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Mark van Voorst, *Executive Director*

April 7, 2020

Dear Association Member/Provider Agency:

We, the undersigned, representing providers comprising the entire system of voluntary-operated programs, supports and services in communities across the state, have joined with NYDA are writing to report on our progress in securing continued funding throughout the COVID-19 pandemic, additional funding to support substantial and necessary DSPs COVID-19 related pay increases, and ongoing relief and flexibility from requirements that distract from your ability to remain focused on keeping individuals safe and healthy throughout the crisis.

Federal Waivers:

OPWDD is working around-the-clock with DOH, the Governor and Executive Chamber staff in order to finalize and submit waivers to the federal government (CMS) that will enable the State to continue to pay providers during the initial 30-day period of day program closure through the billing of retainer days based upon the regularly scheduled services for individuals prior to the closure. The plan includes a design that will enable providers to receive ongoing funding throughout the entire crisis so long as programs, services and staff continue to support individuals and families throughout the crisis. Details will follow over the next several days once approval of these waivers is received. Work being done by our State partners at OPWDD and DOH and the Executive to prepare, negotiate, amend, finalize, submit and obtain necessary federal approvals is very much appreciated.

Funding for COVID-19 Crisis Pay and the State Budget:

We are pleased the Enacted Budget which the Legislature adopted on Friday including the funds that support a 2% DSP increase effective January 1<sup>st</sup>, and an additional 2% increase for DSPs and clinical employees, effective April 1<sup>st</sup>, as originally proposed by Governor Cuomo in his Executive Budget proposal; however, our world has been turned upside down since then. DSPs in our field and in your programs are literally risking their health every day they continue to do the remarkable job they do. Like our doctors and nurses in hospitals throughout the state, our DSPs are on the front lines of this pandemic saving lives and keeping people safe. As Clarence Sundram, former Special Advisor to the Governor on Vulnerable Persons, recently noted, "These are the staff who cannot stay home and keep themselves safe not only because the people they serve absolutely depend on their availability but also because they cannot afford not to work."

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But unlike doctors, convenience and grocery store associates, fast food workers and retail sales associates all who have found themselves unexpectedly on the front lines of the COVID-19 pandemic, there has been no additional funding made available to support pay increases, incentive pay or temporary bonus pay for our workers. Mr. Sundram calls it “combat pay.”

Whatever we do as a system, whatever your agency does beyond the percentages noted above, must be done with whatever resources you have in reserves or can borrow in order to pay. We are receiving reports that many of you are paying an additional \$10 per hour and more – even doubling hourly wages, and still struggling to maintain basic coverage levels.

Bank loans and grants, tax relief and other programs are reportedly included in the federal pandemic recovery package, but understanding and applying for these will take time and the wait for whatever checks may eventually arrive cannot meet our immediate needs in this crisis.

The current State Budget gives the Governor broad authority to direct COVID-19 funding to areas of need including nonprofit organizations. In the coming days and weeks we will continue to advocate that the authority be utilized to compensate our staff for the physical and emotional hardship and distress they are enduring to perform the lifesaving work they do during this COVID-19 emergency.

#### Personal Protective Equipment (PPEs):

Most of us were unfamiliar with this acronym and now it’s a household term and a constant battle for many of you to acquire or maintain a supply. Unfortunately, at this time it looks as though we will be required to source and purchase PPE without the assistance of the State or Federal government. To help our agencies and the people that they serve stay safe and provide peace of mind, we have been working together to create high volume bulk order purchases that will get the attention and response of nationwide and worldwide manufacturers of these PPE products.

#### Executive Orders and Other Flexibility:

Several Executive Orders have been issued by the Governor waiving laws and regulations that impede our ability to redeploy staff to where they are needed. OPWDD has been very helpful in getting our requests for needed flexibility included in these measures and we are thankful for this assistance.

#### New and Burdensome Reporting Requirements:

Our top priority throughout this pandemic crisis must remain trying to keep the individuals we support and our staff safe and healthy. We do not currently have sufficient resources – both supplies and staff –to fight off this dangerous virus. Compounding this challenge, OPWDD is requiring providers to fill out form after form for additional information and requiring us to do so within unrealistic time frames under the best of circumstances. We have been advocating on your behalf to eliminate unnecessary bureaucracy in this area, but we have been largely unsuccessful. In turn, OPWDD has been unsuccessful, either in pleading our case behind the scenes for this relief, or in being able to respond to the critical urgency to become more nimble in its decision making and more reliant upon your commitment and ability to do the right thing throughout this crisis.

In an effort to provide you with a summary of best practices, guidance, and advice we have put together the following list which we are hoping will assist you in these trying times. We stand together in doing our best to continue to support you throughout this crisis and in its aftermath when we will work to recover:

#### 1. COVID-19 Reporting and Tracking

We have been advised by OPWDD that we can either report COVID-19 positive quarantine or isolation information via phone or through IRMA. Subsequent information can be sent via email to IMU/DQI staff ([incident.management@opwdd.ny.gov](mailto:incident.management@opwdd.ny.gov)) or entered directly into IRMA as well. Subsequent guidance has once

again expanded the reporting requirements. Our advice is to remain focused on trying to keep people safe. Do your best to inform OPWDD of positive cases, but not at the expense of the care we need to provide to our individuals.

1a. COVID-19 Residential Preparedness Survey

Some OPWDD regions are requesting a COVID-19 Preparedness Survey for agencies providing residential services. Trying to keep people safe throughout this crisis is our number one priority. Unfortunately, this new survey represents yet another distraction. Accordingly, we advise that you politely indicate that you are focused on trying to keep people safe and will report as necessary based upon staff availability.

2. COVID-19 Related Deaths

When an individual dies because of COVID-19, a full investigative report to OPWDD/Justice Center is simply unfeasible. Notice to OPWDD/Justice Center should be sufficient. Document as best you can given current staff limitations and follow up with the Justice Center once the COVID-19 emergency is lifted.

3. COVID-19 Related Hospitalizations

When a resident of an OPWDD IRA has been sent to the hospital because of COVID-19, CDC guidance as to a safe discharge requires the discharging facility to consider the home's suitability for and patient's ability to adhere to home isolation recommendations – isolation should be maintained at home if the patient returns home before discontinuation of Transmission Based Precautions. Return of an individual hospitalized for treatment of COVID-19 infection should be based upon a determination by each agency's medical director in consultation with local and state public health officials as to the individual's condition and the IRA's capability and preparedness to safely care for the individual.

4. Use of Agency Day Habilitation Sites as Step Down Unit for an Agency's Own Residents

A number of agencies have identified sites, including certified day sites, they either own or lease which can be used as locations to treat an agency's own residents who have tested positive with COVID-19 or have been discharged from a hospital following COVID-19 treatment, but cannot be returned to their IRA either because the IRA is not suitable (e.g., only one bathroom) or because of the resident's inability to comply with isolation protocols. Under these circumstances, and assuming the agency is not receiving enhanced funding for operating the step-down unit, additional reporting requirements and maintenance of life plan documentation within the step-down unit is unnecessary.

Per the Governor's Executive Order, we are required to do what we need to do to keep people safe. Providing notification to the DDRO will meet the minimum requirements of the Executive Order.

5. CAS Assessments

The State has a contract with Maximus and they are doing CAS assessments utilizing telehealth for new individuals coming into the system, FIDA participants and certain ICF residents. CAS assessments for other OPWDD service groups are currently on hold per OPWDD. Many providers are rightly preoccupied with trying to keep people safe right now. We have questioned the wisdom in conducting these surveys in the midst of this crisis, without adequate staff to provide care, with limited person-centered planning capabilities and with our individuals' lives impacted while under extreme stress. Assessors may be calling ICFs to try to set up a time when it is convenient to spend 60-90 minutes in the completion of a CAS assessment (and new individuals coming into the system will need a CAS assessment).

If you have time to participate in these assessments, you should do so. If you do not, you should politely tell them it is not convenient at this time. If you are in the midst of addressing more pressing needs arising from this crisis, you should politely advise the assessor not to try to make contact again until after the crisis. We have been assured they, too, will be polite and accommodating.

6. Documentation of Day Habilitation Services Delivered in Non-ICF settings  
Staff should not have to document Day Habilitation goals while the Day Hab settings are closed and the residents are confined to their non ICF congregate care settings. Document as best you can given current staff limitations.
7. Psychotropic Drug Renewals  
Residential staffs in highly impacted provider agencies currently do not have the time to begin the annual psychotropic drug renewal process for agency Human Rights Committee review. We believe this review process should be put on PAUSE for 60 days. Similar to CAS assessments, if you have the time to complete this process without endangering the health and safety of the people you serve then you should complete this process when it is appropriate.
8. Minimum Staffing Requirements and Notifications  
Other State agencies have urged their providers to do their best in trying to adhere to staffing minimums. Realistically, as the pandemic progresses, we fear the worst, let alone the ability to meet minimum staffing at all times. Of course, you must continue to endeavor to always meet your minimums. If unable, do your best to try to keep people safe. If you do not have staff to keep an IRA open, you will need to report a course of action.
9. Individual Relocation Reporting  
Again, we encourage sharing this information to the greatest extent possible, but not if it sacrifices the care we need to supply. We have Executive Order relief that allows us to do what we need to do to keep people safe. Inform OPWDD if you can, but do not wait for approval. If an individual needs to be relocated to another residence, a temporary residence, or an emergency respite setting, do so and explain the decision later. Do what you need to do to ensure that the people we serve are protected from harm. Regulators will not be able to question your decisions in this crisis if you keep that primary focus at the forefront.
10. CBC/Fingerprinting  
While the Governor's Executive Order 202.13 provides some of the needed flexibility to hire staff who have been through some other state agency background checks/screening, there still remains a requirement for fingerprinting of new employees. The reality in many parts of the state is that there are extremely limited fingerprinting capacities available. We recommend that agencies document they have made a good faith effort to get potential employees fingerprinted and move forward with the usual screening/due diligence they would use when hiring any new staff member and hire on condition of their passing a background check once they are again available. However, employees who have not been fully vetted should not be left unsupervised with individuals we support. Certain other screening can be done quickly and electronically (i.e., SEL, MHL 16.34). Do what you can and document the effort to complete other screening when able.
11. Provision of Community Habilitation for Families/Children During the Day  
While the regulation bars the provision of community habilitation for children and families during "normal school hours" we are advising agencies that there are no longer any "normal" school hours and that community habilitation should be provided at the time that best meets the needs of families and children throughout this crisis. Make a note of why the community habilitation is best provided during what had been school hours and move forward with providing what is needed.

#### Closing Thoughts:

These are challenging times. We struggle to maintain a semblance of normalcy in our lives as a pandemic not seen in our lifetimes ravages our country, our state, our communities and our system. The COVID-19 pandemic has cost us friends, family and colleagues. It has also brought us together as a field. Out of necessity, we are collaborating on the bulk purchase of PPE to distribute to those that need it most. We are sharing best practices, useful tips, and horror stories in an effort to bring the field together to fight this crisis. We admire and commend the challenges you face hour-by-hour, day-by-day, to run your agencies, support the incredible, hardworking and oft-unappreciated staff, that deliver supports and services to individuals and their families every single day. We are better because of these

challenges. We are New Yorkers. As Governor Cuomo says, we are family. As family we support each other. We support our workers; we support the people we have the duty to serve, people who are vulnerable, people who need our kindness, protection, and guidance every single day. We deliver high quality services and supports to an expanding population of over 140,000 New Yorkers who depend upon us and trust us.



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