

MEETING NOTES

OPWDD PROVIDER ASSOCIATION (PA) MEETING

Monday, March 21, 2016

10:00 a.m. – 2:30 p.m.

Conference Room 4B -- 4th floor

44 Holland Avenue, Albany, NY 12229

OPWDD Attendees: Acting Commissioner Kerry Delaney; Helene DeSanto; Abiba Kindo; JoAnn Lamphere; Kate Marlay; Kevin Valenichis; Roger Bearden; Laura Rosenthal; Jill Pettinger; Sally Berry; Megan O'Connor; Ceylane Meyers-Ruff; Allison McCarthy; Kate Bishop; Joanne Howard; Pat Sarli; Neil Mitchell; Donna Cater (DOH); and Maryann Riviello.

Provider Association (PA) Attendees: Nick Cappoletti (OPWDD Advisory Council – by phone); Phil Catchpole (Life Song, Inc.); Mike Alvaro for Susan Constantino (CP of NYS, Inc.); Ann Hardiman (NYSACRA); Rhonda Frederick (DDAWNY – via videoconference); John Kemmer (NYSARC); Ron Little (OPWDD Compass Agencies – by phone); Edie Mesick (UJA Federation – by phone); Gary Milford (Learning Disability Association of New York State); Michael Lawler (NYS Catholic Conference); Anne Ogden (Catholic Charities Disability Services); Peter Pierri (Interagency Council of MR & DD Agencies); Seth Stein (Alliance of Long Island Agencies for Persons with Developmental Disabilities – via videoconference); Karen Thayer (ILCs); Steve Vernikoff (Advance of Greater NY); Barbara Wale (Executive Directors Association); and Yvette Watts (NYS Association of Emerging & Multicultural Providers, Inc.).

Commissioner's Welcome and Update

Acting Commissioner Kerry Delaney welcomed PA members and OPWDD leadership staff to the monthly meeting and updated the group on several key issues.

- *Transportation Panel (TP):* Report and recommendations (61) were released in mid-February. A detailed implementation plan will be released on the OPWDD website over the next several months. TP members will be updated on progress in April. An enhanced communication tool is also in the pipeline.
- *2016-17 State Budget:* Budget discussions are underway. Minimum wage increase is being actively negotiated.
- *FIDA:* Kate Marlay will provide a detailed briefing later in today's meeting. The Office of the State Comptroller signed the FIDA contract two weeks ago. OPWDD is looking forward to the impact of this initiative on care coordination.

Open Discussion Items

- *Medical Marijuana Update*
 - PA Issue:
 - OPWDD policy on the use of medical marijuana – some of our individuals are beginning to have medical marijuana prescribed for a series of severe illnesses. Providers are being told they cannot be consumed in OPWDD certified locations. Can OPWDD clarify its policy on this issue? If it is not a Medicaid reimbursed expense, how will it be funded?
 - OPWDD Response:
 - The New York State Department of Health (DOH) launched the State's Medical Marijuana Program on January 7 as scheduled --- 18 months after Governor Cuomo signed the

Compassionate Care Act. The program makes approved forms of medical marijuana, which has been shown to help alleviate pain and enhance the quality of life for individuals suffering from certain diseases, available with a physician's certification at designated dispensaries across New York State.

- The program provides access to medical marijuana to certified patients suffering from cancer, HIV/AIDS, ALS (Lou Gehrig's disease), Parkinson's disease, multiple sclerosis, intractable spasticity caused by damage to the nervous tissue of the spinal cord, epilepsy, inflammatory bowel disease, neuropathies and Huntington's disease.
 - Over 150 doctors from across the State have already registered for the program and can certify their patients, if clinically appropriate for their qualifying condition consistent with the DOH's guidance and regulations.
 - In order to obtain medical marijuana, a patient must receive a DOH Medical Marijuana Program certification from a registered physician. The patient must then access DOH's online Patient Registration System to apply for a registry identification card. Additional information regarding patient registration can be found at: http://www.health.ny.gov/regulations/medical_marijuana/patients/
 - To apply for a registry card, certified patients will need: a valid DOH Medical Marijuana Program certification form issued and signed by a registered practitioner, photographic identification, documentation of his or her temporary or permanent New York State residency, and designated caregiver information, if applicable. A patient who is under the age of eighteen or who is otherwise **incapable of consenting** must apply through a proxy.
 - Patients with valid registry identification cards are then eligible to purchase medical marijuana from one of the dispensing locations across the State. DOH selected five Registered Organizations on July 31, 2015 to grow marijuana and manufacture it into approved forms. Each Registered Organization operates a manufacturing facility and four dispensing facilities.
 - Additional information on New York's Medical Marijuana program can be found here: http://www.health.ny.gov/regulations/medical_marijuana/
 - OPWDD is in the process of developing policy guidance on the use of medical marijuana in OPWDD operated or certified settings. We have been in consultation with the DOH Bureau of Narcotic Enforcement (DOH BNE) regarding storage requirements for medical marijuana, and have also submitted multiple questions to the SED Office of Professions to determine the role of RN's and LPN's, and to determine if staff who are certified to pass medications can administer medical marijuana (in other words, can this task be delegated by an RN to a DSP). We are still awaiting guidance from SED on these issues.
 - Maryann Riviello will forward a copy of OPWDD's draft FAQ on the Compassionate Care Act to PA members.
- *Payments to Fiscal Intermediaries*
 - PA Issue: We would like an update on the status of the amount of payments to Fiscal Intermediaries (FIs) for administrative functions.
 - OPWDD Response: OPWDD gathered data from all FIs and conducted an analysis that specifically looked at the costs of the FI service against the revenue drawn down through the existing FI fees.

- The analysis was completed on an abbreviated time period and was not based on certified CFR data.
 - There is a great deal of variation in the data and some of the information shared does not make any sense. As a result, OPWDD staff has been reviewing data from the certified CFRs to ascertain costs and adequacy of revenue; certified CFR data are showing less variation.
 - The analysis is focusing on cost. OPWDD recognizes, based on discussions with stakeholders and particularly FIs, that it also must consider program design and the requirements driving the costs as an area that is a significant variable.
 - It appears that there is a “paper deficit” resulting from serving individuals with complex needs. PA members suggested that OPWDD should meet with FI agencies as the issue impacts providers differently. It was stressed how important it is to be flexible and incentivize self-direction.
 - As OPWDD looks to address the TP priority recommendations, a review of the FI model and related cost issues will be further explored. A more detailed update will be provided at the April PA meeting.
- *Background Checks for Volunteers*
 - *PA Issue:* Providers would like OPWDD to clarify its policy on volunteers and natural supports. Under what circumstances do they need background checks and when do they not?
 - *OPWDD Response:*
 - Natural supports (such as family members, co-workers, friends, people who are in the community) are not required to have background checks.
 - Volunteers are required to have background checks when they have regular and substantial unsupervised contact with people receiving services.
 - 633.9 (glossary) defines volunteers as someone who applies to and is accepted by an agency to participate, under the supervision of agency staff or mgmt., in activities with or for the benefit of people receiving services operated, certified, authorized, approved or funded through contract by OPWDD and which he/she receives no salary or remuneration.

Kate Bishop has been working with a stakeholder group to provide further guidance on this issue. A guidance document will be issued shortly and help clarify the situation. The draft will be shared with PA members for input prior to it being issued. The issue dovetails nicely with themes included in person-centered approaches and new HCBS settings rules.

Medicaid Transportation Vendor Enrollment

A DOH/OPWDD stakeholder work group has been meeting since early February to resolve this issue regarding statutory and regulatory changes that necessitate the enrollment for Medicaid transportation providers. Considerable progress has been made, to date, on details such as what transportation providers must register, age restrictions on vehicles, as well as how to monitor compliance, insurance and documentation. OPWDD will continue to discuss next steps with DOH and keep PA members updated.

Justice Center Update

PA members submitted questions to Jay Kiyonaga, Executive Director of the Justice Center, prior to the meeting. He offered the following insight and comments:

- *Transportation:* It is important to raise the bar by tracking van safety and increase provider accountability. The Justice Center investigates numerous incidents that occur in agency vehicles with a number of allegations substantiated. It is also critical to consider travel patterns and the level of licensing for van drivers. Technology options may be able to assist with overall vehicle safety.
- *Case Closure:* This has been a top priority for the Justice Center. While improvement has been made on closing 10,000 to 12,000 cases per year, the Justice Center continues to focus on this priority. Approximately 30 jobs have been added to focus on investigations and case closures. PA members stated that interviews don't always get scheduled right away which has a negative impact when staff remain on administrative leave for prolonged periods of time.. Resources have been reallocated downstate where prior open case ratios were too high. An average of 60 days (or less) is a target goal. The Justice Center also has sought to delegate cases back to providers more quickly. PA members were encouraged to submit specific cases numbers to Mr. Kiyonaga on problematic case closures. He can return to a future PA monthly meeting in several months and provide an update.
- *Status Reports on Website:* Efforts are underway to enhance the Justice Center's website capabilities with a goal of more robust reporting. In April, major changes to the case management system will move toward the internal processing of new data elements and more frequent status updates.
- *Law Enforcement Training:* 191 police officers have been trained since September 2015. The Justice Center is trying to reach out to new recruits and blend its curriculum into their regular police training. PA members were encouraged to relay case numbers to Mr. Kiyonaga on any specific issues with interrogations and training issues.
- *Conduct between Consumers:* OPWDD hopes to issue updated guidance based on the work of a stakeholder group.
- *Substantial Diminution Regulations for Psychiatric Reviews:* Clearer guidance is needed. A final document will be available shortly.
- *State Exclusion List:* 221 people are on the State Exclusion List (115 permanent and 106 pending).
- *Criminal Cases:* There are 102 closed criminal cases. Of these, 39 involve state-operated facilities; 63 involve voluntary-operated agencies; 13 were dismissed; 21 were violations; 45 convictions; 23 adjourned in contemplation of dismissal. Most convictions involved felony endangerment, disorderly conduct and unlawful imprisonment. There were arrests and convictions in all systems under the Justice Center's jurisdiction. In some cases, families don't want to have their loved ones testify which presents challenges.

PA members were encouraged to communicate with regional chiefs regarding specific cases. They need the specific case number rather than anecdotal concerns. Mr. Kiyonaga will return in three to four months and provide a walk-through of the data on the Justice Center website.

Rate Transformation Update

- *General Update*
 - 7/1/15 respite and prevocational rates revisions have gone out in eMedNY. Some providers will have concerns regarding property as property reimbursement was removed from rates in circumstances in which the provider did not have a PPA to properly substantiate the property reimbursement. About 15 providers were contacted over a year ago and notified that they had to get a PPA if they didn't have one.
 - 7/1/14 rates have been loaded for vacancy and retainer days.
 - 7/1/14 through 6/30/15 rates will be loaded this week for all vacancy and retainer days.

- 7/1/15 IRA and day habilitation rates will undergo minor revisions next week. 1/1/15 and 7/1/15 property and lease indexes will be included.
 - 1/1/16 property rates will be loaded next followed by 7/1/16 transportation and day habilitation rates.
 - PA members were encouraged to review rates sheet units for 7/1/16 rates and follow-up with the OPWDD Budget Office.
 - Day treatment rates were updated. No rate transformation involved – bound by old regulations and State Plan for reimbursement.
- Auspice Change Policy Clarification
- PA Issue: OPWDD's policy states that "the higher of methodology will continue until the CFRs submitted by the takeover agency include cost data fully supporting the takeover programs. However, recent OPWDD practice (FEGS) is different from that policy. PA members would like to discuss the discrepancy.
 - OPWDD Response:
There was some confusion on the technical aspects of the rate calculation policy in regards to how the higher of methodology would be operationalized. Information was shared with providers involved in the FEGS takeover on March 2, 2015 that provided a detailed explanation of the process, including the fact that during years in which costs for all providers are rebased, the higher of methodology would be applied to the newly calculated rates for both providers. The letter is being revised, and will be shared for further clarification.

Below is a recap of rate methodology talking points from March 2015 for providers who assumed FEGS programs:

- The new provider's reimbursement rate, for the sites formerly operated by FEGS, from the effective date of the assumption of the program from FEGS through 6/30/15, will be reimbursed the **higher** of the rate calculated for FEGS's program or the new provider's program rate in effect on 4/1/15. This rate will include the appropriate 2% salary enhancement for Direct Care and Support which was effective 1/1/15 and the 2% salary enhancement for Direct Care, Support and Clinical effective 4/1/15. The rates to be compared are calculated in accordance with the Rate Transformation regulations which includes the use of the year 1 transition.
- Beginning 7/1/15 DOH will recalculate rates for all providers(including FEGS) in accordance with the Rate Transformation regulations, which includes rebasing using the 12/13 and calendar year 2013 CFR's. The year 2 transition will be utilized and again the comparison of the new providers rate and the newly calculated FEGS rate will be done. The new provider's reimbursement rate for the sites formerly operated by FEGS will be reimbursed the higher of the rebased rate for FEGS's program or the new provider's rebased program rate. Rates will not be blended, the new providers will be provided with instructions on how billing will occur.
- Beginning 7/1/16, DOH will recalculate rates for all providers (including FEGS) in accordance with the Rate Transformation regulations, which does not include rebasing. The year 3 transition will be utilized and again the comparison of the new providers rate and the newly calculated FEGS rate will be done. The new provider's reimbursement rate for the sites formerly operated by FEGS will be reimbursed the higher of the recalculated rate for FEGS's program or the takeover provider's

recalculated program rate. Rates will not be blended, the new providers will be provided with instructions on how billing will occur.

- Beginning 7/1/17, DOH will recalculate rates for all providers in accordance with the Rate Transformation regulations, which includes rebasing using the 14/15 and calendar year 2015 CFR's. OPWDD will require the new provider to submit their 15/16 and calendar year 2016 CFR in a timely manner in order for DOH to review the differences in CFR costs prior to, and subsequent to, the inclusion of the former FECS programs. Rates will not be blended, the new providers will be provided with instructions on how billing will occur.
- Once the July 1, 2015 rebasing occurs, we will work with the new providers to assess its impact on their ability to adequately support the level of services needed to serve the individuals who have transitioned from programs formerly operated by FECS.

Additional FECS takeover issues discussed:

- ✓ Property will be handled on a provider by provider basis, as all situations are distinct.
- ✓ Advances will be considered as needed, if cash flow concerns are raised.
- ✓ Start-up Funds are: \$5,100 for Supportive IRAs per bed; \$5,800 for Supervised IRAs per bed; \$675 per individual for Day Hab.

▪ Respite Expenses for "Outliers"

- *PA Issue:* What will the status be of those agencies whose respite expenses are considered "outliers?"
- *OPWDD Response:*
 - A draft letter will be sent out this week indicating that providers will continue to be reimbursed, through state funds, for the difference between the provider's rate and the associated cap for 7/1/16 respite rates. This basically holds providers harmless and will ensure that the currently implemented rate will be maintained.
 - With respect to outliers, DOH and OPWDD will continue to work on this issue with a subset of providers and DDROs.
 - Phase II of the People First Community Service Fund, which will be applicable to qualified respite providers, is in development. Similar to Phase I, Phase II includes a mechanism to allow providers to financially transition to rate transformation.
 - The current timetable is for the Respite rate methodology revision to be implemented on 7/1/16. CMS would like all rate transformation to be fully transitioned by 7/1/17. Every program will need to stand alone financially. This may require some nonprofit agency boards to make tough decisions.
 - The respite work group is working with regional offices regarding greater responsiveness in the respite reimbursement system. It was noted that the shift from an agency specific rate to a regional fee will need some flexibility. The standard 24-hour cap is a critical component of this transition; particularly, in preserving the quality of respite programs. PA members felt that CMS and NYS policy makers need to bear in mind that respite services are fundamentally unique and have many hidden costs. This issue will be discussed further at this week's Wednesday morning conference call.

- People First Community Fund Update
 - Kevin Valenichis is working on an alternative to People First Community Service Funds for ICF/IDDs as part of the new financial plan.
 - Applications for Phase II of the program are due on 4/30/16.
- Penalties for Late Submission of Consolidated Fiscal Reports (CFRs)
 - As part of the 07 Waiver Amendment negotiations, regulations have been proposed that will assess additional penalties for delinquent CFR submissions. A number of providers will be impacted by the proposed regulation change. In specified circumstances, OPWDD will not receive FFP for a waiver program when the CFR is delinquent for that provider. Examples of the assessment of the new 50 percent penalty will be separately transmitted to providers.
 - Commencing with the 7/1/15 – 6/30/16 CFR period, providers will no longer have to ask for a filing extension. The CFR due date of June 1, for the calendar filers and the due date of December 1 for the fiscal filers will incorporate the 30-day extension period.

Approved Increases to Capital Thresholds

Capital thresholds have been revised and increased. Various indices were used to calculate the increases, including the average of 19% and 20% for new acquisition/rehab and 17% for leases. The State Division of the Budget has approved the new thresholds effective 2/16/16 for PPAs processed since then. This is the first increase since 2008. It is anticipated that the numbers will be revisited within the next year or on a biannual basis. The increases do not apply to ISS leases.

IPSIDD and Article 16 Update

- PA Issue: PA members would like to review the effective dates of IPSIDD and when rates to IRA and Day Habilitation providers will be changed as a result of the clinic changes.
- OPWDD Response:
 - After April 1, 2016, Article 16 offsite clinic services and certain therapies funded within current habilitation rates must transition to either the Independent Practitioner Services for Developmental Disabilities (IPSIDD) State Plan option or to an Article 16 clinic main or satellite location. With the approval of a State Plan Amendment, IPSIDD will provide for the delivery of clinic therapies such as physical, occupational, and speech therapy, social work, and psychology services that may be provided in certain locations, including OPWDD certified residential and day programs.
 - Enrolled Practitioners can submit under existing fee schedule beginning on April 1, 2016.
 - However, planned April 1, 2016 changes for billing of IPSIDD services will be delayed until June 1, 2016. After June 1, 2016, claims made during this interim period (from April 1 through June 1) will be reprocessed at the updated fee levels. In other words, DOH will make behind the scenes adjustments once billing changes are made to correct the payments made for enrolled practitioners.
 - New group practice or clinicians will require a separate/unique identity for Medicaid and in some cases Medicare (Medicare enrollment is required for Physical Therapists and Licensed Clinical Social Workers prior to Medicaid enrollment. This requirement applies to Group Practices that include these practitioners as well).
 - Any group or individual practitioner who has not already enrolled in Medicaid or Medicare should do so immediately. DOH is willing to enroll affected group practices and clinicians affective April 1, 2016. However, the Medicaid enrollment date cannot precede Medicare enrollment, if Medicare enrollment is required.
 - According to Kate Marlay, a letter detailing this process was shared with provider agencies this morning. OPWDD will follow-up on an issue involving retroactive rates for Supervised

IRA and Day Habilitation rates as they will be amended to remove direct therapy funding from the HCBS waiver rates.

FIDA Update

Alison McCarthy provided an update on the FIDA-IDD which brings health care and long-term supports for individuals with developmental disabilities under a single umbrella, will begin coordinating care on April 1, 2016. Partners Health Plan (PHP) has developed a robust network of providers in a nine-county downstate area. OPWDD and the plan are conducting education and outreach throughout the month of March so that those eligible can make informed decisions on this voluntary option. Sessions have been held in Nassau, Suffolk, NYC and Westchester. Enrollment is beginning now and people have begun the application process.

The first mailings are beginning, and will continue for the next six-months. Over the course of the six-months period, letters will be sent to the eligible population. There are 20,000 people who meet the eligibility criteria and live in the demonstration area. In addition, ICAN has hired a person to head up support for individuals with IDD and is beginning operation. ICAN is the independent Ombudsman service that supports people who receive services through managed care.

It is estimated that approximately 1,000 individuals will enroll in FIDA during the first year with a total projection of 5,000 during the demonstration period.

Wrap-up

The next meeting of the Provider Association will be held on Monday, April 18, 2016 @ 10am @ 44 Holland Avenue in Albany.