



Testimony, Workforce Development Joint Legislative Public Hearing
On the 2018-19 Executive Budget Proposal

By:

NYS Public Employees Federation President Wayne Spence

Chairwomen, committee members and distinguished guests: my name is Wayne Spence and I am president of the Public Employees Federation. Before I begin my testimony, I want to thank you for the opportunity to speak with you today on behalf our 54,000 members – the people who provide critical services to the residents of New York State. We take a lot of pride in the work our members do because we know they are the best qualified for the jobs.

Although the Executive Budget does not call for any planned layoffs, there is a proposal to close the Ella McQueen reception center for boys and girls in Brooklyn. The budget also contains proposals that circumvent Civil Service Law and prevent promotional opportunities for many titles that PEF represents. What is concerning to us, and should be to you too, is the State’s continued reliance on consultants to do the work our highly trained and qualified members should be doing. For instance, this week the NYS Office of Mental Health (OMH) began seeking to procure through an Invitation for Bid (IFB) a contractor to provide After-Hours Remote Pharmacy Coverage. (Announcement is attached- Appendix A)

I will be highlighting for you several areas in this year’s budget proposal that, if enacted, diminish public services to your constituents. Underfunding agencies and increasing dependence on expensive consultants hurts PEF members and does a disservice to all New York taxpayers.

OFFICE OF INFORMATION TECHNOLOGY SERVICES (OITS):

In 1883, New York became the first state to establish a Civil Service system. As mandated by the State Constitution, this system was created to make sure that government jobs were given to individuals based on their “merit” and “fitness” for a position, rather than based on who they knew. New York is setting a vey dangerous pattern of not providing civil service exams for both employment and/or promotional opportunities.

The current proposal calls for allowing 300 people to enter high level positions within the ITS state workforce, without ever taking a New York State Civil Service exam. Selective tailoring of employment must be stopped and investment in New York State employee training needs to be resurrected.

The current practice of hiring consultants thwarts the Civil Service law and sends a horrible message to the state workers who have been waiting for years for the opportunity

to receive training or take promotional exams. If you value morale and you calculate it as an asset, then selective insourcing, which eviscerates it, needs to be stopped.

Please consider the following:

- PEF has expressed our concerns about the implementation of the Selective Certification Examinations over the last several years.
- The selective certification process, although premised on identifying the critical activities and key qualifications necessary for a specific *position* is actually based on creating specific positions for specific *individuals*.
- The implementation of centralized help desk services crippled the ability of the state to provide adequate help desk services and eventually had to be re-insourced to PEF represented employees. In most cases, privatizing these services increases costs and reduces services.
- NYS spent millions of tax dollars on a private consultant whose advice was to create the Office of Information Technology to consolidate services and save money. While it is clear that services have been diminished, it is unclear if any money has been saved.

Let me ask you this question. Do any of you actually believe that continuing to allow outsourcing of public sector tasks, which results in diminished services at a higher cost, really best serves the needs of your constituents?

DESIGN BUILD:

Once again, the Executive budget includes a proposal to expand design-build in New York State, a process that PEF opposes for several reasons. The professional staff employed by New York State agencies are the most competent and cost-effective solution to most of the State's design needs. This remains true in spite of the loss of hundreds and hundreds of state engineers over the last few years.

The design-build delivery system is a dangerous concept where time is money. PEF represents some of the best transportation engineers in New York State. As a result of consultant hiring, their skills and talents are underutilized and the state is losing its ability to provide these services in-house. Having an owner retaining a single entity that is responsible for providing both the design and construction of a project is risky as demonstrated by the "*Big Dig*" disaster in Massachusetts.

Without proper State oversight, design-build allows for opportunities to skimp on critical component materials. As a consequence, to save money, concrete that is supposed to last twenty-years may only last five years or the proper amount of reinforcement steel (rebar) to ensure project longevity can be overlooked when no one is watching. Ask yourself, do you really want the person tasked with building the project also inspecting it and proclaiming it to be safe?

Any implied advantage realized by the design-build process will quickly be offset by costly procurement processes, increased need for upfront owner input, decreased owner control, and increased construction risk. The lack of control, and increased construction risks, demonstrates that design-build projects are not appropriate for New York State. Do we as citizens really get the best value when a company submits the lowest bid to build a bridge or project the fastest? Design-Build combined with less oversight, or none at all, by PEF engineers is a disaster waiting to happen. Any proposals that increases the state's reliance on costly consultants is misguided and we urge you to cast a critical eye towards legislation that expands the use of design-build contracts. ***PEF maintains that we can save money and get greater value out of dwindling transportation dollars by doing more engineering work in-house and decreasing reliance on consultants or design-build.***

The Special Duty to Assignment compensation was implemented as a result of an in-depth risk assessment made by state agencies that recognized the inherent vulnerability and danger of employees working in close proximity to active vehicle traffic on New York's busy highways and roads. As a result of the 2012 "Drivers First Initiative", which prioritized the convenience of motorists, PEF members were forced to work in conditions that made it more difficult to lower speed limits in work zones, increased the use of night time road construction, and made less use of positive concrete barriers and buffer lanes. These dangers are exacerbated by drivers' fondness for texting while they are behind the wheel.

In recognition of the increased inherent dangers, New York did institute the "move over" law and has substantially increased the hazardous duty and expanded such compensation for law enforcement personnel that work alongside PEF DOT employees. Unfortunately, the PEF Special Duty to Assignment compensation has remained stagnant since 2003. Our members, equipped with only hard hats, reflective vests, and steel toed boots, are exposed to increasingly distracted drivers operating speeding cars and trucks that weigh

tons. PEF is requesting that you take Special Duty Assignment into consideration as you deliberate funding projects.

SUNY HOSPITALS:

When it comes to health care, our public teaching hospitals are vital resources for the community. Yet once again they are being targeted in the budget. Last year the Legislature was able to restore 9.3 million of the 18.6 million that was snatched from our public hospitals. This year, the state subsidy is completely removed and replaced with 78.6 million in capital funding. Simply put, our public hospitals need money, not bonding authority. We are asking you to fully restore the 78.6 million subsidy. It is a shame that we have to continually ask you to restore critical funding so that our public hospitals can keep serving the public. SUNY hospitals are hallmarks of excellence and provide vital medical education, research and essential health care services to their communities. *We thank you for your support in the past, for restoring cuts to SUNY hospitals, and for rejecting language that would have opened the door to private investments in public hospitals.*

OFFICE OF MENTAL HEALTH (OMH) & OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES (OPWDD) – DOWNSIZING:

The budget also notes that the state has reduced the number of state-operated inpatient psychiatric beds by 650 adult, children's and/or forensic beds since 2015. This transition to community-based care has been set into motion without the necessary resources in place to ensure that individuals released into their care will receive the same or higher quality standards of treatment that the State has historically provided.

New York State's behavioral health care services have been facing mandated community-based transitions that PEF continues to feel lacks clarity. We are concerned with the adverse impact on continuity of care for those served every day by our members. Currently, PEF represents thousands of members working at OPWDD and OMH. Unfortunately, the State continues to push services for these individuals out into the community. The State budgets OPWDD for the loss of 32 positions through attrition and OMH forecast another reduction of 275 positions to be eliminated through attrition.

The underlying theme for the past few years has been the continued diminishment of public services available for those with developmental disabilities and behavioral health needs. OPWDD closed Broome Developmental Center in March 2016 and Bernard Fineson Developmental Center was slated for closure on March 31, 2017, but remains open due to the difficulty the state is having in finding private contractors to make more beds available.

PEF asks the legislature to delay any further outsourcing of these services until a comprehensive plan is developed that ensures that all individuals will have access to the appropriate quality care and services needed. This would include bringing to a halt the diminishing clinical resources and unsafe placements and discharges of those who are in the greatest need of our state services.

Justice Center for the Protection of People with Special Needs (Justice Center):

The Justice Center oversees cases of abuse and neglect in state operated, licensed or certified programs and facilities in agencies that care for individuals with developmental disabilities, mental illness, substance abuse disorders and children in residential facilities.

The Justice Center has had a negative impact on health care professionals in this field. Clients use the threat of Justice Center charges to manipulate their caregivers. Nurses who become subjects of a Justice Center interrogation and investigation leave for nursing positions outside of State service. They fear that if they are found guilty, their licenses will be jeopardized and their names will be on the list prohibiting them from working with children or vulnerable clients.

Time and time again, money that is squandered investigating baseless claims that are, on their face, so absurd that there is no way they could be accurate. The amount of stress placed on PEF members and the waste of taxpayer's money attached to investigating these cases is indefensible. Unfortunately these investigations usually turn out to be nothing more than a vehicle for continued harassment of the understaffed, PEF represented employees at the agencies overseen by the Justice Center.

There has been inadequate training and support provided to the Justice Center to the PEF represented workforce to meet the requirements mandated by the law. These agencies are in need of workforce training, recruitment, retention and other resources

to continue to meet the needs of individuals with mental illnesses without running afoul of the Justice Center.

DOCCS

The Department of Corrections and Community Supervision (DOCCS) operates 52 facilities that house 50,300 inmates and is responsible for 35,500 parolees.

The Executive Budget provides for a decrease of 71 fulltime employees, which is attributed to the attrition of 87 FTEs as a result of the closing of three special-housing units and an increase of 13 FTEs related to the implementation of the NYCLU agreement, and the addition of three parole board members.

Despite the fact that over the past 15 years the staffing ratio of inmates to uniformed staff within the facilities has been reduced consistently with the decline in the inmate population, there has been an increase in violence within these facilities. Since 2012, there has been an approximately 52 percent increase statewide in assaults on staff in NYS prisons, and an 87 percent increase in assaults on inmates. (DOCCS Fact Sheet, Jan. 1, 2018). So, while the statewide Officer to inmate ratios may have remained consistent; the trend in workplace violence clearly indicates the need for additional highly trained staff. *PEF believes there is a need for additional training for current staff and that new similarly trained staff is necessary to combat the increased workplace violence. Increasing hires and augmenting training will improve safety for staff and inmates alike.*

DOCCS, as with every agency in the state, suffers from recruitment and retention problems of licensed professionals such as nurses, doctors, pharmacists, and nurse practitioners within its facilities. The nurse vacancy rate has increased from 10 percent in January 2015 to approximately 20 percent in October 2017 -- an increase of nearly 10 percent in less than one year-- and this situation isn't improving. Further, 14 of the 52 correctional facilities have an excess of 25% vacancy rate, and three of those exceed 50% and one facility is currently at 75% vacancy rate (DOH Monthly Report- October 2017, p.3 – Attached). This resulted in excess of \$6 million dollars in overtime, and 1,054 incidents of mandated overtime shifts.

These medical professionals provide vital health care 24-hours a day, every day for all of the inmates in the facility and any staff person who is injured or have medical emergencies at work. These vacancies are attributed to salary disparities between what is

offered by New York State compared to similar jobs in the community, resulting in the inability to attract and maintain a sufficient number of staff. Salary disparities are further exacerbated by the hazardous workplace conditions these professionals face.

I would like to say at this point that it is imperative, to address chronic recruitment and retention problems, we begin to take a look at increasing the base pay of a nurse from a Grade 16 to a Grade 18. As I am sure you know, the Governor recently signed legislation that places additional educational requirements for nurses to retain their licenses. Low salaries coupled with Tier 6 retirement makes it very difficult to incentivize nurses to come to, or remain in, New York.

Recruitment and retention problems result in frequent scheduling and assignment changes as well as a high volume of voluntary and mandatory overtime. DOCCS has the highest No Mandatory Overtime Violations of all state agencies, including the three SUNY Hospitals. Medical professionals at DOCCS facilities are undervalued and needlessly overworked.

Parole Officers

I would like to touch on the staffing levels within the DOCCS facilities; we are just as concerned about the understaffing issues facing our parole officers.

You cannot help but see evidence of the need for an adequate level of parole officers when you pick up any newspaper today. One newspaper reported that there were 33 officers monitoring 1800 parolees in Monroe County. However, that story only shines a brighter light on worse ratios, such as those occurring within the downstate region of this state. *There needs to be more Parole Officers on the ground for day-to-day supervising of parolees.*

Within this budget there are two new pilot release programs, one for college educational release and the other for work release. Each program would be limited to 50 inmates at any one time. *While we support the training and education of inmates, we believe this is better accomplished on a much larger scale within the current structure inside of the correctional facilities.*

Medicare Part B and IRMAA

The current language in this budget uses language that states, “Eligible retirees and their dependents for the Medicare Part B standard premium shall not exceed \$134.00 per month.” While this represents an increase for some, the language provides that any future increases would be subject to future state budgets and less likely to rise appropriately.

Ending the Income Related Monthly Adjustment Amounts (IRMAA)

Impacted retirees stand to see reductions of \$642 to \$3,535 per year

Our retired state force must never be forgotten nor taken for granted. These former employees put in many years of state service and now live on very fixed incomes. It is unfair to ask people that have left the workforce to fill budget shortfalls.

While I chose to highlight only a few agencies and issues today, there are many other agencies that remain understaffed and underfunded. Please keep in mind, that overtime expenses at some state agencies continue to grow and the over reliance on overtime demonstrates the need to reinvest in the state workforce. It is not a coincidence the public interest is best served by state agencies that are fully staffed with public employees.

Once again, I agree with the Governor when he made the statement on November 12, 2016, “So let me be absolutely clear: If anyone feels that they are under attack, I want them to know that the state of New York – the state that has the Statue of Liberty in its harbor – is their refuge.”...“It’s the very core of what we believe and who we are. But it’s not just what we say, we passed laws that reflect it, and we will continue to do so, no matter what happens...” (Lam 2016).

By bringing to an end the practice of outsourcing, eliminating selective certification and providing timely promotional exams, PEF is seeking such a refuge in the great State of New York

Thank you for your time and the opportunity to speak with you today.

Reference

Lam, K. (November 12, 2016). Cuomo offers New York as refuge for people who feel 'under attack' during Trump's presidency. Retrieved from <http://pix11.com/2016/11/12/cuomo-offers-new-york-as-refuge-for-people-who-feel-under-attack-in-trumps-presidency/>

Appendix A

Title:	After-Hours Remote Pharmacy
▪ Agency:	Mental Health, NYS Office of
▪ Division:	Central Office
▪ Contract Number:	OMH01-C100324-3650000
▪ CR Number:	2039952
▪ Date of Issue:	01/17/2018
▪ Due Date/Time:	02/08/2018 3:00 PM No late submissions will be accepted.
▪ County(ies):	All NYS counties
▪ Location:	Statewide
▪ Classification(s):	Medical & Health Care - <i>Consulting & Other Services</i>
▪ Opportunity Type:	General
• Description	
• Contact Info	
• Documents	
• Updates	
• Bid Results	

The NYS Office of Mental Health (OMH) is seeking to procure through an Invitation for Bid (IFB) a Contractor to provide After-Hours Remote Pharmacy Coverage. Currently, OMH has 23 facilities and each maintains its own internal full-service, daytime pharmacy (8:00 a.m. - 4:00 p.m., not including State Holidays). To ensure the needs of the patients are being met, it is necessary to have pharmacist coverage after the facility pharmacy is no longer open. The Contractor must be a call-center based operation and be registered to conduct business in New York State. All requirements set forth by the Joint Commission regarding pharmacists

entering, approving, modifying, discontinuing and renewing medication orders must be met. For further details of the Scope of Work, including Mandatory Requirements, please see the Appendix D of the Contract Boilerplate.

Questions from bidders are to be submitted to the Consolidated Business Office per the instructions in the IFB by **Thursday, January 25, 2018 by 3:00 p.m. EST**. Questions and Answers will be accumulated and sent to all bidders by Thursday, February 1, 2018, as well as posted to this ad.

Bids are due no later than Thursday, February 8, 2018 by 3:00 p.m. EST.

Minority and Women Business Enterprises (MWBE) Participation Goals for this contract have been set at the following: MBE - 0%; WBE - 0%.

New York State Department of Labor Prevailing Wage Rates DO NOT apply to this solicitation. The Invitation for Bid documents, as well as the Contract Boilerplate, are attached to this ad. Interested bidders should check this ad periodically for updates.

"Pursuant to the New York State Finance Law Sections 139-j and 139-k, the Procurement Lobbying Act applies to this solicitation. The restricted period began with the publication of this ad and will end with the formal approval by OSC of the contractual agreement."

Minority Owned Sub-Contracting Goal: 0%

Women Owned Sub-Contracting Goal: 0%

Service-Disabled Veteran-Owned Business Contracting Goal: 0%

Disadvantaged Owned Sub-Contracting Goal: 0%

Due date: 02/08/2018 3:00 PM

No late submissions will be accepted.

Contract term: 5 Years

County(ies): All NYS counties

Location: Statewide

Division of Health Services Monthly Report

October 2017

1. Governor's Priorities for Agency Results

- Staffing

Staffing continues to be a major operational issue. This includes nursing, medical provider (physician, nurse practitioner, physician assistant), dental (dentist, dental assistant, dental hygienist), and other support titles. The growing discrepancy between community salaries and negotiated salaries for DOCCS employees is one of the primary problems. Despite extensive assistance from Personnel with requesting geographic differentials in selected areas and advertising in print and radio, all efforts have fallen seriously short of the recruitment and retention needs of the Department. This is rapidly becoming a critical situation. The shortage had affected operations in several facilities for varying periods of time which included reduction in sick call availability and temporary closures of facility infirmaries.

2. Agency Head's Key Priorities for Agency Performance and Results

3. Agency Operations and Infrastructure

- Operational Activities

During October, Health Services administrative staff responded to 312 letters and phone calls involving inmate health care; participated in the investigation of 117 medical/dental grievances appealed to CORC; conducted 2 medication/sharps audits and participated in 9 ACA facility folder audits.

- Compassionate Release

Medical Parole (for inmates who have not yet passed their parole eligibility date) or Full Board Case Review (for those who have passed their parole eligibility date) is available if the inmate is terminally ill or is sufficiently debilitated to meet the requirements of Executive Law Section 259-R or 259-S. Inmates who meet the conditions are referred by DOCCS to the Board of Parole for consideration. (Medical Parole is proscribed in the case of specific crimes, as well.)

During October, 4 applications met criteria for consideration and were referred to the Deputy Commissioner/Chief Medical Officer for review. 1 application was forwarded to the Board of Parole. Since no inmates were released during the month, the number of inmates released through this program since its inception is still 460.

October	
Applications Reviewed	4
Applications Forwarded	1
Releases	0
Total Released	460

- Surveillance Activities

AIDS – There was 1 case of AIDS identified among existing inmates in October. 8 cases were added through admission or readmission and 9 were discharged through death or release. At the end of October, there were 279 known cases under custody.

October	
Inmates Added	9
Inmates Discharged	9
Monthly Total	279

TB – As of the end of October, no cases were under treatment, no contact traces were in process, 22 suspect cases were being followed and 26 counseling sessions were conducted by Communicable & Infectious Disease Unit staff.

October	
Under Treatment	0
Contact Tracings	0
Suspect Cases	22
Counseling	26

Hepatitis C - Per pharmacy records for October, 46 inmates were approved to start hepatitis C therapy. The Department continues to manage Hepatitis C infected patients with treatment regimens that meet the community standard of care.

October	
Therapy Starts	46

- Elderly Inmates

Of the total inmate population of 49,810 at the end of October, 10,337 inmates were age 50 or older. Of those aged 50 or older, 9,939 were male and 398 were female.

Of the 330 inmates in the Regional Medical Units and the Unit for the Cognitively Impaired, 264 inmates were age 50 or older. Of those aged 50 or older, 256 were male and 8 were female.

October	
Total Inmate Population:	49,810
Number >50 Y.O.	10,337
% >50 Y.O. of Total	20.75%
% Male of >50 Y.O.	96.15%

% Female of >50 Y.O.	3.85%
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UCI & RMU Population:	330
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Number >50 Y.O.	264
% >50 Y.O.	80.00%
% Male of >50 Y.O.	96.97%
% Female of >50 Y.O.	3.03%

- Infection Control

Inactivated Influenza Vaccine became available to the correctional facilities in the beginning of October.

- Nursing Services

The average nursing vacancy rate is now 19.89% with a significant (i.e. 25%+) shortage being experienced at:

SING SING	75.00%
CAPE VINCENT	60.00%
MARCY	51.22%
MID-STATE	46.88%
GREENE	46.15%

HUDSON	36.36%
GREEN HAVEN	34.85%
FIVE POINTS	34.21%
LIVINGSTON	30.00%
GROVELAND	29.41%

ADIRONDACK	28.57%
COLLINS	28.57%
ELMIRA	26.32%
FISHKILL	25.41%

Though recruitment is ongoing, staff shortages together with a reduced BFL are necessitating changes to facility specific staffing patterns and schedules; thereby adding to the stresses and anxieties being experienced by existing staff.

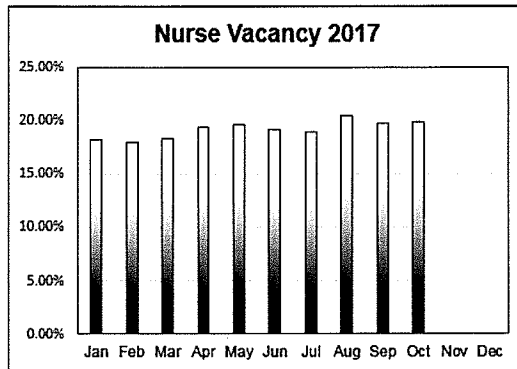
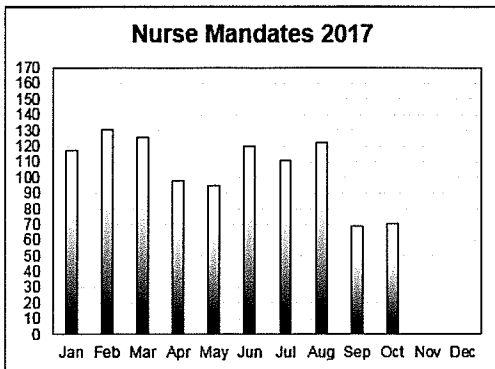
The ongoing and widening gap between DOCCS nursing salaries and community salaries continues to make recruiting and retaining quality nurses nearly impossible. Health Services has authorized the temporary reduction of nursing sick call and closure of infirmaries in select facilities due to nursing staffing shortages.

There were 70 incidents of mandatory overtime this month and 1054* for the calendar year to date.

This month's mandatory overtime total is lower than the yearly average.

October	
Overtime Mandates	70

(*revised due to late data adjustment)



- **Pharmacy Services**

Central Pharmacy is participating in a study with Empire State Development to determine cost savings achieved through utilization of the CAP.

The overall compliance rate for the use of the CAP for October is 90.35%.

Efforts are ongoing with the Bureau of Narcotic Enforcement (BNE) to resolve licensing issues. Site visits are being completed to ensure DOCCS policies and procedures maintain strict oversight of controlled substances.

The pharmacist vacancy rate remains steady at an average of 11%.

- **Dental Services**

The dentist vacancy rate is 18%. The Director of Correctional Dental Services item is currently vacant.

The Regional Dental Directors along with dentists at some nearby facilities are providing on-site clinical services to cover for dentist vacancies in the Wende, Elmira, Watertown, Clinton, and Sullivan HUBS.

3. Public Appearances of Department Staff/Announcements

Health Services nursing staff attended 11 job fairs in October for recruiting purposes.

4. The Month Ahead

Nothing to report.