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NEW YORK STATE ASSOCIATION OF COMMUNITY & RESIDENTIAL AGENCIES

**Testimony for the
Joint Legislative Hearing on the
Proposed 2015-16 Executive Budget for
Mental Hygiene**

Friday, February 27, 2015
Legislative Office Building
Albany, New York

Presented by:

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New York State Association of Community and Residential Agencies

Chairman Farrell, Chairman DeFrancisco, Chairwoman Gunther, Chairman Ortt and distinguished members of the New York State Legislature.

Good morning. My name is Ann Hardiman and I am the Executive Director of the New York State Association of Community and Residential Agencies (NYSACRA). Thank you for the opportunity to provide you with NYSACRA's perspective on the proposed 2015-16 Executive Budget proposal for the New York State Office for People With Developmental Disabilities (OPWDD) and the impact the budget proposal has on people with intellectual and developmental disabilities (I/DD) and the service delivery system.

NYSACRA is a statewide association representing nearly 200 voluntary not-for-profit agencies in New York State. The agencies provide direct services and supports to thousands of people with I/DD and their families and are located in communities across the state. New York's providers employ more than 75,000 direct support professionals who we rely on to deliver essential services.

Overall, the proposed 2015-16 Executive Budget for OPWDD is positive. We applaud the Governor for the continued acknowledgement of the I/DD sector and the importance to invest in new and expanded services as well as funds to transition people moving from institutional settings into the community. NYSACRA is pleased the Governor recognizes the importance of the workforce and we are also encouraged that the budget proposal contains language to further advance last year's changes to the Nurse Practice Act to expand the well needed exemption to allow for direct care staff to perform certain duties in non-certified settings.

We wish to highlight specific initiatives and key areas which merit attention: supporting direct support professionals and the workforce; not-for-profit investments; future directions in the I/DD system; the proposed Office for Community Living; and the Department of Health transportation study for the mental hygiene sectors.

Supporting Direct Support Professionals and the Workforce

On behalf of New York's 75,000 direct support professionals and the agencies that employ these dedicated individuals, I wish to thank the members of the State Legislature for including the human services cost of living adjustment in the 2014-15 enacted State Budget. We are very pleased the Governor's budget proposal contains the 2% wage enhancement for DSPs and clinicians and seek your continued support of the COLA.

Additionally, we thank the State Legislature for funding a study, last year, to develop recommendations to implement a voluntary credential for direct support professionals and look forward to advancing this valuable tool to enhance and professionalize the field. I am enthused with this project and excited that recommendations may soon be made available to you.

One other key area I wish to highlight is the proposed increase to the State's minimum wage. We applaud the Governor for recognizing the importance of increasing wages especially at a time when the economy is rebounding and becoming stronger. We are concerned, however, if the minimum wage is increased without a financial recognition of the need to supplement wages for direct support professionals working with not-for-profit providers, workforce recruitment and retention will become an even larger issue especially as more and more people seek supports and services in the I/DD sector.

If the minimum wage is increased, such an increase should be accompanied by funds to not-for-profit agencies to cover the range of wages from entry level direct support staff to the staff with the most seniority.

Not-for-Profit Investments

As the not-for-profit sectors continue to undergo significant changes, agencies must:

- prepare for new service delivery systems such as managed care;
- comply with new regulations such as the federal Home and Community-Based Settings rule; and
- implement new requirements as OPWDD's Transformation Agenda is being rolled out.

Managed Care

The shift to managed care will be challenging even for the most sophisticated of agencies. NYSRA will elaborate on the experiences in the behavioral health field as well as the need to develop a managed care readiness assessment tool for the I/DD field. It is important for me to underscore that agencies are preparing for managed care without specific resources to enable them to transition.

Home and Community-Based Settings – new federal rule

In March of 2014, the federal Centers for Medicare and Medicaid Services (CMS) adopted the final rule on Home and Community-Based Settings for Medicaid-funded long term supports and services in residential and non-residential settings. The new rule implements significant changes to each of the State's twelve 1915(c) waivers, including the OPWDD Home and Community-Based Services (HCBS) waiver. As a colleague in Ohio stated to me, this new federal change represents the Civil Rights movement for people with disabilities.

The new rules requires that all settings under the HCBS waiver be integrated and individuals have full access to the greater community including:

- employment opportunities,
- choice as to who s/he wants to live with,
- control of personal resources.

A person's right to privacy is an important component of the rule.

NYSACRA wholeheartedly supports the goals of this important new rule and seeks to assist our members to comply with the provisions of the regulation. While this will take time and the federal government is affording State's with the opportunity to transition, agencies will need resources to comply with the rule.

OPWDD Transformation Agenda

The members of our statewide association have collectively and consistently articulated support for OPWDD's transformation agenda and we embrace reform of the system to modernize the structures of the past especially those antiquated practices which limit an individual's independence, individuality and choice. The goals and intent of OPWDD's transformation agenda are groundbreaking, innovative and somewhat revolutionary. As a catalyst and leading advocate on behalf of people with I/DD, their families and the agencies who deliver quality supports and services, NYSACRA believes that such a real transformation embodies the beliefs, values and ideology of our member agencies.

Systemically, NYSACRA believes the sector will ultimately attain success in many areas proposed to change, though we believe and have consistently articulated our concerns that timeframes to implement transformation initiatives are not realistic and resources are not available to allow for smooth transition. NYSACRA has continuously urged both the State and federal governments to revisit overly eager schedules and deadlines to implement monumental and sweeping changes. People with disabilities, providers and stakeholders have been working to evolve to a more person-centered system; we recognize that this should be done with meaningful, thoughtful planning and over a reasonable period of time and with necessary resources.

Self-Direction

One area of the Transformation Agenda which requires attention and funding is self-direction. As part of the State's agreement with CMS, the State will increasingly expand the number of individuals self-directing. NYSACRA believes a hallmark of the I/DD system of supports and services is choice. People should have options and substantial decision-making authority over the supports and services that enable them to live an independent lifestyle and be engaged in and connected to their community. An individual with I/DD is in the best position to know what s/he wants and an individualized service plan most often times will enable one to live a life of their own making. A system which embraces a person-centered philosophy affords one the opportunity to develop and hone strengths, realize desires, and achieve goals.

OPWDD began offering self-direction to people with developmental disabilities in 2003. Since that time, the service has grown steadily and has been measurably successful for many individuals. Success exists when connections and collaborations are strong, plans are realistic and flexibility is allowed. The State is reinventing self-direction in a manner that unintentionally does not improve the service, rather new policies reverse the strides the State and providers have made to properly deliver the necessary supports. OPWDD proposes to advance more streamlined yet stricter policies related to self-direction. We applaud the goal to streamline processes and have strongly urged the State to create policies that do not micromanage the individual self-directing, the Support Broker, the Fiscal Intermediary and members of the Circle of Support. The State has recently converted community support services to self-direction and simultaneously expanded self-direction throughout the State while, as we understand, the system is at maximum capacity. As stated, NYSACRA has supported and fostered self-direction since inception and looks forward to working with the State to advance this service. Self-direction cannot be implemented successfully unless the self-direction redesign is accompanied by additional funds to increase fiscal intermediary administrative reimbursement.

Future Directions in the I/DD System

NYSACRA firmly believes that people with I/DD live better, healthier lives in community-based settings. When people become part of the fabric of their communities, their lives are enriched and they positively impact the lives of neighbors, family and friends. Community is important.

We believe in the spirit and intent of the Olmstead Decision and, as I have stated, we embrace the goals and intentions of the Transformation Agenda.

With several new changes and significant reforms, NYSACRA firmly believes a mechanism should be in place which guides these new processes. We believe a formalized process should be open and visible. Such a process would require the State to share key details related to the service delivery system and require funds from the closure of the remainder of the State's Developmental Centers to be reinvested into community-based services. As a result of the process, the State would be required to report on savings resulting from the closure of the remainder of the State's Developmental Centers and disclose the amount of funds being reinvested into the communities.

Other

The Governor's proposed budget also directs the State Office for the Aging to develop a plan for the creation of an Office of Community Living. According to the Division of Budget, the goal of creating a new office is to improve service delivery and outcomes for older adults and individuals with disabilities that live in the community. NYSACRA is encouraged by the State's continued commitment to the long-term care population though strongly encourages the Governor and the State Legislature to maintain a separate state office to oversee the serve delivery system for people with I/DD.

NYSACRA supports the proposal in the proposed Executive Budget to direct funds (\$750,000) in the Department of Health's budget to hire a transportation management expert to perform a cross-agency mobility needs assessment to improve transportation services for people served by OPWDD, OMH and OASAS. Transportation is a key issue in both urban and rural areas of the State for people with disabilities.

Closing

On behalf of NYSACRA, we appreciate the opportunity to provide our perspective on the proposed 2015-16 Executive Budget.



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Policy Perspectives

Investments in Services for Individuals with Disabilities

Funding for New and Expanded OPWDD Services for People with Developmental Disabilities – Flexibility is Key

Issue: The proposed 2015-16 Executive Budget contains funding to support new or expanded service opportunities for people with developmental disabilities. New service opportunities will be distributed based on OPWDD’s person-centered planning processes and incorporates the individualized needs assessment expected to ensure the provision of necessary supports and services.

Recommendation: *NYSRA and NYSACRA support funding in the 2015-16 State Budget to create and expand approximately 3,500 service opportunities and we urge the State Legislature to incorporate language in the State Budget to ensure transparency regarding the process and determination of need, that these new and expanded opportunities be available in all regions of the state and allocated based on a plan developed by all stakeholders, rather than any one entity having sole discretion.*

Increase OPWDD Employment Supports

Issue: This administration, through the recently created “Employment First” commission and OPWDD’s Transformation Agenda goals around employment, has articulated aggressive goals aimed at increasing competitive, integrated employment opportunities for people with disabilities. Discussion of an enhanced reimbursement rate for OPWDD’s Supported Employment (SEMP) program, intended to expand the capacity of the program to support individuals with more intense needs, provided great hope that real progress would result. However, NYS’ new draft rate methodology for SEMP submitted to federal Centers for Medicare & Medicaid Services (CMS) outlined an approximately \$60/hour rate - wholly inadequate according to many providers currently providing the service.

Recommendation: *To truly increase employment among individuals with developmental disabilities, and expand the ability to accommodate individuals with developmental disabilities with more significant and intense needs, New York State must increase the reimbursement rate for OPWDD employment supports. If CMS does not agree to an increased SEMP rate, or rejects reimbursement for employment supports that are nonetheless recognized as crucial to success, state funds must then be used to provide supports that are deemed non-Medicaid billable services.*

OPWDD Self-Direction Fiscal Intermediaries

Issue: As part of OPWDD’s Transformation Agenda and agreement with CMS, the State committed to increase the number of individuals with developmental disabilities who self-direct their services and supports. OPWDD recently implemented a redesign and transformation of self-directed supports (formerly Consolidated Supports and Services). The changes implemented adversely impact the functionality and reimbursement provided to organizations that serve as the Fiscal Intermediary (FI) for individuals who self-direct, and increases in administrative functions were implemented. OPWDD also implemented a change to the Personal Resource Allocation (PRA) (individual budgets) that may decrease the individual resources available.

Recommendation: *In order to fulfill the State’s commitment to self-direction, we urge the Legislature to appropriate funds to support an increase to the FI administrative fee to at least \$1250/month, to enable providers to appropriately support individuals in their self-direction goals. In addition, PRAs must be able to fund self-directed supports for any individual that chooses the service, no matter the complexity of their disability.*

State Contracts Dedication

Issue: With the administration’s goal of increasing employment among people with disabilities, a concerted effort aimed at educating businesses about the benefits of employing people with disabilities, and providing technical assistance to assist businesses toward that goal, will be necessary. Most importantly, the state must lead by example by employing more individuals with disabilities, and utilize its purchasing power to leverage this goal.

Recommendation: *Similar to the Minority- and Women-Owned Business Enterprises (MWBE) initiative, in which the Governor proposes setting aside 30% of state contracts for organizations that meet this criteria, NYS should establish an initiative that sets aside 5% of state contracts for organizations that commit to hire and retain 15-20% employees with disabilities.*



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Policy Perspectives

Reinvestment for OPWDD

Issue: The State of New York has committed to significant reform and transformation of the state's developmental disabilities service delivery system including its financial structure. One component of the OPWDD transformation agenda is the transition of people from costly institutional settings into more appropriate, integrated and less costly community-based settings. Voluntary not-for-profit providers continue to work with the state to promote smooth transitions that ensure the health, safety and success of people living in the community.

Recommendation: *To advance the transition into community settings, a more formalized planning process which includes stakeholder input is essential. NYSACRA and NYSRA encourage the State Legislature to statutorily create a "developmental disabilities system reinvestment and investment initiative" which advances: 1) a multi-year plan to reinvest savings generated from DC downsizing; 2) significant investments to ensure appropriate capacity for individuals transitioning into the community; 3) formalized priority-setting for those on the waitlist, individuals moving from out of state placements, and those with aging caregivers; and, 4) annual processes to project future need.*

Investments in Direct Support Professionals

Cost of Living Adjustment (COLA) in the Human Services Sectors

Issue: The key to the success of any human services agency is a sufficient, well trained and compensated direct support workforce. The Governor and State Legislature acknowledged the importance of compensation increases in the not-for-profit sector with a COLA in the 2014-15 State Budget and pledged a similar increase in the 2015-16 State Budget. Unfortunately, the methodology by which this COLA was developed does not reflect current staffing.

Recommendation: *NYSACRA and NYSRA and our members appreciate the increases that have been implemented and proposed. They are essential for recruiting and retaining the staff that are pivotal to helping an individual accomplish their goals. However, we urge a recalculation of the previously committed COLA for direct support staff members in the not-for-profit sector to reflect current staffing and provide sufficient resources in order to provide true 2% COLAs in the 2015-16 State Budget, as proposed by the Governor. The increases scheduled to take effect in 2015 include clinicians, in addition to direct support staff.*

The Governor has also acknowledged the need to support a two-tiered increase to the state's minimum wage structure. Indeed the creation of a living wage is imperative, but the state must take responsibility to provide commensurate increases in its payments to providers of services necessary to make any minimum wage increase viable. Such an increase, if implemented, must be accompanied by funds to not-for-profit providers to cover the range of wages from entry level direct support staff to the staff with the most seniority.

The state should enact legislation linking any increases in the minimum wage to rate increases for services the state procures from contracted providers, and require that managed care organizations pass along such increases to providers so that they can pay such minimum wages.

Direct Support Professional Credential

Issue: Direct support professionals are the backbone of the developmental disabilities service delivery system. A direct support professional voluntary credential provides the opportunity for hard-working and dedicated individuals to attain a recognized level of competency, expertise and training that is important to anyone with specific skills and mastery in the respective field. The 2014-15 State Budget requires OPWDD to study the efficacy of advancing a credential to promote the developmental disabilities workforce.

Recommendation: *Enact legislation to acknowledge the importance of promoting the value and skills of the direct support professional field through the creation of a voluntary credential program.*



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Investments in Providers of Services

Nonprofit Investments

Issue: Much like parts of our State’s physical infrastructure, the human services “safety net” infrastructure is also aging. Simultaneously, fundamental policy and funding shifts are occurring, resulting in the need for providers to completely re-think and restructure the way in which they support individuals. Nonprofit providers must now consider: how they will prepare for a managed care environment; how to improve electronic health and service record-keeping capacity; how to use data to improve the delivery of supports; and, how to demonstrate high quality outcomes. Many are looking to become accredited by the Commission on Quality and Leadership (CQL), change their business models, and struggling to comply with the “HCBS community-rule” associated with many Medicaid-funded supports. Strategic investments by providers of services to individuals with disabilities may very well make the difference for organizational survival in the long-term. But we also can’t forget that operating costs continue to rise, as well.

Recommendation: *NYSRA and NYSACRA request the State Legislature build upon the Governor’s \$50M capital fund investment for nonprofits to create a comprehensive nonprofit infrastructure, technology, and business investment fund, initially capitalized with \$500 million from the current New York State surplus. This one-time investment would fund specific categories of necessary infrastructure to support the nonprofit sector, including providers of services to individuals with disabilities.*

In addition, NYS must recognize the effect of no increases on providers over a number of years and the ability of providers of services to accommodate increasing operating costs.

Managed Care Preparedness

Issue: The shift from a fee-for-service to managed care environment is one that will be challenging for even the most well-positioned and well-prepared organizations. In mental health and substance use disorder services, that shift is about to take place. Resources identified in last year’s budget bolstered this preparatory activity, with the development of a Managed Care Technical Assistance Center (MCTAC) that provides – among many things – a readiness assessment for providers. In developmental disabilities, while the shift to managed care has temporarily slowed, providers have barely begun any such preparation for this planned eventual transition.

Recommendation: *1) Maintain the commitment to managed care transition technical assistance and preparedness for the behavioral health sector; and, 2) Begin to expand these managed care preparedness activities to the developmental disabilities sector through implementation of a managed care readiness tool.*

\$50M Nonprofit Loan Fund

Issue: These are unprecedented times for providers of services to people with disabilities in the nonprofit sector. The provision of services has become more tenuous. This can cause negative consequences for individuals who rely upon such providers for support and their families, when interruption does occur. In order to create more stability, resources on which providers of services can temporarily rely would provide assistance.

Recommendation: *NYSRA and NYSACRA request the State Legislature invest \$50 million to capitalize the existing State loan fund for nonprofits available to provide nonprofit cash flow advances.*



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Policy Perspectives

OPWDD Work Center and Residential Technical Assistance

Issue: In line with OPWDD's employment transformation agenda and goals, organizations operating work centers seek to transform themselves into businesses that can continue to offer employment opportunities to individuals with disabilities, many find themselves without the expertise and resources necessary to create such businesses. Likewise, in line with OPWDD's residential and day habilitation transformation goals, many providers are also challenged to create opportunities that are small and more integrated in the community. As part of its Balancing Incentives Program grant funding, OPWDD has invested in providing technical assistance to providers of work center and residential/community support. While a positive step, these funds will only provide needed transition supports to a handful of the hundreds of providers of these services, and only until December 31, 2015.

Recommendation: *In order to continue the momentum begun under the BIP grant-funded transformation efforts beyond the end of 2015, we request \$5M in transformation technical assistance to expand and continue the technical support available to assist all employment, residential and community support providers to transform.*

Nurse Practice Act Changes

Issue: The State seeks to expand the exemption from the Nurse Practice Act that allows non-nurses, with training and supervision, to perform functions that fall under the scope of practice of nurses in OPWDD certified settings to non-certified settings (as had been agreed to the SFY 2014-15 budget negotiation). This expanded authority would allow individuals to be supported in more community-integrated settings. In addition, the Governor's budget proposes to create a new Advanced Home Health Aide designation that would allow non-nurses to perform functions that fall under the scope of practice of nurses as part of the anticipated federal approval of the State's Community First Choice Option State Medicaid plan amendment. Again, this would pave the way for the provision of necessary supports in more community-integrated settings.

Recommendation: *The Legislature should support language included in the Governor's budget proposal related to the performance of certain functions in the delivery of supports to individuals with disabilities in OPWDD non-certified settings and as part of the Community First Choice Option, which would otherwise fall under the purview of the scope of practice for nurses.*

Regulatory Commission on Regulations

Issue: The regulatory and oversight burden on providers of services to individuals with disabilities often not only makes general operation challenging (at best) and wasteful of precious time and energy, but often stifles any creative efforts intended to improve the way in which individuals can be supported.

Recommendation: *Establish a regulatory commission or workgroup to review current State regulations and reporting requirements. This commission would identify rules and processes add little or no value, are duplicative, and unnecessarily burdensome for both State agencies and the nonprofits they contract with.*

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New York State Association of
Community & Residential
Agencies

August 29, 2014

Kerry A. Delaney
Acting Commissioner
New York State Office for People with Developmental Disabilities
44 Holland Avenue
Albany, New York 12229

**RE: Comment on the Home and Community-Based Waiver Application and Settings
Transition Plan**

Dear Acting Commissioner Delaney,

On behalf of the New York State Association of Community and Residential Agencies (NYSACRA) and the New York State Rehabilitation Association (NYSRA), we are pleased to submit comments on the Home and Community Based (HCBS) waiver application for the New York State Office for People with Developmental Disabilities' (OPWDD) Comprehensive Waiver.

NYSACRA is a statewide association representing 200 agencies who provide services to thousands of individuals with intellectual and developmental disabilities (I/DD) and their families in communities across New York State. The agencies employ more than 75,000 dedicated direct support professionals who are relied upon to deliver necessary supports and services.

NYSRA is a statewide 501 (c) (6) organization representing rehabilitation providers who advocate on behalf of individuals with differing abilities and the agencies who serve them. NYSRA's community providers offer a full spectrum of services to people throughout New York State, including individuals with developmental disabilities, mental illness, deaf and hearing impaired, and vision problems, in addition to addictions, traumatic brain injuries and veteran services.

On January 16, 2014, the federal Centers for Medicare and Medicaid Services (CMS) published the final rule related to HCBS for Medicaid-funded long-term supports and services provided in non-institutional settings under specific authorities of the federal Social Security Act. The goal of the rule is to ensure that individuals receiving long-term supports and services through HCBS programs under sections 1915(c), 1915(i) and 1915(k) of the Social Security Act have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate. Additionally, the regulations seek to enhance the quality of HCBS and provide protections to participants. The new rule requires that states ensure a focus on

strengthening person-centered supports and services that highlight strengths, preferences, needs and desired individual outcomes.

NYSACRA and NYSRA agree with the spirit and intent of provisions of the new federal requirements related to an individual's integration in and full access to the greater community and individual selection of residential settings and setting options, as well as full opportunities to seek employment, control personal resources and receive services in the community the same as individuals not enrolled in Medicaid HCBS.

Our associations have long been at the forefront of promoting person-centered services to individuals with developmental disabilities and fully supports opportunities for people to self-direct and create their own individualized supports and services, and to have choice regarding where an individual wants to live and receive services, and with whom s/he wants to live. NYSACRA and NYSRA are pleased that the new federal rule governing the 1915(c) HCBS waiver has moved in a direction that allows individuals more choices and options. However, we believe specific requirements, while well-meaning, may have unintended and possibly harmful consequences if implemented as swiftly as proposed. While it may not take as long to restructure the system as it took the system to develop into its current state, moving it to a more fully person-centered approach will take time.

Our comments focus on the following key areas: the State of New York's HCBS Transition Plan, the components of the waiver renewal related to OPWDD's rate rationalization/ rate language and self-direction.

NYSACRA'S AND NYSRA'S GENERAL COMMENTS

Systemically, NYSACRA and NYSRA believe the sector will move in the direction that the new federal rule requires, though we believe timeframes are not realistic, especially given the vast level of change New York's developmental disabilities system is currently undergoing. People with disabilities, providers and stakeholders have been working to evolve to a more person-centered system; we recognize that this should be done with meaningful, thoughtful planning and over a reasonable period of time.

At the same time, the field is moving toward managed care, spending necessary time on implementing direct support professional core competencies, exploring the use and financial impact of electronic health records, implementing the transformation agenda and serving more complex people with forensic backgrounds. This multitude of issues creates additional circumstances including, but not limited to, the need to find supports that individuals require, training the staff to serve them and preparing to adjust to new outcome measures for individuals and organizations.

Our collective memberships are supportive of the move to accomplish full integration for every person with a developmental disability in a manner consistent with the HCBS rule. However, we firmly believe that more time is required to accomplish meaningful change in keeping with – and not just compliance with – the new rule.

THE STATE OF NEW YORK'S HCBS TRANSITION PLAN FOR COMMUNITY-BASED SETTINGS

As stated in the Comprehensive Waiver application and the State of New York's Statewide Transition Plan for Community-Based Settings, the State has affirmed its commitment to serving people with disabilities in the least restrictive environment. Such commitment has been displayed through the State's Report and Recommendations of the Governor's Olmstead Development and Implementation Cabinet. NYSACRA and NYRSA believe this "framework" is an appropriate first-step toward implementing the new federal HCBS rule.

We recognize the monumental task ahead of the State of New York and all stakeholders involved with the implementation of the new federal rule, including our association and our members. We would be remiss if we did not continue to underscore the tremendous value of the new rule, though we believe the timeframes are not realistic and should be amended to allow for more thoughtful and meaningful dialogue and planning.

NYSACRA and NYSRA are pleased the State has performed a thorough initial analysis of the HCBS Setting requirements outlined in the final rule and performed a crosswalk with existing State regulations, standards, processes and protocols. Our association is pleased to learn that the State believes that substantial alignment exists between OPWDD's regulations and the final federal rule.

As indicated in the waiver application, OPWDD recognizes that additional analysis is required to ensure compliance and is taking necessary steps to ensure such compliance, including performing comprehensive on-site residential assessments of all providers and settings. We are represented on OPWDD's regulatory reform working group currently reviewing the assessment tool and working in partnership with the State to ensure the tool is comprehensive and useful, and that it will capture the necessary data and information to assist the State and providers to comply with the federal rule.

It is important to note that this task is critical to gain the information necessary to implement the rule on the State and community levels. Therefore, like all facets of the transformation of the system, resources (financial and appropriate staffing) need to be made available to thoroughly capture the necessary survey information, analyze the data, and develop a plan of action with real time allotted to the State and providers to comply with the new requirements. NYSACRA, NYSRA and member agencies, as the primary source of information to inform the assessment process, are committed to assisting the State in complying with the federal rule, while also recognizing that this process must be done thoughtfully.

Additionally, an interagency workgroup has been organized by the State to address how best to comply with the requirements of the new rule. As we understand, the group was convened to ensure that a cohesive statewide transition plan was developed to address the unique needs of individuals across a wide variety of community-based settings. The working group is currently comprised of state agency representatives. NYSACRA and NYSRA recommend expanding the

workgroup to include a variety of stakeholders, including people with disabilities and providers, and perhaps creating subcommittees to assist with the implementation of the activities outlined in the timeline/transition plan activity/deliverables. Additionally, the Most Integrated Setting Coordinating Council might serve as the conduit for publically reporting on the status of the State's transition plan and components of such plan.

NYSACRA and NYSRA also recommend that the State hold public hearings on the Transition Plan. These hearings will afford all stakeholders an opportunity to further comment on the plan.

RATE RATIONALIZATION AND RATE LANGUAGE

In the spring of 2014, NYSACRA commented on proposed state regulations to implement new reimbursement methodologies. NYSACRA's comments remain relevant. NYSACRA and NYSRA understand OPWDD's and the NYS Department of Health's (DOH) reasoning to implement a new reimbursement methodology that adheres to the commitments set forth in the agency's transformation agreement with CMS. NYSACRA and NYSRA have consistently been supportive of rate reform that creates a modernized fiscal platform to balance the existing rate and reimbursement system with a system that promotes the transformation agenda of putting people first.

As the State continually sought to revise various rate methodologies under its purview in a rational manner, our associations were pleased to have been engaged with OPWDD and stakeholders in dialogue on restructuring. We appreciate OPWDD's and DOH's efforts to seek feedback from all stakeholders on rate rationalization and various versions of the State's rate-runs. While we acknowledge the fairly transparent review process, we understand the final proposed regulation is a result of a negotiation between the State of New York and CMS.

Transition to New Methodology

On behalf of our member agencies, we appreciate that the State of New York sought a more gradual implementation of the new rate methodologies, and understand the transition period as written in the final regulation is not reflective of the State's initial multi-year request. Our associations are not supportive of a three-year phase-in of the new rate structure and believe the short timeframe to implement the rates will negatively impact individuals being served (especially individuals residing in ICFs/DD with severe developmental disabilities and behavior problems, the elderly and frail and those with complex needs) and agencies adversely affected by the new rates. NYSACRA and NYSRA believe a five-year transition is not only more consistent with the timelines associated with other similarly profound policy changes, but would better support successful rate reform that creates the modernized fiscal platform. A five-year transition will also create a phase-in that would appear more seamless to individuals and families, while still continuing to promote the safety, health and well-being of people being served.

As NYSACRA and NYSRA have consistently suggested, a new reimbursement strategy must be one that promotes network stability and structural reform, and incorporates a glide-path over the course of several years (at least five) to allow for natural balancing of rates to occur. System change that dictates big "winners" and big "losers" without time to adequately phase-in the gains and losses will have a much more profoundly disruptive impact on the field.

NYSACRA and NYSRA also suggest that OPWDD and DOH assess the efficacy of the transition, on an annual basis, to ensure a consistent and smooth transition that does not negatively impact the individuals being served. The need for annual assessment of the transition is especially apparent as the system will soon move into a managed care environment and the tool can serve to validate the new regional/cost-based methodology. NYSACRA and NYSRA recommend the waiver renewal submission reflect such an annual assessment especially for the duration of the rebalancing of the rates.

SELF-DIRECTION

While OPWDD's transformation plan includes rate rationalization, employment and deinstitutionalization, NYSACRA and NYSRA are pleased that emphasis on moving to a more person-centered system is a cornerstone of the State's reform agenda. Our associations have long championed and fostered person-centered services and our members are excited at the new opportunities to promote and enhance self-direction.

OPWDD began offering self-direction to people with developmental disabilities in 2003. Since that time, the service has grown steadily and has been measurably successful for many individuals. Success exists when connections and collaborations are strong, plans are realistic and flexibility is allowed. Policies must permit flexibility and fluidity when an individual is self-directing. Real opportunities for alterations and changes when deemed necessary is important. For instance, strong Circles of Support lead to more successful self-direction. The new federal rule assumes that strong Circles of Support exist in most instances, which NYSACRA and NYSRA maintain is not always the case. Unreasonable expectations set forth in policies will result in the inability of individuals and all stakeholders to reasonably self-direct.

Furthermore, the State is reinventing self-direction in a manner that does not improve the service, rather new policies reverse the strides the agency has made to properly deliver the necessary supports. OPWDD proposes to advance more streamlined yet stricter policies related to self-direction. We applaud the goal to streamline processes and strongly urge the State to create policies that do not micromanage the individual self-directing, the Support Broker, the Fiscal Intermediary and members of the Circle of Support. Additionally, the newly restructured rates are inadequate to fully support all components of self-direction to be successful. The State seeks to convert community support services to self-direction and at the same time expand self-direction throughout the State while, as we understand, the system is at maximum capacity. As stated, NYSACRA and NYSRA have supported and fostered self-direction since inception and looks forward to working with the State to advance this service. Given the significant changes and what appears to be a disconnect between what we need to accomplish and what the field can actually accomplish given rushed timeframes, we urge the State and the federal government to extend proposed timeframes to implement self-direction to ensure government and all stakeholders achieve the correct balance to implement appropriate new changes correctly.

CONCLUSION

We commend OPWDD for achieving many of the goals set forward in the transformation agreement with CMS including: implementing the Front Door process (and resolving issues when they arise); enhanced training on self-direction and person-centered practices; and promoting federal initiatives such as Money Follows the Person, the Balancing Incentive Program and the employment first agenda to afford people with more opportunities to self-direct.

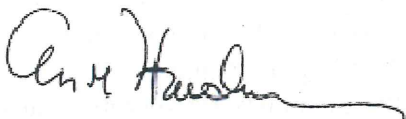
People with developmental disabilities are at the very center of the State's transformation initiative. Given the complexities associated with transforming an entire system of supports and services, we must keep the person being served as our guide. Therefore, as the system continues to change and our thinking, language and behavior converts from organizing around revenue streams, control and compliance, it is imperative that we invest in processes that yield new possibilities most responsive to people with developmental disabilities. The new federal rule promotes this process and self-direction is one of the foremost keys to advance this to reality.

Once again, NYSACRA and NYSRA must underscore the importance of implementing thoughtful and meaningful policies and practices as the State seeks to streamline services and, at the same time, transforming and expanding services. We must ensure that realistic processes are in place to ensure success.

On behalf of our two associations, we appreciate the opportunity to comment on the HCBS waiver application for OPWDD's Comprehensive Waiver and New York State's Statewide Transition Plan for Community-Based Settings.

Please do not hesitate to contact us (Ann Hardiman at annah@nysacra.org and Michael Seereiter at michael@nyrehab.org) if we can be of assistance to you.

Sincerely,



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