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December 17, 2020

OPWDD

Division of Policy and Program Development

44 Holland Ave.

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To Whom It May Concern:

I am writing on behalf of The Arc New York in reference to OPWDD's proposed technical amendments to its 1915(c) Comprehensive Home and Community Based Services (HCBS) waiver. The Arc New York is a family-led organization that advocates and provides supports and services to people with intellectual, developmental, and other disabilities, emphasizing choice and community engagement. With 39 operating Chapters across New York state, our organization supports more than 60,000 individuals and families and employs more than 30,000 people statewide.

Operation of waiver programs and services throughout the COVID-19 pandemic has provided valuable experience and insight in identifying new approaches for supporting individuals and caregivers. Those lessons, and the creative solutions and flexibilities afforded by the Appendix K waiver, are important to sustain as we move beyond the disaster period. To that end, we have provided comments on the Appendix K waiver amendments that address critical needs arising from the pandemic, as well as on items we recommend be continued in its aftermath.

Continuation of Com Hab-R

Many individuals have shown an interest in continuing to enjoy weekday supports based out of their certified residential program. Whether these supports are delivered through Com Hab-R or IRA-based day habilitation services, this approach offers individuals greater opportunities for integration and participation in their community.

We commend OPWDD for proposing continuation of this option. Many residential providers are now engaged in redesigning program management and DSP deployment to better and more efficiently support

this option. We believe the next logical step is to eliminate arbitrary distinctions in regulation and ADM between the definition, delivery and documentation of residential and day habilitation. We recognize CMS may not be prepared to accept this transformation for our entire system of certified residential and day habilitation supports. If that is the case, **we recommend that OPWDD create the opportunity for providers who serve an individual in both their residential and day habilitation program to pilot this approach.**

This idea has been discussed repeatedly since the inception of New York's HCBS waiver program in 1991. Now is the time to take action toward elimination of these arbitrary distinctions.

Remote Services

Remote service delivery has proven an overall positive experience, and we are pleased to see OPWDD is proposing to provide for its continuation. During the pandemic, we learned that many families require support from information technology staff to benefit from remote services. This support includes education in the use of technology such as Zoom, assistance installing and setting up applications, and in some cases, the loaning or donation of tablets or other equipment. **We recommend that time associated with such technical support be considered billable time under programs such as community habilitation, respite or other similar services in which the individual may be enrolled. We should also identify sources to pay for necessary computer equipment,** which may be an option under the waiver or Medicaid State Plan.

Grocery Supports

Allowing for time associated with grocery shopping and delivery to be billable during the pandemic has been extremely helpful to individuals and caregivers requiring this service. **OPWDD should consider necessary circumstances and reasonable limits for continuation of this valuable support going forward.** This service could be extremely helpful in supporting the capacity of the caregiver to support individuals in their current setting, especially in cases of elderly or single caregivers. While many food service chains now offer online ordering and delivery, the pandemic has demonstrated how time-consuming and challenging this service is to navigate. An elderly or single caregiver who is trying to care for an individual with challenging behaviors or significant medical issues may find the ongoing support of grocery shopping and delivery extremely helpful in maintaining their ability to provide care in their home.

Day Habilitation Property Funding

The pandemic underscored a flaw in the current waiver approach to paying for approved day habilitation and site-based prevocational program property costs. Accurately projecting ongoing enrollment and attendance is challenging under normal circumstances, and has often left providers without adequate funding for prior-approved property costs. Enrollment and attendance will be much more unpredictable following the pandemic. **We recommend**

reinstating the monthly approach to paying for annual approved property costs, by paying **one-twelfth of such costs monthly**. This approach would be conditional on CMS support and federal funding participation. If this support cannot be secured, we recommend utilizing the prior actual claims for the most recent rate period as the basis for establishing the property funding component for the upcoming rate period. We believe this approach would comport with current waiver language.

Reinstitute Limited Funding for IRA Vacancy Days

With respect to the elimination of the occupancy adjustment, we further recommend OPWDD recognize that **complete avoidance of all vacancies is simply unachievable**. Individuals relocate or pass away and, despite providers' 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 at least a 1% vacancy factor into an occupancy adjustment rate calculation, effective in the 1/1/21 rate update**.

Reimbursement for Therapeutic Leave Days

Families are a constant throughout the lives of people with I/DD. The recent changes reducing both reimbursement for therapeutic leave days and the number of annual reimbursable therapeutic leave days is already presenting a challenge to families in maintaining regular and ongoing connection with their loved ones. **We recommend making waiver changes to permit an annual pooled limit of fully funded therapeutic leave days, calculated by certified capacity** to benefit families and ensure maintaining connections with loved ones does not financially harm providers (e.g., 40 days x certified capacity = annual limit funded at 100%).

Reinstitute 100% Reimbursement for Certain Retainer Days

Under circumstances where the IRA needs to provide DSP hospital sitter supports in order to ensure that the unique communication and/or behavior challenges are understood by hospital staff, the **IRA should be authorized to bill at 100% of its rate for such retainer days**.

Transformation of OPWDD's DQI Survey Process

The Appendix K Waiver Amendment allowed OPWDD to temporarily cease the routine survey process. OPWDD conducted focused surveys of certain providers experiencing significant numbers of individuals with COVID-19. This approach 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 significant drain on financial and staff resources for both OPWDD and its providers. This process must be reevaluated to improve efficiency 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.

Create a Social- and Leisure-Focused Alternative to Day Habilitation

Day Habilitation has been 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 focused on social connections and leisure. Current waiver services such as respite may be an appropriate option, but respite 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.**

Shared Savings Pilot for Appropriate Transfer to Less Restrictive Residential Options

As we prepare to utilize the CAS assessment tool to create an expanded and more responsive approach to acuity-based funding, we need to begin planning to eliminate the arbitrary distinction between supervised and supportive IRA services. Current rates are based upon each provider's historical costs, and such costs are largely driven by DSP staffing required by individuals served during the base year used to create the rate. For the supportive IRA program, this has created financial challenges in supporting individuals that require substantially higher levels of DSP support annually than currently captured in rates.

We recommend the development of a supportive IRA acuity formula that better predicts necessary hours of DSP support. This would make progress toward the elimination of the distinction in regulation and ADM between these two levels of residential care. **In the meantime, we recommend the introduction of a "higher needs" funding level to support individuals during the transition from supervised to supportive IRA, until such time as the supportive IRA rate is updated.** This change would be helpful in supporting movement to this less restrictive setting.

We believe OPWDD should also begin to examine a similar approach in funding Family Care residential habilitation, as some individuals living in supervised IRAs may be appropriately transitioned to this option with additional support. We recommend OPWDD begin discussions and planning with CMS to create a **shared savings pilot** that would fund providers to better

support transition of individuals from the supervised IRA program to less costly and restrictive residential options.

We appreciate the opportunity to comment on the proposed 4/1/21 technical amendments to the HCBS waiver, and look forward to our continued work and partnership with OPWDD in supporting individuals with I/DD.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Erik Geizer". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Erik Geizer
Deputy Executive Director and Corporate Compliance Officer
The Arc New York