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THE SENATE
STATE OF NEW YORK



DAVID CARLUCCI
SENATOR, 38TH DISTRICT

Albany Office:
Capitol 514
Albany, NY 12247
(518) 455-2991
Fax (518) 426-6737

Rockland Office:
20 South Main Street
New City, NY 10956
(845) 623-3627
Fax (845) 708-7701

Westchester Office:
2 Church Street, Ste. 210
Ossining, NY 10562
(914) 941-2041
Fax (914) 941-2054

E-Mail Address:
Carlucci@nysenate.gov

June 29, 2020

Theodore Kastner, M.D.
Commissioner, NYS Office for People With Developmental Disabilities
44 Holland Avenue
Albany, NY 12229

Dear Commissioner Kastner:

We write to express our concern regarding recently announced proposed cuts to the OPWDD service delivery system and in particular how destabilizing these revenue reductions will be to the voluntary not-for-profit residential service provider network currently staggering from the COVID-19 pandemic.

On May 27, 2020, the Department of Health published a public notice in the New York State Register announcing proposed cuts in reimbursement for IRA and ICF residential programs by eliminating the occupancy adjustment resulting from vacancies and slashing reimbursement by 50% for retainer days when residents are in the hospital or are taking therapeutic leave days for family visits. Finally, after cutting reimbursement by 50% for leave days, the proposal also would impose an annual "cap" of 96 days of therapeutic leave days, after which reimbursement would be reduced to zero.

The proposed cuts total about \$238 million on an annual basis and would result in a reduction in reimbursement by as much as 7.5% for certain residential programs with significant vacancies, including vacancies due to deaths from COVID-19. Neither voluntary providers nor provider associations received any advance notice of the proposed rate reductions and there was no consultation or discussion with stakeholders.

In the midst of the COVID-19 pandemic, now is not the time for DOH and OPWDD to impose these cuts. OPWDD voluntary not-for-profit service providers, especially residential providers operating congregate care IRAs, ICFs, and community residences are faced with unprecedented challenges as they navigate this pandemic. These providers have gone to heroic efforts to keep the over 29,000 individuals in these certified settings safe and healthy. The direct care and clinical staff of these agencies are the lifeblood of the OPWDD service delivery system, and these cuts will cause tremendous harm as these agencies seek to recover from the pandemic.

Furthermore, these cuts to the reimbursement rates of residential providers come at the same time the COVID-19 pandemic have forced the closure of other programs, such as Day Habilitation and Site-based Pre-Vocational Services, while limiting the ability of the providers to provide Community Habilitation, Supportive Employment and Respite. The revenue losses from these program closures are significant and it is not at all clear if these losses can be made up.

Additionally, we have been made aware that voluntary not-for-profit residential service providers had to obtain Personal Protective Equipment (PPE), including masks, gowns, gloves, shields and other protective materials without receiving

any allocation of PPE from OPWDD and often facing roadblocks from the county OEM's where provider agencies were told that they are not a priority. We are also aware that voluntary providers have had to provide "combat/hazard pay" for front-line direct care and clinical staff, who serve and protect a vulnerable population, offering double and even triple pay to these brave DSPs, house managers and other essential staff as they serve a population often ill-equipped to self-distance or whom cannot tolerate wearing a mask.

We expect the DOH and OPWDD provide the voluntary sector with funding which was made available through the enhanced FMAP Medicaid funding that it has received as part of the CARES Act. Furthermore, New York State has received \$5.1 billion in CARES Act funding as part of the Coronavirus Relief Fund (CRF). The NYS Comptroller notes Federal guidance will permit the use of CRF resources for the payroll costs of public health and public safety employees. We firmly believe that these CRF funds must be made available to voluntary providers to address the COVID-19 crisis and expect OPWDD to provide guidance as to COVID-19 related spending which may be eligible for Federal Emergency Management Agency (FEMA) resources.

There is little doubt these proposed cuts will lead to further institutionalization, longer delays in individuals and families to receive services and higher costs to the state as providers will not be able to attract and retain staff or serve more complex individuals who seek to leave an institutional setting. Therefore, we urge you to reverse these unsupportable cuts and to work with providers on a plan to address the COVID-19 pandemic and develop a rational cost-based reimbursement methodology based upon real world practices.

Sincerely,



Senator David Carlucci
38th Senate District




Senator Gustavo Rivera
33rd Senate District

cc: Howard Zucker, M.D., J.D., Commissioner, NYS Department of Health



Senator Todd Kaminsky
9th Senate District



Senator Shelley B. Mayer
37th Senate District



Senator Rachel May
53rd Senate District



Senator Brad Hoylman
27th Senate District



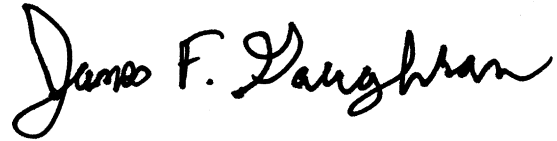
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3rd Senate District



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11th Senate District



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22nd Senate District



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5th Senate District



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42nd Senate District



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