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29 British American Blvd.  
2nd Floor Latham, NY 12110  
518-439-8311  
thearcny.org

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October 16, 2020

Commissioner Theodore Kastner  
NYS OPWDD  
44 Holland Avenue  
Albany, New York 12229

Dear Commissioner Kastner,

Thank you for your presentation to The Arc New York Board of Governors on October 1, 2020. We appreciate the direct communication and transparency, even if the information you shared was discouraging and challenging. We are committed to advocating throughout the upcoming budget process for additional resources to help in responding to the needs that you presented and will partner with you and your leadership team to utilize the resources enacted in the final budget in the best way possible to support people with I/DD. In this regard, and in keeping with our ongoing dialogue, The Arc New York would like to provide recommendations on amendments to be proposed to CMS on OPWDD's HCBS waiver that will enhance efficiency within our system. These recommendations are based upon our experiences in operating under the Appendix K waiver during the COVID-19 pandemic as well as our understanding of how OPWDD utilizes 100% state aid funding that might otherwise continue to support individuals while generating federal matching funds.

**I. Appendix K Waiver Feedback**

**1. Extend the Day Hab Billing Flexibilities Past the October 14<sup>th</sup> Sunset**

Since the start of the pandemic, we continue to see decreased day habilitation utilization. Following the reopening in late July, attendance at day programs had been steadily improving but still fell well below 70% (including individuals served in certified residential). But now that we are experiencing surges or hot spots which are being widely reported in the media, we are beginning to see attendance falling again and are already experiencing pauses in day program operation - a strategy being utilized by providers in hot spots to avoid exposure. Although we believe that day hab may never reach its pre-pandemic utilization levels, individuals and families that still hope to utilize these services need additional time to decide when, and whether, they will feel safe in returning.



Many providers have benefitted from the billing flexibility in order to deliver morning and afternoon sessions which enable them to meet minimum space and social distancing requirements. Renewal of the billing flexibility will support the sustainability of these services while enabling providers to continue to adhere to OPWDD's necessarily strict day program reopening safety requirements. Such continuation will be critically important as hot spots in the resurgence of COVID-19 in locales throughout the state occur, which we anticipate will require many temporary pauses in day program operation. And while OPWDD's budget remains protected with funding guardrails, providers will require ongoing support to maintain the financial sustainability of these programs. These flexibilities are particularly important to individuals who live at home with family who have been confined to their home for many months and are attending day program as part of the initial phase of reopening.

2. Therapeutic Leave Changes

We recognize that the October 1, 2020, therapeutic leave changes were initiated to achieve targeted savings, but The Arc New York believes this is poor public policy. These reimbursement limits on therapeutic leave will create a severe financial wedge between providers and families. Parents and family members are a constant source of support for individuals throughout their lives and they will be torn between their desire to maintain regular visitation and their reticence to cause a reduction in reimbursement to the provider caring for their loved one. We recommend that OPWDD mitigate the impact by:

- Making appropriate waiver changes to permit pooled therapeutic leave days by certified capacity to benefit families (e.g., 40 days x certified capacity = annual limit funded at 100%).
- Removing the restriction on the delivery of remote residential habilitation in order to support the billing of a service day in circumstances where family has taken their loved one home to mitigate risk during the pandemic and services have been delivered remotely by IRA staff in accordance with an approved plan.

3. Occupancy Adjustment

We further recommend that with respect to the elimination of the occupancy adjustment, OPWDD recognize that complete avoidance of all vacancies is simply unachievable. Individuals relocate or pass away and despite best efforts to screen, select and expedite appropriate placement upon the occurrence of an opportunity, some minimum number of vacancy days must remain reimbursable. We urge OPWDD to revise its proposal and build in at least a 1% vacancy factor into an occupancy adjustment rate calculation, effective in the 1/1/21 rate update.

4. Combine Daytime and Residential Habilitation into an Integrated Habilitation Funding Model:

The necessity to provide day supports and services based from the certified residential program during the pandemic has created a significant learning opportunity for our entire



system. Many individuals report positive experiences and a preference to continue to receive supports in this fashion. In addition, a significant number of our Chapters have reorganized program management and DSP staff deployment in ways to achieve a more integrated delivery of day and residential habilitation supports which enhance both quality and efficiency. We believe that habilitation based from the residence (not necessarily in the residence) can eliminate arbitrary distinctions between day and residential habilitation and better support participation of individuals in their community.

Day services planning and delivery must continue to be person-centered. Where individuals want to continue to participate in their pre-pandemic day program, this can be accomplished through cooperative contracting arrangements between the residential and day program agencies. Involvement and oversight by the Care Manager and Care Coordination Organization will ensure that these determinations remain person-centered and responsive to the needs and preferences of each individual.

We should continue to rely on Com Hab-R and day habilitation service delivery and billing until such time as our system can develop an effective transition plan that identifies long term facility utilization needs and will ensure we do not create significant destabilization by making abrupt changes that create defaults on borrowing commitments made in partnership with OPWDD under current policy. Our long-term goal, assuming OPWDD can obtain CMS approval, would be to fully integrate habilitation service delivery, documentation and reimbursement for individuals who live in certified residential programs and the agencies that support them.

##### 5. DQI-BPC Surveying Modifications

The Appendix K Waiver Amendment allowed OPWDD to temporarily cease routine survey processes with the caveat that the survey process resume upon the end of the state of emergency. OPWDD conducted focused surveys of certain providers experiencing significant numbers of individuals with COVID-19. This approach has enabled OPWDD to focus its survey resources on providers requiring the most support and oversight. This practice should be generalized as OPWDD resumes normal survey activity following the pandemic. This will enable OPWDD to direct more survey resources to providers facing the greatest difficulty in achieving and maintaining compliance while recognizing the capacity of providers that have demonstrated consistently high levels of compliance to continue to do so with less frequent survey activity.

Survey activity is a large resource and financial drain to both OPWDD and its providers and this must be reevaluated to improve efficiencies and effectiveness. We believe that this is an opportunity to revisit the survey protocols, which have become onerous and duplicative, consisting of four separate types of surveys. We encourage OPWDD to utilize this opportunity to focus and prioritize survey efforts on providers that demonstrate quality or operational challenges, with reduced survey burden on providers that routinely demonstrate a high quality of care and services.



II. **Broader Changes and Recommendations**

1. **Create a Less Costly Social and Leisure Focused Alternative to Day Habilitation**

Day habilitation has been utilized as the primary programmatic and funding model to support elderly individuals in retirement. While age should not determine whether individuals need or want habilitation services, some individuals may not require day habilitation all day and may prefer activities that are more social and leisure focused. Current waiver services such as respite may be an appropriate option but is not available to individuals who live in certified residential programs. The CMS HCBS waiver taxonomy includes Social Adult Day Care. OPWDD should explore whether the current waiver agreement could be amended to introduce this option to individuals for whom it is appropriate and desired. OPWDD will need to work with DOH to accommodate the impact on the cost per unit of service for individuals who remain in each provider's day habilitation where individuals requiring less intense services transition to social adult day care.

2. **Enhance Family Care Funding to Incentivize the Transition of Appropriate Individuals from Supervised Residential Programs**

Family Care is a very effective alternative to high-cost supervised residential placement for certain individuals. We have received positive feedback noting its effectiveness in supporting community participation for individuals for whom this model is appropriate. In the past, OPWDD has worked with voluntary providers in order to facilitate the transition of state-sponsored family care homes to voluntary-sponsored family care. Recently, with the imposition of the 20% withhold on certain state aid payments, we have learned that OPWDD pays for costs associated with state-sponsored Family Care with 100% state aid and seeks federal matching funds at some point thereafter. Whereas for voluntary-sponsored Family Care, providers immediately submit claims for Family Care Res Hab via eMedNY where Federal Financial Participation (FFP) is obtained much quicker. We would urge OPWDD to reinstitute its prior initiative and transition the remainder of state-sponsored Family Care to the voluntary sector, thereby creating a cash savings in its budget during the transition year. We would further recommend that OPWDD, in conjunction with Family Care home operators and voluntary providers currently sponsoring Family Care, commence a review of program and physical plant requirements so as to identify unnecessary mandates that can be eliminated. We have been advised, for example, that in recent years a new physical plant standard requiring hot water mixing valves in all Family Care homes was mandated. Yet in many such homes there are no individuals who requires this level of protection. An alternative approach could be to assess each individual and require a mixing valve only when necessary. The goal would be to identify ways of making Family Care more readily available in order to increase the number of homes and placement opportunities statewide. Finally, with the introduction of the CAS Assessment Tool, we would urge consideration of further enhancement to payments available to Family Care home operators, such as with the establishment of additional tiers, in order to support placement of individuals with greater needs. We believe this enhancement, coupled with the recommendation



below, could support the transfer of individuals from certified supervised residential programs with net savings to OPWDD.

3. Incentivize Transition from Supervised to Supportive IRA: Create a higher needs rate to support appropriate transfer of interested individuals from supervised IRAs to supportive IRAs.
4. Incentivize Reduction in Certified Residential Capacity

Reports from OPWDD sources indicate there currently are many vacancies within certified residences in our system. We believe this occurrence is primarily due to the inability to pay competitive wages sufficient to recruit and retain our DSP workforce. Individuals with emergency and urgent placement needs remain in significant numbers according to OPWDD CRO reports. Nevertheless, while placement opportunities are available, necessary resources to provide care for all with significant need is inadequate. This need for additional resources must be addressed and our organization will continue to make this among our highest advocacy priorities.

Nevertheless, the availability of more single bedrooms and smaller homes in our certified residential system would enhance risk mitigation in the management of COVID-19 and other potential health crises. We believe that OPWDD's data with respect to the prevalence of positive COVID-19 occurrences in larger certified residential programs bears this out. The availability of private bedrooms, which is a requirement to consider and facilitate when requested by individuals, would also enhance compliance with the CMS HCBS Settings requirements as well as the dignity of individuals supported in certified residential programs. At a time when providers with current vacancies are about to lose funding, we would strongly recommend that OPWDD offer an incentive for providers to consider reducing certified capacity instead of trying to fill the vacancy. This could be done through a fast-track review of a CON to be initiated by the provider and approval would be contingent upon OPWDD's determination regarding adequate capacity within the geographic area. When a provider reduces certified capacity, they do not accrue any savings with respect to fixed program and agency administrative costs. Such costs are reallocated across remaining programs in accordance with OPWDD's ratio-value CFR reporting requirements. We therefore recommend that OPWDD work with DOH to expedite reimbursement of such costs, such as by incorporating this impact into each 6-month rate update by DOH, instead of having to wait two years or more for the next scheduled rebasing. We believe this approach would create net cost avoidance savings to OPWDD's budget as many such vacancies will otherwise be filled. The above strategy could also be utilized with an enhanced Family Care reimbursement model when a provider successfully supports the transfer of an individual from a high-cost supervised residential program.

In addition to the above, we plan to explore internally the development of a potential proposal to facilitate transfer of certified capacity among Chapters where attrition occurs in geographic areas with diminished ongoing placement need to geographic areas with high needs. Such a proposal



would build upon the unique collaborative relationship among Chapters of The Arc New York and our mission to provide necessary supports to individuals with I/DD throughout the state.

5. Continued Use of Telehealth for Services

The current Federal and State flexibilities on telehealth for Medicaid and Medicare during this public health crisis have been a welcome addition to the OPWDD service delivery system. They have been very beneficial for state plan clinic services, especially behavioral health. Providers continue to utilize telehealth in a personalized manner to the benefit of the individual and provider alike. For example, telehealth has proven useful for safety monitoring/checking in with individuals in their own apartment or Supportive IRA and for individuals who respond to verbal prompting. Providers are also leveraging telehealth modalities for primary care and for aspects of nursing triage.

We need to continue these flexibilities and find opportunities to expand telehealth to provide services in a safe, cost effective and convenient manner. OPWDD must work to keep this methodology simple and user friendly, without over-regulating or diminishing/disincentivizing usage at this time.

Specifically, The Arc New York recommends that:

- OPWDD consider a Residential Habilitation telehealth addition for extended therapeutic leaves such as when a family takes their loved one home to mitigate risk during a pandemic.
- Any further OPWDD guidance or administrative directives (ADM) that stifle the current flexibilities or add restrictions to the flexibilities should be scrutinized closely to ensure that this modality is used to its fullest extent.
- OPWDD continue to advocate for telehealth and/or telephonic service reimbursement comparable or equivalent to in-person services to ensure convenience, coordinated care, and maximum utilization, especially in light of the pandemic and the resulting reduced revenue to the provider community.

III. State Operations – Safety Net/Provider of Last Resort

OPWDD's State-operated residential programs have become an under-utilized resource that, in partnership with voluntary providers, could play a much more significant role in the delivery of community residential services. OPWDD staff are paid significantly higher wages and benefits which are supported under a different, more responsive rate methodology than that utilized for voluntary providers. OPWDD has lower DSP turnover and likely higher average tenure. These resources could be utilized to repatriate aging out individuals being supported in out-of-state residential schools at incredibly high rates which are being paid with 100% state aid funding without any federal participation. Meanwhile, voluntary provider funding is being cut. Many individuals living in State-operated residences already attend voluntary day programs where they have developed close friendships with individuals served in such provider's residential program. We believe that voluntary providers could create opportunities for such individuals



to transfer to an IRA where they already know other residents, may also know some of the staff, and would enjoy this new opportunity. Such transfers would be voluntary, person-centered and subject to all necessary notifications and external reviews and approvals to ensure it is also in the best interest of each individual. This approach would then create vacant opportunities which could be occupied by individuals currently living out of state. This process would create very significant net saving to OPWDD for each and every individual brought home to New York State.

We would further recommend that this same opportunity be offered to individuals living in private residential schools in New York. As an alternative, such private schools could seek necessary approvals to become certified by OPWDD, such as an ICF, where matching federal funds would be generated and thus reduce the state cost by 50%.

Finally, we would recommend the same partnership approach be utilized where a voluntary provider can no longer successfully support an individual with significant behavioral challenges safely in their current placement. At a time when residential funding to voluntary providers is being reduced by OPWDD, providers can no longer be required by DQI to increase staffing to 1:1 coverage to try to safely support an individual and/or protect others who live in the residence.

### **Summary**

OPWDD's response to the COVID-19 pandemic, along with providers, individuals and families, has also produced many valuable lessons which will be invaluable in responding to continued surges of the current virus or in future public health challenges. We hope you will give serious consideration to our recommendations above and we are available to further discuss and work with you and your leadership team as necessary. You have our commitment of strong and ongoing advocacy and partnership throughout the upcoming budget process and thereafter in working to meet the needs of people with I/DD and their families in New York.

Sincerely,



Mark van Voorst  
Executive Director

Cc: Roger Bearden, Executive Deputy Commissioner, OPWDD  
Kevin Valenchis, Deputy Commissioner, OPWDD  
Dr. John Kowalczyk, President, The Arc New York  
Erik Geizer, Deputy Executive Director, The Arc New York  
John Kemmer, Associate ED for Program Service, The Arc New York