

# MEMORANDUM

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To: The Honorable Harris B. McDowell, III, Co-chair  
The Honorable Melanie George Smith, Co-chair  
Joint Finance Committee Members

From: Elizabeth G. Booth, Esq. on behalf of the following organizations:  
Developmental Disabilities Council  
State Council for Persons with Disabilities  
Governor's Advisory Council for Exceptional Citizens

Date: February 18, 2016

Re: Division of Prevention and Behavioral Health Services FY 2017 Budget

Please consider this memorandum a summary of the oral testimony presented by Elizabeth Booth, Esq. of the Disabilities Law Program on behalf of Developmental Disabilities Council ("DDC"), State Council for Persons with Disabilities ("SCPD"), and the Governor's Advisory Council for Exceptional Citizens ("GACEC") with regard to the Division of Prevention Behavioral Health Services ("DPBHS") proposed budget for the 2017 fiscal year.

We wish to focus our comments this afternoon on maintaining adequate financial support to ensure the ongoing provision of community-based behavioral health services by DPBHS.

## **Medicaid State Plan Changes**

As DPBHS has been in the process of re-writing its Medicaid state plan to ensure compliance with federal requirements, changes are taking place in how behavioral health services for children and their families are paid for and administered.<sup>1</sup> While DPBHS is already operating under a deficit, these necessary changes will incur significant costs, including over \$2.4 million dollars required to close gaps in Medicaid coverage under this new framework and roughly \$750,000 necessary to fund transitioning DPBHS to Medicaid's billing system and satisfying other related requirements.<sup>2</sup> All of these expenditures are necessary in order for DPBHS to maintain the current level of services provided to youth in our communities.

## **Increasing Demand for Services**

DPBHS faces these added costs at a time when the demand for behavioral health services continues to increase. For example, between 2010 and 2014, DPBHS saw a 56% increase in the number of youth served by its Intensive Outpatient Program ("IOP") for mental health, and a

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<sup>1</sup> See, e.g., DPBHS Kids Line Newsletter, Spring 2015, at 3, available at [http://kids.delaware.gov/pdfs\\_archive/pbhs/kidslines-2015-Spring.pdf](http://kids.delaware.gov/pdfs_archive/pbhs/kidslines-2015-Spring.pdf).

<sup>2</sup> DPBHS Advisory & Advisory Council meeting presentation, January 28, 2016.

98% increase in the number of youth served by its IOP for substance abuse treatment.<sup>3</sup> Additionally, KIDS COUNT data indicates that approximately 37,000 – or 20% – of children living in Delaware have demonstrated one or more behavioral, emotional, or developmental condition, indicating there may be more youth in the community requiring these services.<sup>4</sup> Additionally, DPBHS data indicates a “high rate” of co-occurring mental health and substance abuse treatment needs among the youth served by the agency; while “up to 52% of youth in mental health treatment had exhibited behaviors and had risk factors suggesting the existence of substance abuse problems, only 21% were receiving focused treatment for substance abuse.”<sup>5</sup>

### **Role of Community-Based Services**

The community-based services provided by DPBHS, including intensive outpatient programs, day programs, and wraparound services, enable hundreds of youth to receive the treatment and support they need within their homes, schools and communities. DPBHS is also working toward a more flexible, menu-based approach to its provision of services so that these services can be customized to an individual’s specific needs.<sup>6</sup> In some cases, this may help to avoid the need for higher levels of care such as inpatient treatment.

The continued funding of a robust system of community-based services is necessary in order for Delaware to remain in compliance with the American Disabilities Act (“ADA”) and the U.S. Supreme Court’s *Olmstead* decision, which require that individuals with disabilities be treated in community settings, as opposed to institutional settings, when appropriate. Delaware’s ongoing settlement agreement with the U.S. Department of Justice has required the state to demonstrate compliance with the ADA and *Olmstead* by committing to the sustained expansion of community-based mental health treatment. While these requirements apply to the adult mental health system, the underlying principles of this agreement are also applicable to children’s mental health services and other states, including Massachusetts (*Rosie D. v. Romney*) and California (*Katie A. v. Bonta*), have faced class action lawsuits for failure to provide children with adequate community-based mental health services.

For these reasons we recommend that sufficient funds be allocated in the FY 2017 budget to enable the ongoing provision of needed community-based support and services to youth in Delaware; this includes financing the necessary changes to DPBHS’s Medicaid state plan.

Thank you for your consideration.

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<sup>3</sup> Based on service statistics provided to the Disabilities Law Program by DPBHS.

<sup>4</sup> See <http://datacenter.kidscount.org/data/tables/6031-children-who-have-one-or-more-emotional-behavioral-or-developmental-conditions?loc=9&loct=2#detailed/2/9/false/1021,18/any/12694,12695>.

<sup>5</sup> Delaware Combined Behavioral Health Assessment and Plan, 2015-2016, p. 50.

<sup>6</sup> DPBHS Advisory & Advocacy Council meeting presentations, January 29, 2015 and September 29, 2015.