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NYDA COMMENTS 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 or when individuals go to summer camps. Additionally, 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 actions, which were to take effect on October 1, 2020, and subsequently delayed to take effect on May 1, 2021, will have significant impacts on individuals with intellectual/developmental disabilities (I/DD) and the voluntary provider agencies who provide these essential supports and services.

The proposed cuts total over $238 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 voluntary OPWDD providers across the state, New York Disability Advocates (NYDA) strongly objects to the imposition of these cuts and respectfully requests that OPWDD complete the ongoing rate redesign before implementing any such reductions.

The OPWDD provider community has incurred significant hardships in connection with the COVID-19 public health emergency. The implementation of the proposed cuts will severely limit funding for individuals simply because they require hospitalization due to medical or psychiatric illness, or choose to take therapeutic leave to spend time with family members or with others at a summer camp.

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Under the approved 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, the provider incurs no costs for that individual and there is no reason for the residential provider to be paid in full during the absence.

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 elimination of the occupancy adjustment defies logic, when according to OPWDD's response to questions raised at the SFY 2022 Mental Hygiene Budget Hearing, there are currently 1,530 total available certified vacancies statewide, with 489 of those in the State operated system. These vacancies exist, with more than 5,288 individuals awaiting placement on the Certified Residential Opportunities process. By eliminating the occupancy factor, provider agencies, have already began the process of consolidating residences and closing vacancies to minimize their exposure to this action, which will undoubtable cause access issues to the 5,288 individuals who have been approved by OPWDD for certified residential opportunities.

The 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.

Moreover, 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

Therefore, we respectfully request that OPWDD delays the implementation of these actions while efforts are ongoing to redesign the rate structure.