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November 2, 2021

New York State Office for People with Developmental Disabilities
44 Holland Avenue
Albany, NY 12229
Attn: Office of Counsel, Bureau of Policy & Regulatory Affairs

Re: Certified Residential Opportunities Proposed Regulation

To Whom It May Concern:

I am writing on behalf of The Arc New York in response to the Office for People with Developmental Disabilities' (OPWDD) proposed regulations regarding changes to the certified residential opportunity placement program ("CRO").

The Arc New York is a family-led organization driven by the shared mission to provide people with intellectual and other disabilities the ordinary and extraordinary opportunities of life. With 36 operating Chapters across New York state, our organization is the largest voluntary provider in the state, supporting more than 60,000 individuals and families and employing more than 30,000 people. Because of our size, statewide presence, and family-led governance, The Arc New York brings a unique perspective to the state's priorities, policies and procedures governing placement in certified residential opportunities.

While this proposal essentially moves longstanding policy and procedures to regulation, we strongly urge OPWDD to delay such action and instead consider the upcoming implementation of an entirely new reimbursement methodology as a unique opportunity to take a fresh approach to the policy for approving placement into certified residential opportunities.

¹ Available at <https://opwdd.ny.gov/system/files/documents/2021/09/certified-residential-opportunities-final-reg-text.pdf>

We believe that the new regional acuity methodology will align funding with need, such that residential providers with the expertise and staffing resources necessary to successfully support individuals with more challenging needs will be reimbursed accordingly. We believe this key change in reimbursement will fundamentally shift the placement paradigm, making the current CRO approach, which has not been exceedingly successful throughout the state, unnecessary.

The current CRO policy and procedures essentially require all certified residential providers to screen all individuals categorized as “Emergency Need.” This requirement results in inefficiency in the system and increases vacancy days while providers engage in unnecessary screening to demonstrate to the DDRO that each individual on the Emergency Needs list is incompatible with the needs of the individuals in the certified residences in which vacancies exist. Many providers simply do not have the expertise to serve individuals with the most challenging behaviors and needs. At best, the CRO process builds in lengthy, unnecessary delays until the provider meets the screening requirement. At its worst, the CRO policies and procedures pressure ill-equipped providers to place individuals who they are unlikely to support successfully, and in extreme cases, who present unmanageable and dangerous behaviors which jeopardize their safety and the safety of others.

Providers that do not have the expertise to serve individuals with challenging or forensic behaviors should not be encouraged or required to screen such individuals, and should be permitted to focus on individuals on the certified residential waitlist who they are capable of successfully supporting. Under the new acuity funding methodology, they will be reimbursed accordingly. It should be noted that individuals at risk of homelessness who are in critical need of placement but who do not have extremely challenging or forensic behaviors are also categorized as Emergency Need. Some individuals are so categorized because an aging parent’s death may be imminent or they are otherwise incapable of continuing to provide care, there are no other available family members to provide care, and the individual is therefore at imminent risk of homelessness. Such circumstances illustrate an ongoing need to modify the CRO policy and procedures, and to put staff in place to provide a mechanism that will bring the placement needs of appropriate individuals who can be supported successfully to the immediate attention of providers. Such a process would be consistent with processes in place prior to the establishment of the CRO policy many years ago.

Also of note, the current waiver agreement requires OPWDD to categorize individuals on the waitlist based upon Emergency Need, Substantial Need and Current Need. The waiver agreement could conceivably be changed, subject to CMS approval, but we do not believe

this is even necessary, as the current waiver agreement language does not appear to prescribe the current CRO procedures.²

OPWDD could instead, we believe, continue its current process of categorizing individuals on the certified waitlist, and it could rely on the new acuity funding methodology to achieve its commitment to prioritize placement based upon need. Individuals would continue to be categorized, eligibility information would continue to be submitted to CRO staff, referral information would continue to be made available to all providers, but there would no longer be a mandate that all individuals with Emergency Need must first be screened before someone with Substantial Need can be screened and approved for placement. DDRO staff should be able to bring an individual at imminent risk of homelessness who does not have extreme behavioral needs to the attention of a provider, for example, without imposing a mandate for screening such individuals. We believe this approach will be more effective in achieving the state's placement objectives than what is in use currently.

Below are specific recommended language changes based upon the approach recommended above. Please note that text in bold is recommended to be added and text within brackets is recommended to be deleted.

636-3.4 Responsibilities of Residential Provider Agencies

(a) Residential Provider Agencies must:

(3) prioritize individuals for services in residential facilities **who they have chosen to screen** have been designated as having a higher need for such services **and whose needs, based upon their determination, appear to be consistent with their expertise and resources to successfully support placement of such individuals;**

(4) **consider** screening individuals referred for services in residential facilities to assess the appropriateness of the service needs of individuals referred [~~for all available vacancies~~];

(b) Residential Provider Agencies must submit site profile information for all residential facilities to OPWDD and update site profiles whenever changes occur. **Such information shall**

² In accordance with this current OPWDD CMS approved waiver (2019-2024), OPWDD continues to prioritize participant needs on a statewide basis as follows while factoring an individual's compatibility with available services: Emergency Need: Any of the following (i.e., emergencies): -- Homeless or at risk of homelessness -- Primary caregiver is incapacitated /No other caretaker available --Ready for discharge from a hospital/psychiatric setting, prison/jail, shelter, hotel or emergency room Substantial Need: Any of the following (i.e., urgency/emergency prevention) --Aging or failing health of caregiver/no alternate caregiver available --Transitioning from a residential school/program, leaving a developmental center or skilled nursing facility --Increasing risk to health and safety or to health and safety of others Current Need: This priority group includes all who present a need but there is no danger to the health and safety of the individual or his/her caregiver (i.e. considered not urgent)."

be utilized by CRO staff within the DDRO to eliminate the need for referral and screening of individuals who are incompatible for placement in vacancies in such provider's residential program. Changes include, but are not limited to, instances when: (1) a new residential facility is added to an agency's residential inventory; or (2) there is a substantive change in the composition of the residents, staffing, or features of a residential facility.

(c) Residential Provider Agencies must screen all individuals who appear appropriate for any of their current or anticipated vacancies. [~~and all individuals specifically referred to them by OPWDD~~].

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636-3.7 Residential Referral Process

(a) Residential Provider Agencies [~~must attempt to~~] **should consider** filling any current or anticipated vacancies with individuals designated by OPWDD as having the highest level of need [~~prior to considering other individuals for available residential services.~~] **consistent with such agency's unique expertise**

[~~(b) Residential Provider Agencies may only consider individuals designated as having lower levels of need upon receipt of prior approval from OPWDD.~~]

I would like to express my appreciation on behalf of The Arc New York for this opportunity to comment, and for your consideration of our recommendations for this alternative approach. We stand ready to work closely with OPWDD in achieving our shared goals in placing individuals in need of certified residential placement throughout New York State.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Erik Geizer", with a long horizontal flourish extending to the right.

Erik Geizer
Chief Executive Officer
The Arc New York