

Submitted Testimony

DDAWNY Comments on 2015-16 Executive Budget
Mental Hygiene Health
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just written



SUBMITTED TESTIMONY

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Chairman Farrell, Chairman Defrancisco, members of the Senate Finance Committee, Assembly Ways and Means Committee and the Assembly Mental Health Committee and Senate Mental Health and Developmental Disabilities Committee. Thank you for your ongoing interest in these issues and for the opportunity to allow DDAWNY to comment on the Executive Budget.

DDAWNY is a collaborative group of member voluntary agencies that provide services and supports, including educational services to people with developmental disabilities in the Western and Finger Lakes regions of Western New York. DDAWNY member agencies employ over 22,400 individuals in the seventeen Western and Finger Lakes counties of New York State providing supports and services to over 33,000 individuals with developmental disabilities and their families and/or circle of supports.

In 2011, DDAWNY member agencies had combined revenues of over \$737.1 million and combined expenses of over \$737.2 million. Revenues are derived from various governmental and non-governmental programs, including programs funded by the State Education Department, the Department of Health, the Office of Mental Health, the Office For People With Developmental Disabilities, the Federal Department of Housing and Urban Development, foundation fundraising activities and contributions from various charitable and related religious institutions.

DDAWNY is pleased to provide comment to the Joint Fiscal Committees on the 2015-16 Executive budget and in particular the Mental Hygiene` portions of the budget.

TRANSFORMATION AGENDA

The State of New York is currently seeking to transform its delivery of supports and services to persons with I/DD. The State is seeking to ensure, consistent with Title II of the Americans with Disabilities Act (ADA) and the Olmstead decision that individuals with I/DD are not unlawfully discriminated against and that services, programs and activities are provided in the most integrated settings appropriate to the needs of persons with I/DD.

DDAWNY strongly supports the goals of Olmstead and was pleased with the proposals contained in Governor Cuomo's Olmstead Plan intended to assist in transitioning people with disabilities from segregated settings to the community. Governor Cuomo has stated that "people with disabilities have the right to receive services and supports in settings that do not segregate them from the community; it is a matter of civil rights."

In order to improve the system and comport with Federal policy, OPWDD is currently focused on three initiatives. These initiatives are designed to improve the system and ensure individuals and their families get what they need.

According to OPWDD these initiatives include:

- The elements of the transformational plan,
- The Front Door and
- The movement toward a managed care model using a reformed HCBS waiver service delivery system.

The Transformation Agenda focuses on deinstitutionalization, employment, improved quality measurement and quality improvement and self-direction.

DDAWNY is concerned that the Executive Budget proposal fails to provide the level of funding we believe is necessary to ensure the state meets the promise of the Governor's Olmstead plan and more importantly complies with the ADA as interpreted by the Supreme Court in Olmstead and the United States Department of Justice, which is charged with enforcement of the ADA's integration mandate.

A FLAWED ASSESSMENT TOOL

DDAWNY continues to be troubled by the idea of "assessed need" driving the OPWDD budget. DDAWNY believes the assessment tools OPWDD is currently using and the scoring levels produced are flawed and do not correlate with the actual staffing needs of individuals being served; as a result OPWDD is badly underestimating current need for services, especially more intensive service needs; the new tool being piloted is badly delayed and we are not at all comfortable believing the scores the new tool produces will correlate with a high degree of confidence to the staffing support needs of individuals who require services

At the present time, OPWDD is using the DDP-2 to develop scores permitting OPWDD to group individuals according to their individual services planning model (ISPM) groupings. Large numbers of Individuals with ISPM scores of "1", representing "low needs", reside in certified settings, attend day habilitation or are living at home with aging caregivers. OPWDD has indicated that the new Front Door process will not allow those with an ISPM score of "1" into a day habilitation program in "99% of cases". The same thinking apparently applies to additional certified housing development. OPWDD is now requiring MSCs to provide substantial additional "justification" to place those with ISPM score of "1" in a certified setting. OPWDD has not issued any guidance or administrative memorandum on what this justification is to contain.

DDAWNY believes the DDP-2 is a flawed instrument. The DDP-2 was never designed to allocate resources. The scores generated in answer to the DDP-2 questions have little if any correlation to the worker staff needs of those being scored. Yet OPWDD and apparently DOB view these numbers as gospel. Of course we only need 474 new certified beds in FY16 if many of those currently in IRA's have scores of "1" and most of those at home or exiting school have scores of "1".

DDAWNY believes this policy assumption is simply wrong.

The DDP-2 scores are seriously flawed and the use of these scores by state and federal policy makers cripples the system redesign by seriously underestimating the actual level of acuity for much of the population we serve and significantly underestimates the staff needed to serve this population and the costs associated with supporting this population.

DDAWNY rejects the validity of these scores and believes a realistic view of need based upon the person centered planning model given lip service by OPWDD and CMS, driven by a well thought out and data driven plan to address the goals, aspirations and needs of individuals with developmental disabilities

ought to be the basis for budget decision making, not inaccurate invalid ISPM groupings based upon scores generated by a flawed assessment tool.

DDAWNY would request the Legislature add language to proposed Section 7-a of Section 366 of the Social Services Law as proposed in S.2007/A.3007 Part S, Section 1, requiring any needs assessment used to develop a plan of care to be actuarially sound and correlate with a high degree of confidence (at least 90%) to the staffing support needs of the person seeking services. The Legislature should also require annual reporting on the number of individuals assessed, the levels of support needs authorized and the satisfaction of individuals served. DDAWNY believes regulations implementing the provisions of section 7-a of §366 of the Social Services Law should not be discretionary (may) but must be required by the Legislature (shall).

SY16 EXECUTIVE BUDGET PROPOSAL

The Executive Budget supports a \$151 million increase in disbursements for local assistance spending. However, OPWDD Department of Mental Hygiene spending on local assistance is reduced by \$338.2 million. Actual cash spending in the aid to localities budget is significantly impacted by other spending reflected in the Department of Health budget, including \$915 million in DOH resources which will support spending in the Mental Hygiene Stabilization Fund (a \$200 million increase from FY15) and \$177.6 million in one-time Federal Balancing Incentive Program (BIP) funding. The BIP program ends on September 30, 2015 and significant BIP funded OPWDD programs aimed at providing the resources providers need to implement the Transformation Agenda are not continued with state dollars when these federal resources expire.

DDAWNY is appreciative of the Executive's commitment to provide funding of \$57.1 million to support the 2nd year of the DSP salary enhancements agreed to in the FY15 Enacted Budget and the commitment of some \$30 million in new resources for the development of 3500 new service slots for those living in the community, ***but its not enough.***

DDAWNY believes additional funding to support up to 6500 new or expanded opportunities, returning development to pre fiscal crisis level of development is appropriate and sustainable, including the development of residential supports for at least an additional 300 people with high priority needs who reside at home and need 24-hour residential support and funding to support the addition of 1000 new opportunities in Supportive Employment.

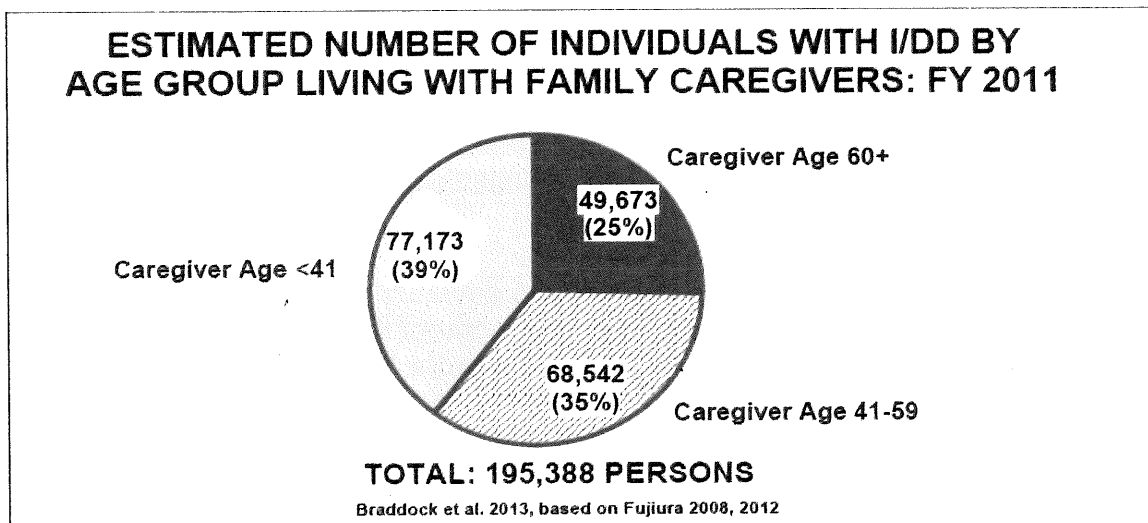
HOUSING

The State faces very real challenges in transforming our housing

opportunities to meet the housing needs of this population and to do it in a manner compliant with the Americans with Disability Act's most integrated settings mandate.

These challenges include aging caregivers, a growing school age population and the closure of virtually all-residential options of an institutional nature

In terms of aging caregivers, it is estimated that nearly 50,000 individuals with developmental disabilities are living with caregivers aged 60 or older in New York.



These individuals, representing 25% of those living with a family caregiver, are most at risk of homelessness should their family caregivers pass away.

New York also faces a growing number of students with disabilities who will soon be aging out of our educational system. Over 3000 students in Region One are students with disabilities, aged 18 to 21.

And while SED and OPWDD definitions of who is eligible for DD services differ, it is fair to suggest that approximately 1700 students with developmental delays in the DDAWNY service area may be seeking services from OPWDD in the next several years.

Of particular concern are those students with disabilities taking the New York State Alternative Assessments. These students have severe cognitive disabilities and significant deficits in communication/language and adaptive behavior.

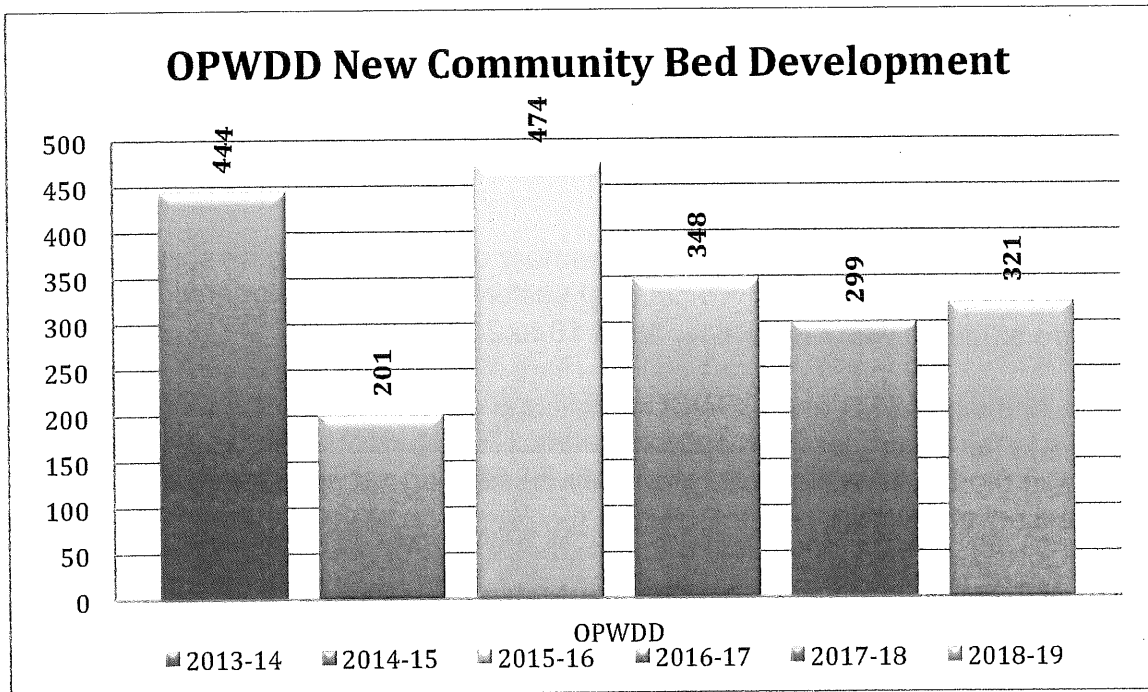
SED now indicates an additional 422 students in the DDAWNY service area took the assessments in the 2013 school year.

These numbers continue to grow and these students are also going to want to live more integrated lives in the community.

As part of New York State's Transformational Agreement with the Federal Government, the state must close its remaining developmental centers, and OPWDD is required to provide integrated housing opportunities for most of the nearly 1000 individuals transitioning into the community. The State is also required to transition the residents of most of the over 6300 individuals remaining community-based ICFs to community-based settings. However, the agreement fails to acknowledge or support the critical housing needs of individuals in the community currently waiting for housing and at risk of institutionalization.

The current capacity of provider and state run community residences other provider-sponsored housing opportunities is insufficient to meet the growing needs of this population.

The Executive budget now projects the development of a mere **201 beds** in the current fiscal year, increasing bed development to **474 beds** in FY 2016; and only developing **348 beds** in FY 2017; **299 beds** SY 2018 and only **321 beds** in FY19.



DEINSTITUTIONALIZATION

Although the Executive budget supports moving 249 individuals from institutional settings into more community settings and provides \$7.1 million in new community services to facilitate the planned downsizing (saving the state an estimated \$11.6 million) the Executive budget fails to fully reinvest savings from the de-institutionalization effort to meet the critical needs of those living in the community with aging parents.

The SY16 Executive Budget provides \$62.8 million in fiscal plan savings related to savings from the closure of state operated facilities, including \$58 million from annualization of FY15 census declines (407 individuals) and a net savings of \$4.5 million from the movement of 249 individuals to less costly settings in the community. In FY14 \$32 million in savings from deinstitutionalization was used to mitigate a \$90 million reduction in Aid to Localities spending. An additional \$30.5 million in deinstitutionalization savings in FY15 provided fiscal plan relief.

DDAWNY believes savings from deinstitutionalization should be reinvested in community based, Olmstead-compliant community services and not used for state fiscal plan relief. This is especially true given the recent history of significant cost containment within the OPWDD budget and the significant budget surplus the State currently enjoys.

COST CONTAINMENT & BUDGET SURPLUS

Cost containment within the OPWDD budget since FY12 has saved the state \$836 million, an average of \$209 million per year. Unlike during the Great Recession, New York is currently in much better fiscal shape.

The state is receiving significant new federal funds as a result of the Affordable Care Act (\$3.3 billion in 2015 and \$6 Billion in 2016). This includes Balancing Incentive Program (BIP) funds totaling \$598.7 million of which \$290.1 million is dedicated to OPWDD Waiver services.

Recent settlements with the financial industry also provide the State with a significant windfall.

The FY16 Executive budget now projects a 2015 General Fund surplus of \$7.8 billion dollars, \$5.4 Billion of which is derived from legal settlements with the financial industry involving activities by these banks that led to the Great Recession.

DDAWNY would propose that a portion of this windfall could be set aside in a special "Transformation Fund". This Transformation Fund can be used to

fund critically needed residential and day supports and services **families need now** -- as we *transition* to the new service delivery model -- and can also be used to support the one-time costs of the transformation ---

- Costs such as new supportive housing models and alternative employment opportunities for those exiting work centers.
- Costs relating to new models of transportation and the new managed care infrastructure. Costs associated with the needs assessment instrument and resource allocation process and the training needed to successfully transition state staff to this new process.

TRANSFORMATION FUND

Programs currently funded with one-time Federal BIP dollars, including the \$50 million Community Fund that has not yet received CMS approval, additional state funding to implement the Transformation agenda (BIP funded for \$45 million in FY16) and additional funds aimed at incentivizing employment (BIP funded for \$24 million in FY16) **must be continued once Federal BIP resources are exhausted in September of 2015.**

Costs related to integrated employment, crisis respite, day hab and sheltered work transformation and the costs incurred downsizing and transforming not for profit ICF/ID institutional settings into integrated community settings meeting the new HCBS standards do not go away when federal funding expires in mid FY16.

DDAWNY supports a Transformation Fund to address costs related to new models of transportation and costs not being reimbursed due to the current flawed needs assessment tool, including supplemental funds to fully support room and board costs, technical support to assist Work Centers transform into new business models, supplemental state employment payments to enhance integrated employment opportunities, funding for the creation of new more inclusive day program models and support the transition of current day program models, support for ICF downsizing in order to insure compliance with the new HCBS rule, and training for direct support workers.

TRANSPARENCY & AN INTEGRATED HOUSING PLAN

DDAWNY supports legislative efforts to require OPWDD to develop an **Integrated Housing plan** and require the collection and publication of levels of need and an analysis of gaps in service delivery for the Legislature and

stakeholders to assess Transformation progress similar to legislative proposals adopted last year but vetoed by the Executive.

EMPLOYMENT GOALS

When it comes to employment services, DDAWNY believes one size does not fit all.

State policy makers need to understand the diverse interests and needs of individuals seeking jobs and the local businesses that will determine who they will hire. The State must respect a person centered planning process ensuring individuals can make informed choices of the most integrated setting appropriate based upon an assessment of his or her interests, strengths, priorities, abilities and capabilities must be respected by state policy makers.

In New York only 13% of the 56,873 individuals with I/DD supported by OPWDD worked in an integrated employment setting in 2013. Recently the ACS reports that of those aged 16-21 with cognitive disabilities only 14.4% were employed with mean annual earnings of \$5,233. Employment of those aged 22-30 was 27%, but among those young adults served by OPWDD only 15% were employed in an integrated employment setting and earned approximately \$271 per two-week period.

36.4% of people with a cognitive disability are living below the poverty line and of the total number of SSI recipients with disabilities only 4.7% are working.

According to OPWDD, of those employed, 8000 individuals with I/DD are employed in a sheltered work setting, many of these individual are over 50 years old, at the same time, OPWDD provides supports and services to 9,954 individuals with I/DD in a supportive work environment and as of March 31, 2014 7,369 individuals with I/DD were receiving a competitive wage at or above minimum wage.

Yet significant number of individuals with unmet employment needs remain. OPWDD indicates, as of November of 2013, over 6400 individuals, including over 1,200 individuals in Western New York and the Finger Lakes are seeking supportive employment services and supports.

DDAWNY believes eliminating current employment-related choices without providing meaningful alternatives is ill advised and arguably a violation of the Olmstead mandate. The State needs to invest additional resources in a full range of employment and pre employment services and must also recognize

that without robust transportation options, individuals with IDD, who seldom if ever are able to drive a car, will have great difficulty finding meaningful integrated employment options. The state needs to develop new or alternative transportation capacity in order to support meaningful community integrated employment options.

The State needs to **enhance the capacity within the community** to provide more regular work opportunities in the community; the State needs to **lead by example** and provide more employment opportunities within state service and provide incentives for business to hire individuals with I/DD.

DDAWNY believes NYS should establish an initiative that sets goals to insure 5% of state contracts are set aside for organizations that commit to hire and retain 15-20% employees with disabilities.

DAY SERVICES

State policy makers need to focus on those who are not qualified to work who have significant day habilitation needs, as well as those found qualified to work.

Based upon June 2013 New York State graduation rates only 5% of students with disabilities graduated with grades indicating either college or career readiness

According to data maintained by the State Education Department, statewide 2834 students with severe cognitive disabilities took the New York State Alternative Assessment (NYSAA) in Secondary ELA in 2013. This assessment may only be given to students with a severe cognitive disability and significant deficits in communication/language and adaptive behavior. In order to be eligible to take this assessment, these students require a highly specialized education program that facilitates the acquisition, application and transfer of skills across natural environments and require educational support systems such as assistive technology, personal care services, or behavioral interventions.

According to SED, students eligible for the NYSAA may experience severe speech, language and/or perceptual-cognitive impairments and evidence challenging behaviors that interfere with learning and socialization. These students may also have extremely fragile health conditions and may require personal care, physical/verbal supports and/or prompts and assistive technology devices. Students being given the NYSAA Secondary ELA are assessed at age 16-17, meaning the majority of the students assessed in 2010 are now aging out of the education system.

DDAWNY feels the FY16 Executive Budget proposal which provides for up to 3500 new community service slots fails to adequately address the current day service needs of many of those aging out of the education system, whom are neither career or college ready.

EXPAND OPWDD NURSE PRACTICE ACT EXPANSION

DDAWNY strongly supported the Governor's proposal in last year's budget to expand the exemption in the Nurse Practice Act allowing DSPs to administer medication under the supervision of a registered nurse (RN) in non-certified settings funded, authorized or approved by OPWDD. DDAWNY supports language in the HMH Language Bill (Part S), which codifies the current HCBS waiver program (with amendments as discussed previously) and provides technical changes, which should facilitate an agreement between OPWDD and SED to permit the expansion of the Nurse Practice Act exemption to non-certified, community-based settings.

Thank You.

