NEW YORK
DISABILITY
ADVOCATES
Life. Supported.

POSITION STATEMENT ON OPWDD PROPOSED REIMBURSEMENT REDUCTIONS

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 $200 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.

On behalf of our members and all OPWDD providers across the state, New York Disability Advocates (NYDA) strongly objects to the imposition of these cuts.

The OPWDD provider community has already incurred significant hardships in connection with the COVID-19 public health emergency. Providers have experienced challenges with access to testing, staffing vacancies due to illness and family obligations, and shortages of PPE. Agencies have had to scramble to obtain PPE from private suppliers with absolutely no financial assistance and very little support from the state. Providers have been forced to develop contingency plans for quarantine and isolation in their residential programs without any state operational or financial support. Residential programs were left to finance the cost of the emergency on their own, without any financial support from the state to meet the increased costs of responding to the impact of the emergency.

The proposed cuts will severely limit funding for individuals simply because they require hospitalization due to medical or psychiatric illness or choose to

take a therapeutic leave to spend time with family members. It is nothing less than discrimination against individuals with I/DD to eliminate the Occupancy Factor and cut reimbursement during hospitalizations, needed placement in a rehabilitation facility, or during family visits. Under the proposed cuts, if an IRA or ICF resident receives health care in another setting, their placement is reserved for them after their stay, and the rate for their care is reduced to 50% of the customary daily rate. The proposed cuts represent disparate treatment for individuals with serious medical or psychiatric conditions that directly impacts the level of services that can be provided.

The rationale offered by OPWDD for these cuts is that if an individual is not physically in his or her residence, there is no reason for the residential provider to be paid in full during such absences since the provider incurs no costs for that individual. However, this claim is invalid, and any claimed savings are entirely illusory. First, 80% of the cost of residential programs is salary paid to direct care staff, clinical staff and residence supervisors. These costs for direct care staffing are unaffected – and certainly can't be reduced – simply because one resident of a six- or seven-person IRA is out of the house. Staff is provided around the clock usually with three 8-hour shifts per day. If a resident is in the hospital, a direct care staff member simply can't be placed on unpaid leave until the hospital stay is over.

The absence of a single resident does not in any way reduce the need for a full complement of staff to provide for the needs and ensure the health and safety of the rest of the residents. To the contrary, when a resident is admitted to the hospital, staff are in most cases assigned to provide coverage, advocate for the individual, interface and consult with the hospital staff and ensure that the individual's needs are met. This actually results in more staff time and increased staffing costs, not the opposite. Similarly, if a resident goes home with their family for the weekend or goes on vacation with their family, staffing needs for the rest of the IRA or ICF residents remain the same. Since OPWDD still runs its own certified residential programs, it well knows that the absence of one resident has no impact on the staffing needs in a residence and that a cut of 50% in reimbursement leaves the residence underfunded.

Further, in most cases extended vacancies are the result of necessary hospitalizations. In the I/DD service system, many people with significant medical issues often require extended periods of hospitalization due to complicating behavioral factors or co-morbidities. In addition, some individuals have significant mental health issues that may result in the need for extended periods of inpatient psychiatric care due to behavioral issues. In both instances, it would not be unusual for a resident to be admitted to a hospital for weeks or months at a time. Under OPWDD rules, providers are mandated to keep residential slots open and unfilled throughout the entire hospital stay or other absence from the residence. This is the opposite of the rule for nursing homes, where after two weeks vacant beds can be filled with new residents. During long hospital stays, agencies will have insufficient funding to pay for mandatory staffing levels.

The proposed additional cuts to the vacancy rate constitute discrimination against service recipients who have serious medical and/or psychiatric problems. Reduction in funding during extended hospital stays is an example of discrimination in funding for these individuals due to the very nature of their disability. Reduced funding hurts the individual in the hospital, the remaining residents, the provider supporting these individuals and the entire system.

The State's proposal to cut funding when residents visit family members will act as a disincentive for community integration goals fundamental to the HCBS waiver. Moreover, the proposed policy also undermines the Legislature's intent to support the workforce of this critical sector in New York's system of Medicaid supports and services. In fact, the proposed cuts will directly offset rate enhancements previously provided by the NYS Legislature in 2019. The Legislature approved two 2% salary enhancements

for direct care and clinical staff working in OPWDD residential programs – one increase to be implemented on January 1, 2020, and the second on April 1, 2020. Neither has been implemented as of this date but remain "under review" with the Division of the Budget.

The bottom line is the enhancements approved in the 2019 state budget for direct care staff in voluntary-run residential programs will be wiped out by the proposed cuts.

If the state needs to generate savings, it should first examine the cost of its own certified residential programs. We understand that in the recently adopted state budget for 2021-2022 fiscal year, state-run residential programs received a 5.5% increase in spending while voluntary-run programs are now facing a reduction in financial support of almost the same percentage. It would appear that the state is cutting funds for voluntary-run programs to finance increases in funding for state-run programs. Although OPWDD operates the very same residential programs operated by voluntary agencies, the cost of the state-run program, per bed, greatly exceeds what the state pays voluntary agencies for the same programs. This disparity is primarily due to the fact that state reimbursement for salaries for staff working in voluntary agency residential programs is only 66% of what the state pays its staff doing the same jobs. Until state costs are reduced and are made equal to the funding provided for voluntary agency-run residential programs, the state should look to its own system to find savings before cutting voluntary agency reimbursement.

The disability sector is well aware of the State's serious financial shortfalls due to the impact of the emergency, yet we question the need for this cut taken as part of the "State's financial plan" when in reality the State's spending for this budget year is most certainly well below approved spending limits due to the impact of COVID-19 on providers' ability to provide and bill for services. Prior to the pandemic, disability providers were already financially struggling with one in three having less than thirty days cash on hand – as of April 1, that number had grown to 41% with an ability to cover two payrolls. The financial impact of the proposed vacancy cuts would be approximately $238 million per year. This is a staggering number, especially during a public health emergency when already financially strapped providers have received zero financial support for the extra costs incurred due to the crisis. Agencies have had to absorb enormous costs for PPE, staff absences and replacements, and isolation and quarantine efforts. At the same time, hospitals and nursing homes have received both federal and state support to weather the public health emergency, while the OPWDD system, which provides substantially similar congregate care, has received virtually nothing.

Out of a total of 35,000 individuals in the residential system in the State of New York, 423 lives have been lost to the pandemic. While the loss of even one life is too many, when taking into account that more than 30,000 individuals have perished statewide, this statistic clearly demonstrates that the voluntary system has done an excellent job of protecting its residents during a deadly public health emergency – without state assistance. Now, our system is threatened with devastating cuts – cuts that are particularly disturbing because these untimely deaths and their resulting vacancies will result in a loss of revenue under the proposed cuts. Instead of making cuts during an already vulnerable time, New York State should be focused on working towards a slow and steady return to pre-COVID service delivery without jeopardizing the precarious financial position of so many voluntary agencies.

The public health crisis is far from over and public health officials are anticipating a second wave or additional surges in the fall and winter. Now is not the time to cut funding for OPWDD certified residential programs.