HEALTH AND MENTAL HEALTH COMMITTEE
MINUTES
(REMOTELY)

TUESDAY, JULY 21, 2020
4:00 P.M.

PRESENT: James D. O'Donnell, Chairman
Michael Amo, Kevindaryán Luján, Janet Sutherland, Peter V. Tuohy, Laurie R. Tautel

ALSO
PRESENT: L. Stephen Brescia, Chairman
Katie Bonelli, Majority Leader
Leigh J. Benton, Legislator
Barry J. Cheney, Legislator
Kevin W. Hines, Legislator
James M. Kulisek, Legislator
Kathy Stegenga, Legislator
John S. Vero, Legislator
Antoinette Reed, Legislative Counsel
Harold J. Porr, III, Deputy County Executive
Darcie Miller, Commissioner of Social Services and Mental Health
Laurence LaDue, Commissioner, Valley View Center
Irina Gelman M.D., Commissioner of Health
Christopher Ericson, Deputy Commissioner of Health
Barbara A. Clifford, Health Equity Director, Department of Health
Karin Hablow, Commissioner of Finance
Kerry Gallagher, Deputy Commissioner of Finance
Gretchen Riordan, Budget Analyst
Nick DiSantis, Partner, O'Connor Davies LLP
H. Chris Kopf, Partner, O'Connor Davies LLP
Christopher McCarthy, Partner, O'Connor Davies LLP
Michelle S. O'Reilly, Audit Engagement Partner, O'Connor Davies LLP
Tiffany Wisniewski, Audit Manager, O'Connor Davies LLP
Toni Giannelli, Administrative Assistant, O'Connor Davies LLP

Mr. O'Donnell opened the committee meeting at 4:08 p.m. and asked everyone to stand for the Pledge of Allegiance. All committee members were present with the exception of Legislator Anagnostakis who was absent.

On the agenda was a Department Update from Darcie Miller, Commissioner of Social Services and Mental Health.

Ms. Miller addressed the committee stating that Governor Cuomo has extended the waiver for telephonic reimbursement for services and they have been fully operational since the beginning. She thanked Legislators Sassi and Sutherland for their participation at the 3-1-1 center photo opportunity and the announcement of 3-1-1 on the Legislature's Facebook page because spreading the word is how they get access. They are very concerned with the potential increase in suicides and the increase in opioid deaths so they need to ensure the message is out there and that people can call 3-1-1. In addition, county clinicians have provided approximately 20% to 30% higher rates of service since the COVID-19 isolation and use of telephonic and telehealth services. The New

York State Office of Mental Health and the New York State Office of Alcoholism and Substance Abuse have decided to withhold state advancement funds to counties across the state with those withholdings being proportionately removed from all contractor advances. Of their total budget of $32 million approximately $22 million goes out to contract agencies with the majority coming from state funds. The state office has indicated that the message from the governor is that they need to withhold these advanced payments for the 3rd quarter in the hopes that there will be federal relief to cover the gaps and that they could make them whole in the 4th quarter. For all those individual's dependent on those funds and who provide direct care services to their residents those withholds will directly impact them throughout the 3rd quarter. Forty percent of the state funds received goes toward supportive housing and if these withholds become cuts, they will have to reduce the number of apartment units across the county in order to accommodate the decrease in funds. They currently have 500 people on a wait list in Orange County for supportive housing and every bed they lose is one too many. They did not receive new beds this year or last year so they are already coming in from behind and many of their providers are very concerned with these withholds and are advocating to encourage the governor to not actually make these cuts regardless of the decisions made through the federal government and to find another way to fill the gap.

Mr. O'Donnell commented that at the last meeting Ms. Miller mentioned evictions and would she have any figures on that. Ms. Miller replied no, but they can only imagine how high those numbers will be. They may also receive landlord feedback as they are also waiting to be paid but they are hopeful that they can get the funds out there once they know the actual needs.

On the agenda was the monthly report on Valley View.

Mr. LaDue explained that IGT funding remains at $2.2 million, emergency disaster assistance was at $1.8 million and other revenues at $18 million. On the personal services side, personal services were at $10.9 million, equipment at $95,000.00, contractual at $4.4 million, employee benefits at $9 million and serial bond interest at $87,000.00. Their census has been negatively impacted by COVID-19 with the June census at 80.49% and for July they are at 82.75%. Medicaid utilization was at 72.16%, medicaid (HMO) at 9.61% and medicare at 14.66%.

Chairman Brescia asked if overtime has decreased with the decrease in occupancy. Mr. LaDue replied yes.

Ms. Tautel moved to request approval and appropriation of funds, $222,000.00, for proposed 2020 capital expenditure to upgrade resident bathrooms in the Glenmere building, seconded by Mr. Luján.

Mr. LaDue explained that the funds would be used to replace all seventy-eight bathrooms in the Glenmere building. In addition, all capital projects are reimbursed seventy-five cents on the dollar in their medicaid rate.

Motion carried. All in favor

Ms. Tautel moved to request approval and appropriation of funds, $70,000.00, for proposed 2020 capital expenditure to continue upgrading nursing mechanical lifters, seconded by Mr. Tuohy.

Motion carried. All in favor.

Ms. Tautel moved to request approval and appropriation of funds, $150,000.00, for proposed 2020 capital expenditure to replace the anti-elopement system which supports wander management for at risk residents, seconded by Ms. Sutherland.

Mr. LaDue explained that the funds would be used to replace the current systems as it is difficult to find bracelets for the 20-year old system.

Motion carried. All in favor.

Ms. Tautel moved to request approval to implement salary ranges in classified Nursing Per Diem titles, seconded by Mr. Tuohy.

Mr. LaDue explained that this was presented to the Personnel and Compensation committee on Monday and passed unanimously. Their per diem rates have not been updated since 2005 and during the COVID-19 crisis they have observed the need for per diem staff when a number of employees were sick along with reducing overtime.

Mr. Tuohy asked if any employees were currently ill as Mr. LaDue stated at the Personnel and Compensation committee meeting that over the course of the pandemic approximately 70 employees became ill. Mr. LaDue replied that during the height of the crisis in mid-March to the end of April a majority of their staff was ill. Within the last four days they have had one staff member test positive for COVID-19 and at this time they are only one of two employees to test positive over the last two months. However, because that staff member tested positive for COVID-19 it has pushed back their family visitation for another 28 days per the new guidance.

Motion carried. All in favor.

Mr. Tuohy moved request to accept and appropriate COVID-19 provider relief fund, $1,862,459.00, from Department of Human Services and awarded to facility under Federal CARES ACT, seconded by Mr. Luján.

Motion carried. All in favor.

Mr. Luján moved to request approval and appropriation of funds, $50,000.00, for proposed capital expenditure upgrade food service equipment, seconded by Mr. Tuohy.

Mr. LaDue explained that they are looking to replace roll-in refrigerators, tilting skillet braising pan and roll through heating cabinets.

Mr. Benton asked that Mr. LaDue supply the Ways and Means committee with the ages and pictures of the equipment they are looking to replace. Mr. LaDue replied that he would.

Motion carried. All in favor.

On the agenda was a Department Update from Laurence LaDue, Commissioner of Valley View.

Mr. LaDue explained that they have seen a decrease in COVID-19 activity from previous months and employees must be tested once a week. Two employees have tested positive for COVID-19 over the past two months. Their census for the month of July was at 83% and while their census is beginning to trend in the right direction it will take approximately three to four months for them to return to their normal census.

Mr. Benton asked about the annual survey and when did they anticipate that being conducted due to the COVID-19 pandemic. Mr. LaDue replied that the Department of Health has conducted a Focus Infection Control Survey on every nursing home in New York State and were at Valley View within the last month. They have not received the final report, but he will report to the committee on that survey when it is received. In addition, the surveys are now being done approximately every two years and they are not due until July 2021.

Mr. Benton stated that after speaking with Mr. Amo he understood that their facility could not control COVID-19 if they could not control other infectious diseases from spreading within the facility.

Mr. LaDue agreed.

Mr. O'Donnell asked Mr. LaDue about a recent newspaper article and meeting with the Sullivan County Legislature on their County-owned nursing home and was Mr. LaDue a part of that meeting. Mr. LaDue replied yes.

Mr. O'Donnell asked if any members of the Health and Mental Health committee were invited to that meeting. The response from those in attendance was no.

Mr. O'Donnell asked Mr. LaDue for a brief synopsis of that meeting. Mr. LaDue replied that they are in a difficult financial situation and very similar to what Valley View was in several years ago. Those in attendance were the Sullivan County Legislative Chairman, several legislators and Sullivan County Executive's staff. They discussed the situation they were in and he presented them with some of the things they did to help turn things around at Valley View; however, the Sullivan County Legislative Chairman is under the impression that they do not have time to turn things around but it will be up to the full legislature to decide on how they will proceed. They were basically asking him about what they did here in Orange County.

Mr. O'Donnell asked for clarification that there was not a representative from the Orange County Legislature at this meeting. Mr. LaDue replied that he did not believe so, but he was not consulted on who would be invited to the meeting.

Mr. O'Donnell expressed his displeasure that not one Orange County Legislator was invited to attend a meeting with another county nursing home regarding the closure of that nursing home and that they received an update on what they did at Valley View.

Mr. O'Donnell asked about the recent news article stating that Valley View lost $4 million and where did they get that figure. Mr. LaDue replied that he believes the Sullivan County Legislative Chairman was referring to the funds that DSS must pay back for the IGT funds as he interprets that as a loss for the county.

Mr. O'Donnell stated that it was not presented that way in the news article and even more of a reason why they should have been represented; however, that was not Commissioner LaDue's fault.

On the agenda was a review of the 2019 Financial Report by O'Connor Davies LLP.

Mr. McCarthy introduced Michelle S. O'Reilly, Audit Engagement Partner, O'Connor Davies LLP and Tiffany Wisniewski, Audit Manager, O'Connor Davies LLP who will be participating in the overview of the Valley View 2019 Financials (see original minutes) for the year ending December 31, 2019 and power point entitled, **Valley View Center for Nursing Care and Rehabilitation, Report to the Honorable Legislature** (see original minutes) which highlights the Financial Report. The audit process was unusual due to the COVID-19 pandemic as they started the process at the nursing home, but they have been conducting the audit remotely since March 15, 2020. He reviewed the engagement status, filing of the medicare cost report, filing of medicaid cost report on or before August 31, 2020 (it has been filed) and the RHCF-4 medicaid cost report which is due on or before September 15, 2020 but they anticipate it being completed by July 31, 2020, O'Connor Davies' responsibilities, responsibilities of Valley View Management, audit scope and approach, financial statement effects of COVID-19.

Ms. O'Reilly explained the significant audit areas that were looked at during the audit which were as follows: residents account receivables and resident revenue, due to/from third party payers, long-term debt, net pension liability, Other post-employment benefits (OPEB), payroll and related expenses, long-term impacts of COVID-19, related parties, fraud and illegal acts (of which there were none) and audit procedures under Government Auditing Standards.

Ms. O'Reilly added that COVID-19 was a significant event for 2020 as is classified as a Type 2 Subsequent Event, which happened after December 31, 2019 and it must be discussed in the financial statements. They understand the impact it has had worldwide, and it has been discussed in the financial statements because the uncertainty of the outcome of its final effects is unknown.

Mr. McCarthy added that they audit a significant number of nursing homes in New York State and the typical facility has seen a decrease in census of approximately 20% to 25% with a few down nearly 40% due to COVID-19. To hear that Valley View has increased to 82% is tremendous as they have some facilities that are hoping for 70% as this has been a huge cash drain and loss for so many skilled nursing facilities. Years ago, the Berger Commission Report looked at rightsizing the nursing home industry, but COVID-19 rightsized the industry in two months and devastated a number of facilities with some unable to recover.

Mr. McCarthy referred to page 10, *Patient Accounts Receivable and Resident Revenues,* and highlighted accounts receivable of $7.5 million, change in accounts receivable of $1.8 million which was due to an increase in allowance for doubtful accounts of $779,293.00 and a little over $1 million from faster collections.

Ms. Wisniewski added that the faster collections could partly be attributed to patients that transitioned back to traditional medicaid from medicaid managed care.

Mr. McCarthy added that through historical trends, data extraction and the assistance of Mr. LaDue and his staff they were able to identify that they are collecting a little over 99% of the revenue for services rendered. The increase in allowance was due to: allowing for a percentage of 2019 revenues based on historical collections, allowing for all receivable balances older than January 1, 2019 and collecting from certain Medicaid Managed Care companies continues to prove challenging and is a statewide problem.

Mr. McCarthy referred to page 13, *Due to/from Third Party Payers* with the following transactions recorded: The fifth and final Universal Settlement payment was paid in the amount of $231,000.00, quality pool recoupment for 2018 of $199,000.00 and a second 1% supplemental payment of $290,000.00. Case mix is based on the scores given to a patient and drives the direct component of the medicaid rate with Valley View and all other nursing homes scoring patients twice a year. Case mix generates approximately 60% of their medicaid rate, Valley View along with many in the industry showed a case mix decrease in January 2019 which impacted their July 2019 rate. However, when that rate was received Ms. Strecker and her staff questioned the case mix decrease because if their case mix decreased their rate should have gone down but in fact it when up. After further review and consultation with O’Connor Davies LLP they identified that there was Medicaid BMI rate sheet error as nursing homes receive an additional payment when they care for patients that are morbidly obese due to the cost of caring for that type of patient. They were erroneously overpaid by about $325,000.00 and that liability was recorded at year end and eventually recouped by New York State, and they are satisfied that the amounts have been properly recorded. Under other areas, they worked in conjunction with the county audit team for Governmental Accounting Standards Board (GASB) related items and financial statement items processed by the county.

Mr. McCarthy referred to page 15, *What we are seeing - Pre-Pandemic,* the continue to see third party payer reimbursement challenges. Traditional medicare through September 30, 2019 was known as the Performing Provider System (PPS) system and Valley View was averaging approximately $631.00 a day, traditional medicare payments then changed to the Patient Driven Payment Model (PDPM) on October 1, 2019 at $673.00 a day. Medicare Advantage Plans have not seen much penetration in Orange County and the traditional medicaid rate was at $285.00 a day with medicaid managed long-term care transitioning back to traditional medicaid with 60% to 70% of their patients on medicaid and like most facilities they are offsetting a lose on medicaid by having medicare patients. Census was relatively stable in New York with Valley View at 93%, New York State averaging at 90% and the United States at 82% with only 20% of the 13,000 nursing homes across the country being not for profit or municipal and/or government operated. Staff hiring and retention remains a challenge and there was a proposed change to computing New York State medicaid case mix effective July 1, 2019; however, an injunction was filed by the various associations placing the proposed change on hold.

Mr. McCarthy referred to page 17, *Nursing Facility Medicaid- Only Case Mix Index Benchmark Overview – Government County Facilities*. He explained that Valley View's case mix averages approximately ten points higher and one point equates to about $1.67 a day for Valley View and if they are ten points higher on an annual basis that amounts to about $1.6 million more in revenue than the average county operated facility.

Ms. Wisniewski referred to pages 18 and 19, *Financial Statement Highlights,* there were two significant changes in Deferred Outflows and Non-current Liabilities. The two major pieces that flow through there and they are the net pension liability and postretirement health care benefit obligation (OPEB). The net pension liability increased approximately $3.8 billion statewide which then trickles down to all participants with Valley View's share of the liability to approximately $3 million. The major change this year was with the postretirement health care benefit obligation (OPEB) as there was a change in the actuary assumptions as they changed the discount rate which then created deferred outflows of resources of over $30 million. These deferred outflows will be amortized over a period of time as determined by the actuary into the statement of revenues and expenses. Operating revenues remain consistent with the prior year; however, operating expenses increased significantly with about $3 million of the increase relating to amortization of the deferred outflows. Exclusive of that operating expenses have increased 3% from the year before and non-operating revenue over expenses shows a decrease of $1.3 million which relates to IGT funding. If they take the change in net position for both years and remove the impact of the pension and Other Post-Employment Benefits (OPEB) liabilities the facility had a positive change in net position for both years.

Mr. McCarthy explained that last year for every dollar of salary they also had an additional 95% of not only employee benefits but also the impact of Other Post-Employment Benefits (OPEB) and pension with the typical non-county operated skilled nursing facility at approximately 45% to 50%. He presented the committee with a "make-believe world" example and the impacts that would have. If they were to take their salaries and adjust the benefits to a typical skilled nursing facility at the 45% to 50% range and last year even before operations and IGT funding the facility was a breakeven operation and if they were to do the same with Other Post-Employment Benefits (OPEB) and the additional issue presented by Ms. Wisniewski they are at 107% or $1.07 of benefits. If they drop that calculation down to the 40 cents to 50 cent range in benefits they could be at a loss of operations of approximately $1.4 million; however, that would be before Other Post-Employment Benefits (OPEB) and the millions being added back in. When he says that it is "make-believe" it is looking at them as a county operated facility knowing that Other Post-Employment Benefits (OPEB) and Governmental Accounting Standards Board (GASB) are required recordings and not a cash layout right now. They are laying costs for the post-retirement benefits in excess of $3 million for Valley View's retired employees but when they look at it and adjust it, they can see that this facility has turned itself around.

Ms. O'Reilly referred to pages 22 through 26, *Required Communications,* and highlighted the Allowance for Doubtful Accounts, Depreciation Expense, Other Post-Employment Benefits (OPEB) and Net Pension Liability and notes (6) Long-Term Liabilities, (9) Retirement Incentives and Other Penson Obligations, (10) Other Post Employment Benefit Obligations and (12) Commitments and Contingencies.

Ms. Wisniewski referred to pages 28 through 30, *Internal Control Over Financial Reporting,* if during the audit they were to find a deficiency in internal controls that would be considered a "material weakness" or "significant deficiency" they would be required to communicate that, but they had no such findings.

Mr. Benton disagreed with Mr. McCarthy's statement of Other Post-Employment Benefits (OPEB) being a "make-believe world." Governmental Accounting Standards Board (GASB) is doing things for notification and transparency and eventually these figures will have to be paid and/or paid down which will have a big effect. It was stated in the newspaper article that Sullivan County's Other Post-Employment Benefits (OPEB) was $22 million and Orange County's is nearly twice that amount, and no one seems to care.

Mr. McCarthy clarified that when he was referring to "make-believe world" he was asking them to "make-believe" they were not a county operated nursing home and to substitute the percentage that a typical skilled nursing facility incurs from a fringe benefit stand point in the 40% to 50% range. This would enable them to see that the facility is spot on from a breakeven analysis. However, they are a county run facility and do have these liabilities.

Ms. Tautel asked for clarification on the difference between a privately run nursing home and county run nursing home with respect to Other Post-Employment Benefits (OPEB). Mr. McCarthy replied that when an individual retires the county continues to pay their health insurance which is a benefit that non county facilities typically do not offer. In addition, Governmental Accounting Standards Board (GASB) requires that the liability the employee is earning now should be recognized now. The liability is prepared and performed by an actuary who has the expertise to look at this. What a typical nursing home pays including payroll taxes is 40 cents to 50 cents; however, with Valley View it was almost 95 cents on the dollar last year and in 2019 it was around $1.07 of benefits for every $1.00 of salary. If they were to look at themselves not as a public facility but a not-for-profit and benefits are at the 40 cents to 50 cents range their benefits would be slashed by almost $9 million to $12 million and from an operating standpoint, they would breakeven. There are only fourteen county operated facilities in New York State.

Ms. Tautel asked if another large county department such as the Department of Social Services was running close to that amount. Mr. McCarthy replied that he could not say as that would be a question for Nick DiSantis, Partner, O'Connor Davies LLP or Chris Kopf, Partner, O'Connor Davies LLP who handle the county audit.

Mr. O'Donnell asked for the bottom line on how much money Valley View made or lost in 2019. Mr. McCarthy referred to the *Financial Statements Highlights*, and the Recognition of Change in Net Position and in 2019 with all adjustments including Other Post-Employment Benefits (OPEB) the facility was at a $5.9 million loss. However, when they look at the impact of recording Other Post-Employment Benefits (OPEB) and because an Enterprise Funds is accounted for on a full accrual basis if they add back in the Pension of $466,397.00 and Other Post-Employment Benefits (OPEB) of $6 million they would have a bottom line income gain of $635,068.00.

Mr. O'Donnell asked for clarification that even with the $1.4 million in less revenue the facility still made $600,000.00. Mr. McCarthy replied ultimately yes, with the adjustment of Other Post-Employment Benefits (OPEB).

Mr. O'Donnell emphasized that Other Post-Employment Benefits (OPEB) was not going away.

Mr. McCarthy explained that if they were going from an accrual to a cash basis the facility was near breakeven.

Ms. Tautel moved request to accept and appropriate additional funding, $101,806.00 from NYSDOH for Healthy Orange Schools and Communities grant for a period of 10/1/2019-9/30/2020, seconded by Mr. O'Donnell.

Motion carried. All in favor.

On the agenda was a Department Update from Dr. Irina Gelman, Commissioner of Health.

Dr. Gelman explained that the Orange County Department of Health has been fully active in its response to COVID-19. They have seen an increased workload with summer programs slowly starting to become more active and some deciding to operate. This includes children's camps, pools, beaches and some temporary food service permits. Challenges continue with issuing of permits for these facilities as they must still comply with the Governor's Executive Orders for COVID-19. Most of the department's staff has been deemed "essential" in either their response to the pandemic or in activities that are continuing in the county such as the Intervention Services Division. The Nursing and Epidemiological Divisions continue to work primarily on the COVID-19 response, and they have started to plan for the reopening of their immunization clinics and sexually transmitted disease (STD) clinics starting in August. The Division of Public Health Planning and Epidemiology has hired another Epidemiologist and that individual will start at the end of July and they are excited about the experience and knowledge she will bring to the department. As guidance and recommendations from New York State becomes more available on issuing permits for summer operations such as children's camps, pools, beaches, food services and public gatherings, the Environmental Health Division is working closely with operators to get them into compliance. In addition, the Health Department has issued Commissioner's Orders with regard to vaccination records being made available for all children and staff that are attending children's day camps. Overall, immunizations rates are at an all-time low and declined by 50% as compared to the same time last year. They have held multiple calls with providers, nursing homes and other community agencies to alert them of the decrease in immunization rates. In addition, they have issued a public health alert on July 17, 2020 with regard to the New York State Department of Health report on vaccines for children and the 50% decline as it is imperative that they get the immunization rates up for all preventable diseases so that schools can resume safely. To date, the majority of Early Intervention Program (EIP) children receiving in-person services reside in the Kiryas Joel community and at the direction of the Orange County Health Department Commissioner, families and providers are required to sign the Acknowledgement and Assumption of Risk form prior to offering or receiving in-person services with only individual services being offered at this time. Group services including Parent-Child Group (PCG) and Group Developmental Model (GDM) are not available currently. The Orange County Department of Health has issued a letter to parents and providers regarding the potential risk of transmission of COVID-19 when resuming in-person services for the Early Intervention Program and Preschool Special Education Services, that accompanied the acknowledgement forms. The Commissioner of Health strongly advises against families resuming in-person services at this time due to COVID-19 health and safety concerns and any family or provider willing to participate in in-person services must sign an Acknowledgement and Assumption of Risk form. She added that they have had an astonishing response to the Medical Reserve Corps (MRC) and have a roster of 225 Medical Reserve Corps (MRC) members. The Medical Reserve Corps (MRC) has spent over 800 hours on just COVID-19 responses alone, a monumental contribution, and any information distributed on recruitment for the Medical Reserve Corps is greatly appreciated.

Ms. Sutherland asked if schools were required to share their safety/reopening plans with the public. Dr. Gelman replied yes, and they must be submitted to the state by the end of July.

Ms. Sutherland asked why Dr. Gelman was recommending that in-person services not be done in person as those children and their families need it to be done in-person. Dr. Gelman replied that she was referring to Early Intervention as they are the more susceptible population with a majority being medically fragile and there has been no mandate that providers be tested which is very concerning. Summer in-person services started in July with only one preschool program in the *Kiryas Joel Union Free School District* (KJUSD) open this summer with 42 students being transported by bus to this location. In addition, 150 parents/guardians have signed the Acknowledgement and Assumption of Risk waiver and 150 children have resumed in-person services.

Mr. Benton asked if school reopening plans are to be posted on the schools' website, New York State Department of Health website or both. Dr. Gelman replied that currently it is the local schools' website; however, that could change as the final guidance has not been presented.

The meeting adjourned at 5:30 p.m.