Version 1 – March 11, 2020
Version 2 – May 14, 2020
Version 3 – May 18, 2020
Version 4 – July 29, 2020
Version 5 – August 5, 2020

OPWDD Challenges and Opportunities
Current Issues and Uncertainties
Version 5 – Updated August 5, 2020

NOTE: This is the fifth version of this document, which was originally prepared at the outset of the COVID-19 Pandemic on March 11, 2020. The first section below, entitled Federal / State Updates Between May 18th and August 5th, has been prepared while Congress and the White House continue to debate the significant differences between the $3 trillion Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act passed by the House in late May and the $1 trillion Health, Economic Assistance, Liability Protection and Schools (HEALS) Act released by the Senate. There are substantial differences between the House and Senate bills, and it appears as though a sequence of bills may be agreed upon over the next 30 days. Congress is due to go on summer recess on Friday, August 7th, which could be extended if the first of these stimulus bills cannot be agreed upon among the House Democrats, Senate Republicans, and the Trump Administration.

In this updated version, the Federal Government continues to provide unprecedented stimulus dollars to address the economic and health-related impacts of the COVID-19 Pandemic. The Coronavirus Aid, Relief, and Economic Security (CARES) Act passed in late March authorized $3 trillion of funding to address the various issues. In June, the Paycheck Protection Program Flexibility Act (PPPFA) was passed to provide additional stimulus and extend the initial eight (8)-week PPP loan period to a maximum of 24 weeks at the option of the organization receiving the PPP loan.

As of this date, approximately 40 million Americans have applied for unemployment benefits. COVID-19 vaccine trials have offered some optimism that a vaccine may be available by December 2020. However, there is general agreement that this coming fall and winter will see a resurgence of the Coronavirus Pandemic in certain "hot spots" throughout the country.

We believe that additional Federal stimulus legislation will be considered at least until a reliable vaccine is developed and available for rapid distribution. From a planning perspective, health and human service providers must anticipate the myriad of issues resulting from the Pandemic as having a significant impact on the organization's fiscal viability and program services throughout calendar 2021. Preservation of cash flow will be a critical component of organizational success in "getting to the other side" of the disruption caused by the Pandemic.

The information that follows is an attempt to document a realistic and reasonable assessment of the impact of the pandemic on OPWDD providers. It should be acknowledged that no one can predict the ultimate impact of the COVID-19 Pandemic on each and every health and human service provider, particularly those serving the Intellectually and Developmentally Disabled.

The I/DD service sector, funded primarily by OPWDD and certain programs funded by DOH, continues to experience significant reform initiatives, financial pressures, and challenges to service quality. Managed Care initiatives and related reforms, particularly in the past seven years, have resulted in potentially long-term implications for the individual autonomy of New York State's 600 I/DD service providers.

Accordingly, the two distinct narratives below are segregated as follows:

I. **Updates on Federal Stimulus and New York State Response to the COVID-19 Pandemic**
II. **Ongoing Industry Challenges, Opportunities, and Impact of COVID-19 Pandemic**

I. Updates on Federal Stimulus and New York State Response to the COVID-19 Pandemic – Federal / State Updates Between May 18th and August 5th

1) **Congress Debates Reconciliation Between HEROES Act and HEALS Act**
Congress is scheduled to go on summer recess on Friday, August 7th. It is unlikely, in an election year, that they will go on summer recess without having passed some additional stimulus legislation. The pandemic continues to spike in more than 30 states, and the longer term economic impact continues to result in economic contraction throughout the country. Unless and until significant stimulus is provided to states, counties, and local municipalities, the respective ability of New York State government payers will be negatively impacted. Without the availability of a reliable vaccine, it is likely that Congress will pass two more stimulus bills before the election. The "lame duck" Congress may also be very active in enacting further stimulus that will not jeopardize future election results.

2) **PPPFA Enacted in June 2020**
The PPPFA was intended to provide both clarity and flexibility to organizations receiving PPP loans in April and May. The primary modifications included the ability to extend the "loan forgiveness period" from eight (8) weeks to 24 weeks. Future stimulus legislation is expected to provide more funding to providers. The biggest negative associated with PPP was the eligibility limitation for the organization to have fewer than 500 employees. Confusion continues as to whether or not organizations using the "Alternative Size Standards" will ultimately be eligible for PPP loan forgiveness. Applications are due by August 8, 2020.

3) **Announced Cuts for OPWDD Providers Effective October 1, 2020**
The adopted State budget had a 2% cut of Medicaid funding for OPWDD providers to be effective July 1, 2020. During June 2020, OPWDD announced that in lieu of the 2% cut, there would be a series of additional program funding reductions effective October 1, 2020. For certain providers with large residential programs, the effect of these cuts could be as much as 5% on an annual basis. In addition, in July 2020, OPW announced that providers needed to "re-open" their Day Services Programs. While the impact of the pandemic has leveled off in New York State, the ability of providers to generate historical levels of revenue from Day Services Programs may be negatively impacted. The combination of the October 1 cuts and the ongoing impact of the pandemic of program services continues to increase the need for preservation of cash and continuous monitoring of staffing levels and program financial results.

4) **Health and Human Service Provider Relief Fund Payments Between April 10th and August 5th**
In a separate initiative, initially focused on hospital and nursing home providers, HHS initiated distribution payments beginning April 10th that were intended to provide up to 2% of patient / medical services revenue to offset providers' incremental costs and lost revenue associated with the COVID-19 pandemic. The initial distribution payments in April and May were made to providers that had Medicare claims revenue in calendar 2019 and/or filed a Medicare cost report for calendar 2018. In June 2020, HHS announced an additional $15 billion tranche for Medicaid service providers that were requested to submit certain eligibility and financial information to an HHS portal. On July 31st, HHS announced that Medicaid service providers that did not fully benefit from the April and May distributions could submit their required information to the HHS portal no later than August 28th. At this point, these HHS payments can be retained by providers only to the extent that the provider can demonstrate that incremental costs associated with COVID-19 coupled with lost revenue associated with COVID-19 can be substantiated and documented.

5) **Nonprofit Organizations Now Eligible for Main Street Lending Program**
In mid-July 2020, the Main Street Lending Program was expanded to include eligibility for nonprofit organizations meeting certain eligibility criteria. The application process for nonprofit organizations is expected to be made available by participating banks no later than Monday, August 10th. We believe that each NFP provider organization should prepare a projected cash flow for the 12 months ending July 31, 2021, based on reasonable assumptions. This cash flow, together with projected financial results and available financial resources, should be used by Management to determine whether a Main Street loan would be beneficial for the organization.

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The following narrative was included in Version 3 of this document and has been updated through August 5th.

6) **Historic and Flexible NYS Budget Approved on April 1, 2020**
The budget provided Governor Cuomo with tremendous flexibility and authority to evaluate the State's economic and budget situation on a quarterly basis. His first reset date was as of June 30, 2020. The following actions represent the most significant issues that Governor Cuomo has communicated to health and human service providers through the Department of Health and the various O Agencies.

- Governor Cuomo's daily press briefings have announced in June/July that New York State will need between $61 billion and $78 billion of additional Federal aid / stimulus to address the economic catastrophe experienced by New York employers, businesses, municipalities, and its health and human service provider infrastructure. This stimulus request encompasses a multi-year projection.
- Recent Department of Budget projections for the current year deficit continue to demonstrate a budget shortfall of approximately $14 billion. Governor Cuomo announced in July 2020 that $5 billion has already been incurred related to COVID-19, but was not anticipated in the budget process for the current year. Obviously, the need for additional Federal stimulus increases substantially as the impact of the pandemic progresses each week/month. In July 2020, Governor Cuomo instructed each County to initiate a "20% withhold" for State-funded contracts payable to certain health and human service providers.

- The fiscal 2020-2021 adopted budget, subject to Governor Cuomo's quarterly resets, provides, in the absence of future Federal funding, significant authority for the Governor to assess and implement additional budget adjustments on a quarterly basis throughout the period of the pandemic for the budget period ending March 31, 2021.
- Of the 600 OPW providers in New York State, approximately 450 are at risk of not being able to sustain financial viability during and after the pandemic. There are fewer than 150 OPW providers that have accumulated financial reserves, investment portfolios, and diversification of revenue sources to enable them to continue normal business operations. This distinction between **"Have" and "Have Not" providers** will force an exponential number of mergers, affiliations, and program service transfers from the "Have Nots" to the "Haves". PPP loans have resulted in the deferral of forced affiliations into the fourth quarter of 2020.
- The reduction in government Medicaid funding will continue to require all successful providers to access new Foundation Grants, increase fundraising revenue, and pursue for-profit business activities to offset reduced government funding.
- For the five years ended March 31, 2020, the Federal and State governments collaborated on an $8 billion, five-year Medicaid Reform Program referred to as **DSRIP**. New York State submitted an extension application that was **rejected by the Federal Government** in February 2020. The future of the 25 Regional Performing Provider Systems created by DSRIP is unpredictable. However, as of July 2020, each of the PPS organizations has funds remaining and have been instructed by DOH to distribute 80% of their remaining funds by December 31, 2020. The successor structure for each PPS after March 31, 2021 is beginning to take shape with various initiatives being created depending upon the PPS's geographic region and relative cooperation among providers. Every health and human service organization, including OPWDD providers, needs to aggressively pursue PPS funding from the last year of available funds.
- In February 2020, the Governor appointed the **Medicaid Redesign Team – Part 2** and they provided him with recommendations amounting to $2.5 billion in reduced Medicaid spending during the last week of March 2020. Most of the MRT recommendations were in the adopted budget, subject to Governor Cuomo's quarterly reviews and resets.
- Pending additional Federal stimulus funding to New York State, further Medicaid cuts and reform initiatives in the midst of a global pandemic are probable. Providers must recognize that even though Governor Cuomo has significant authority for this budget year, additional and more significant Medicaid cuts may be required in 2021 and future years. (See October 1 OPW cuts discussed above.)

7) Federal Stimulus Funding

The Federal Government has provided and will continue to provide trillions of dollars of stimulus to address the negative economic impact caused by the COVID-19 pandemic.

- Through the second round of the Paycheck Protection Program (PPP) loan program, more than two million loans have been processed, with 83% of the loans being for less than $100,000 and predominantly placed with for-profit small businesses.

- The stimulus initiatives initiated to date will not be sufficient to support provider cash flow beyond Labor Day. Accordingly, there will be additional stimulus legislation enacted. On May 15th, the House passed a $3 trillion additional stimulus package, which, at this time, is Dead On Arrival in both the Senate and the White House. Further negotiations and compromise must be agreed upon, since there is no other choice than to provide additional stimulus to support states, counties, local municipalities, and the entire social service infrastructure of the country.
- While the stimulus activities implemented to date have been necessary, in the absence of a vaccine, there will continue to be trillions of dollars of additional stimulus implemented between now and December 2020.
- There are many unresolved issues that have resulted from the unprecedented level of Federal stimulus. The following issues are most significant, but certainly not all inclusive:
    a) The term “Double Dipping” has entered the lexicon. Essentially, if Federal dollars have been provided to New York State-funded providers, does New York State have the right and authority to reduce State funding dollars by an equivalent amount or some percentage of the Federal dollars provided?
    b) Considerable confusion has existed since Day One regarding the eligibility of nonprofit providers with more than 500 employees and whether or not these providers with more than 500 employees could qualify for a PPP loan using the NAICS Alternative Size Standard.
    c) Many, many questions are still open with respect to the loan forgiveness calculation, expense eligibility, and related matters. The Treasury Department does have an ongoing list of Frequently Asked Questions. As of August 5th, 49 questions have been posed and answered on the Treasury website. Treasury released additional guidance regarding the loan forgiveness calculation process on August 4th.

II. Ongoing Industry Challenges, Opportunities, and Impact of COVID-19 Pandemic

8) Medicaid Reform Initiatives and the Potential Impact on Providers

All of the foregoing Medicaid reform and Federal stimulus initiatives are being implemented during the global pandemic, while there are many ongoing program service and management issues that must be addressed by OPW providers on a daily, weekly, and monthly basis.

- In February 2020, the **unemployment rate** in the country was less than 4%. It is now in excess of 15%. In their recruitment processes, OPW providers may have a significantly expanded pool of qualified candidates to reduce or eliminate their vacant position issues. The enhanced $600 per week unemployment benefit has many unemployed individuals preferring to stay home vs. seeking new employment.
- As a result of the foregoing, the **New York State Workforce Crisis**, which had elevated vacancy rates for Direct Service Professionals between 15 and 35% at most providers, may be alleviated. However, the risk of working in Direct Services for I/DD individuals in the midst of a global pandemic is more likely to result in increased overtime costs and incremental Hazard Pay for purposes of adequately staffing each provider’s program sites.

- On January 1, 2020, New York City implemented a **$15 minimum wage**, which has created more pressure on Upstate providers. Many competing employers (e.g., fast food restaurants, convenience stores, retail, and traditional service businesses, etc.) are offering between $14 and $15 per hour, even though the mandated minimum wage is less than that for counties north of Westchester. As a result of the foregoing, the workforce crisis continues.
- All of the foregoing continues to pressure the ability of providers to **render high quality services** (e.g., OPW's Incident Management Unit is investigating hundreds of reported incidents, coupled with the Justice Center scrutiny, both of which frequently result in incremental unreimbursed costs for providers).
- In response to the workforce crisis, New York Disability Advocates (NYDA) is advocating for a **3% Direct Service salary increase** for each of the next five years, known as "3 for 5". The pandemic and New York State budget crisis resulted in no action on the request. OPW had scheduled 2% increases for Direct Service Professionals to be implemented on January 1, 2020 and April 1, 2020, as well as 2% for Clinical Staff on April 1, 2020. However, these rates have not been issued, so providers have not yet received these dollars.
- All of the foregoing will result in significant increases in **merger, affiliation, acquisition, and auspice change activities** between and amongst the current 650 OPWDD licensed service providers.

9) Rate Rationalization Phase III

DOH / OPWDD finally posted revised provider rates in February 2020 retroactive to July 1, 2019. Rate Rationalization has resulted in approximately 25% of providers falling into the "have" category (i.e., more than $5 million in investment reserves) and 75% in the "have not" category (i.e., generally less than $1 million of operating cash and regular borrowings on lines of credit).

In issuing these new rates, providers were informed that a retroactive recoupment of rate reductions would be implemented through 10 bi-weekly Medicaid Payment Cycles, negatively impacting 2020 cash flow.

OPWDD is currently calculating revised January 1, 2020 rates that will implement these salary add-ons but disallow all Agency Administrative costs above 15% (i.e., NPRA requirement). In addition, the OPWDD Room and Board Supplement is expected to be reduced to 88% of the previous reimbursement prospectively.

10) DSRIP 1.0 and 2.0

DOH has instructed that the remaining DSRIP 1.0 funding should be disbursed through March 31, 2021. Each and every Medicaid service provider must ensure that funding from the Performing Provider Systems (PPS) operating within the provider's program service geography is pursued aggressively. In other words, there may be a benefit derived by OPWDD providers in obtaining final year funding from the final year of DSRIP 1.0, in that PPSs have been told to provide additional financial support to Community Based Organizations (CBO) like I/DD providers.

DSRIP 1.0 was created in 2015, when New York State entered into a joint agreement for $8 billion of Federal Government funding to implement the Delivery System Reform Incentive Program for New York State's seven million Medicaid eligibles. The rejection of the DSRIP 2.0 application and related loss of funding will have a major detrimental impact on hospitals and health systems and represents a significant lost revenue opportunity for CBOs.

11) **Accelerated Mergers, Affiliations, and Auspice Changes**

As a result of the foregoing factors, most notably the decreases in revenue and rate funding, those providers that are negatively impacted by reduced rates retroactive to July 1, 2019 will be looking to affiliate, merge, and/or transfer program services through an auspice change between now and June 30, 2021. The 2% ATB cut predicted for July 1, 2020 will add additional pressure on those providers lacking a strong financial position. This will represent the most dramatic and significant restructuring of the I/DD provider community since the Willowbrook Consent Decree. It is expected that smaller OPWDD service providers will be most negatively impacted.

12) **Status of Care Coordination Organization (CCO) Transition of Medicaid Service Coordination (MSC)**

On July 1, 2018, approximately $375 million of Medicaid Service Coordination services and Medicaid costs were transferred from individual providers to seven State-authorized CCOs. The current rates for CCO services are generating significant surpluses for most of the CCO entities. For the first two years, the Federal Medicaid Program agreed to reimburse New York State for 90% of this cost compared to the typical 57% Federal Medicaid match. On July 1, 2020, these rates were reduced (e.g., 15% rate reduction and elimination of start-up funding). The rate reductions are based on the first two years of surplus financial results and the fact that the 90% Federal match will be reduced to 57%, thereby shifting 33% (or approximately $124 million) of MSC costs back to the New York State Medicaid budget.

13) **Self-Direction Implementation**

For more than five years, OPWDD has stressed a major initiative to transition 100,000 of the 130,000 I/DD individuals with OPWDD to the Self-Direction Program. Enrolling I/DD individuals in the Self-Direction Program provides maximum flexibility to the individuals, their family members, and friends. However, the financial reporting aspect and internal controls related to the Self-Direction Program result in significant challenges for provider agencies (i.e., greater risk of misappropriation / malfeasance). Essentially, every individual enrolled in Self-Direction becomes a separate income and expense financial reporting process on a daily basis. These challenges have, in part, been mitigated by the development of several software applications that transfer the enormous accounting requirements to an electronic platform. No one from NYS has been able to explain clearly how individuals enrolled in Self-Direction can also be transitioned to enroll in a Medicaid Managed Care model.

14) **Managed Care Implementation Date Continues to Be Delayed**

OPWDD Commissioner Kastner continues to indicate that I/DD providers are "not ready for Managed Care". One of the key topics of discussion is whether State-Operated Facilities for the I/DD population should be included in or excluded from the Managed Care Model. At this juncture, it remains unlikely that the State-operated facilities rate methodology will be modified to parallel the rate rationalization methodology used for Voluntary Service Providers. In addition, the Commissioner believes that the Coordinated Assessment System that has been piloted for determining each I/DD individual's Service Eligibility Needs must be further tested, developed, and revised in order to properly support a Medicaid Managed Care Model. Accordingly, Managed Care implementation is unlikely to move forward without having an acceptable Coordinated Assessment System for determining service eligibility. The latest prediction is voluntary enrollment in 2021/2022 and mandatory enrollment in 2023.

15) Continued Scrutiny on Regulatory Compliance by Government Regulatory Audit Authorities

In addition to the increased financial pressures resulting from Medicaid Reform Initiatives, the New York State regulatory authorities, including auditors from OMIG, OPWDD, OMH, SED, DOH, and Office of the State Comptroller, are continuing their scrutiny of provider service documentation and compliance with the multitude of complicated Medicaid Regulations. These audits can be devastating to an individual provider, since the primary objective of the audit process is to identify and recoup compliance violations with Medicaid Regulations. Continued discipline and vigilance must be invested by each and every New York State Medicaid provider in order to mitigate the risk of an audit recoupment to an acceptable level, since it is rare that a regulatory audit does not result in some form of recoupment.

16) Where Are the Opportunities in This Period of Global Pandemic, Medicaid Austerity, and New York State Budget Deficits?

- Autism service opportunities
- Enhanced geriatric and frail elderly services for I/DD individuals
- Affordable integrated housing / apartments
- Community Habilitation surplus funds capped at 5%; excess amounts are subject to claw back, depending upon MRT-2 recommendations
- Self-direction continues to be emphasized as an expansion opportunity by OPWDD.
- Private and public foundation grants to replace government funding and identify other sources of revenue diversification (e.g., for-profit affiliates)
- Increased fundraising and development opportunities, primarily planned giving, legacies, and bequests (i.e., every I/DD Board should have a trust and estate attorney / banker
- The Warren Buffett 50% Initiative has created significant grant opportunities
- Mother Cabrini Foundation, formed as a result of the Fidelis sale, has $3.5 billion in assets, and provides $250 million each year in grants
- Bezos Family Foundation (Amazon) has more than $20 billion in assets
- Therefore, a highly qualified, experienced grant writer is critical to future success for replacing declines in government funding

17) What Does the Future Hold?

On Monday, May 4th, during his daily briefing, Governor Cuomo said, "At certain times, it takes a crisis to shock the body politic into real change." The COVID-19 pandemic will hopefully prompt one or more of the following to occur as "real change" is implemented:

- Threatened litigation by providers regarding NYS continued discrimination on paying 40% higher rates to State-operated I/DD facilities compared to voluntary charitable providers
- The occurrence of one or more tragedies that may take the lives of multiple I/DD individuals – this is more likely as the pandemic progresses in the absence of a vaccine
- Possible provider litigation challenging the legality of the State's Rate Rationalization Methodology, which has been used since 2015 as a vehicle for reducing provider payment rates to a level that is in direct conflict with the health, safety, and service needs of I/DD individuals being served
- Extraordinary advocacy is required during each State budget process and throughout the year