Mental Hygiene facility results in a settlement or a judgment for a monetary award, the Department would be prohibited from seeking recovery from such monetary awards for amounts relating to the provision of services or treatment within the facility.
A.6665-A Ortiz	A.5791 McDonald	Passed Assembly	This bill would increase the frequency of inspections of facilities operated or licensed by the Office for People With Developmental Disabilities (OPWDD).
A.6840 Rodriguez	S.4467 McDonald	Chapter # 37	This bill would amend the Mental Hygiene Law by eliminating references to the terms "mentally retarded" and "mental retardation" to reflect the change of the Office of Mental Retardation and Developmental Disabilities (OMRDD) to the Office for People With Developmental Disabilities (OPWDD).

<b>ASSEMBLY BILL # SPONSOR</b>	<b>SENATE BILL # SPONSOR</b>	<b>FINAL ACTION</b>	<b>DESCRIPTION</b>
A.7495 Magee	S.4864 Griffo	Veto # 29	This bill would require the state to pay for costs associated with prosecuting state inmates at the Central New York Psychiatric Center (CNYPC) in order to align the funding of these instances with what currently occurs in Department of Correctional Services (DOCS) facilities
A.8127-A Ortiz	S.5716-A McDonald	Passed Assembly	This bill would prohibit an OPWDD provider from requiring direct care employees to work more than sixty hours per seven day work week.
A.8322 Schroeder	S.5792 McDonald	Chapter # 542	This bill would require that the ombudsman of regional OPWDD Developmental Disabilities Services Offices (DDSO) be employed by the Commission on Quality Care and Advocacy for Persons with Disabilities (CQC-APD).
A.8323 Bing	S.5794 McDonald	Passed Assembly	This bill would require a standardized training curriculum for employees or volunteers of the Office for People With Developmental Disabilities (OPWDD).
A.8324 Ortiz	S.5793 McDonald	Chapter # 588	This bill would require the Office of Mental Health (OMH), the Office for People With Developmental Disabilities (OPWDD), and Office of Alcoholism and Substance Abuse Services (OASAS) to require in any new contracts with providers, that employers must provide notice to employees that all instances of abuse will continue to be investigated even if an employee or volunteer resigns or leaves during the pending investigation.
A.8325 Ortiz	S.5795 McDonald	Chapter # 558	This bill would require that certain allegations of abuse be reported to law enforcement immediately, but no later than within twenty-four hours.
A.8330 Weisenberg	S.5796 McDonald	Passed Both Houses	This bill would require the Office for People With Developmental Disabilities (OPWDD) to provide criminal history information on applicants who have previously been employed by OPWDD.
A.8357 Titone	S.5678 Lanza	Chapter # 188	This bill would prohibit the co-mingling of adolescent and adult patients in hospitals licensed by the Office of Mental Health (OMH).

**APPENDIX C**

**LAWS ENACTED IN 2011**

<b>ASSEMBLY BILL # SPONSOR</b>	<b>SENATE BILL # SPONSOR</b>	<b>FINAL ACTION</b>	<b>DESCRIPTION</b>
A.6840 Rodriguez	S.4467 McDonald	Chapter # 37	This bill would amend the Mental Hygiene Law by eliminating references to the terms "mentally retarded" and "mental retardation" to reflect the change of the Office of Mental Retardation and Developmental Disabilities (OMRDD) to the Office for People With Developmental Disabilities (OPWDD).
A.8322 Schroeder	S.5792 McDonald	Chapter # 542	This bill would require that the ombudsman of regional OPWDD Developmental Disabilities Services Offices (DDSO) be employed by the Commission on Quality Care and Advocacy for Persons with Disabilities (CQC-APD).
A.8324 Ortiz	S.5793 McDonald	Chapter # 588	This bill would require the Office of Mental Health (OMH), the Office for People With Developmental Disabilities (OPWDD), and Office of Alcoholism and Substance Abuse Services (OASAS) to require in any new contracts with providers, that employers must provide notice to employees that all instances of abuse will continue to be investigated even if an employee or volunteer resigns or leaves during the pending investigation.
A.8325 Ortiz	S.5795 McDonald	Chapter # 558	This bill would require that certain allegations of abuse be reported to law enforcement immediately, but no later than within twenty-four hours.
A.8357 Titone	S.5678 Lanza	Chapter # 188	This bill would prohibit the co-mingling of adolescent and adult patients in hospitals licensed by the Office of Mental Health (OMH).

**APPENDIX D**

**LEGISLATION VETOED IN 2011**

<b>ASSEMBLY BILL # SPONSOR</b>	<b>SENATE BILL # SPONSOR</b>	<b>FINAL ACTION</b>	<b>DESCRIPTION</b>
A.7495 Magee	S.4864 Griffo	Veto # 29	This bill would require the state to pay for costs associated with prosecuting state inmates at the Central New York Psychiatric Center (CNYPC) in order to align the funding of these instances with what currently occurs in Department of Correctional Services (DOCS) facilities