

MEETING NOTES
OPWDD PROVIDER ASSOCIATION (PA) MEETING
Monday, December 14, 2015
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; Roger Bearden; Abiba Kindo; JoAnn Lamphere; Kate Marlay; Kevin Valenichis; Joanne Howard; Sally Berry; Megan O'Connor; Tammie Devine; Dixie Yonkers; Don Hughes; Ellie Smith; Ceylane Meyers-Ruff; Maryellen Moeser; Jill Pettinger; Dianne Henk; Neil Mitchell; Susan Prendergast; and Maryann Riviello.

Provider Association (PA) Attendees: Phil Catchpole (Lifesong, Inc.); Tina Chirico (Financial Managers Association); Susan Constantino (CP of NYS, Inc.); Michael Seereiter (NYSRA); Ann Hardiman (NYSACRA); Rhonda Frederick (DDAWNY); John Kemmer (NYSARC); Ron Little (OPWDD Compass Agencies – by phone); Edie Mesick (UJA Federation); 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 – by phone); 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.

- *Transformation Panel Update:* It is anticipated that OPWDD will submit its Transformation Panel Report to the Legislature by its mid-February due date. The Panel will meet this week to discuss revisions to the draft recommendations from the public listening sessions. OPWDD expects to release the draft by January 1 for public review and comment. The Panel will then meet again in January prior to the issuance of the final report. The Residential Request List, Integrated Employment and Front Door reports are also due to the Legislature in February.

Update on ICF Conversions and HCBS Settings Compliance

Dixie Yonkers provided an update on the numerical goals met in 2015. Overall, 79 conversion proposals were submitted for approval, transferring 692 individuals living in ICFs to IRAs. Of these, 61 ICFs were approved for conversion involving 531 residents. Eighteen proposals remain under review. A 9/30/15 webinar featuring nuts and bolts information about conversion processes and procedures was cancelled and rescheduled for early February 2016.

Additional points mentioned included:

- Starting 1/1/16, all ICF conversion proposals that are not fully compliant with the HCBS Settings Rule upon opening (conversion), will need to submit a Compliance Work Plan. The Plan will provide a timeline for the activities the provider will undertake to come into full compliance.
- Steps should be taken to come into full compliance as soon as possible, but no later than 10/1/18.
- The Work Plan must be reviewed and approved by OPWDD prior to the conversion moving forward. Central Office staff will review the plans.

- Additionally, the ICF providers that convert ICFs to IRAs may opt for early Heightened Scrutiny review of their converted setting. This review will occur after the site is converted to allow for the site visit and collection of needed evidence/documentation.

Safe Patient Handling Act Update

- *PA Issue: We believe there are differing opinions on its applicability to voluntary providers. We'd like to discuss this further.*
- **OPWDD Response:** A meeting was held on 12/11/15 with DOH regarding the issue of reasonable application to OPWDD voluntary agencies. Apparently, the intent when the law was written was to include schools and developmental centers but carve out small group homes. OPWDD will put forward a reasonable argument about its position on the applicability of the Act with DOH via an upcoming conference call and keep PA members updated.

Policy Document regarding MSC Agency Selection

Abiba Kindo updated PA members on the elements of a new policy document regarding Medicaid Service Coordinator (MSC) Agency Selection.

- Developing and engaging a circle of support with an individual receiving services is a foundational element to strong person-centered practices. All possible efforts should be made to involve family members or people desired by the individual receiving services in person-centered service planning.
- In circumstances when individuals transitioning from an ICF to HCBS waiver supports are not able to make decisions on their own behalf and do not have a person who actively makes decisions for them, the clinical planning team, or ICF provider designee, can choose the MSC provider agency.
- In these circumstances, the chosen MSC vendor should not be the provider of residential habilitation services for the individual unless there is a clear justification. In the event that the selected MSC provider also delivers residential habilitation services to the individual, the provider must complete the "Same MSC and Residential Habilitation Provider Request Form," and submit it to the DDRO/ICF Transition Liaison for review and approval by the Deputy Director. The DDRO will return a signed copy of the form to the provider within 10 business days of submission.
- Conflict free case management is the goal of the policy change. Some PA members disagreed with the idea that automatic conflict inherently exists when MSC and residential habilitation services are received from the same provider. They feel that individuals sometimes don't always receive quality services from someone who is independent.

Rate Transformation Update

- Retroactive property in ICF rates was handled the same way as IRA rates. ICF 7/1/15 rates were put into the system last week. Ready for rate cycle 2001. Providers have 90 days to review for calculation errors or related issues. Retroactive property was also put into this rate. The property was not put in as a prior rate so no lump sum checks will be issued. PA members expressed concern about this turn of events (lack of property payment inclusion in a prior versus a current rate) as many agencies are owed back funding and had anticipated a lump sum payment not a payment of retroactive property over a year.
- For ICF rates, the DOH survey yielded a 40% participation rate. 20% of these recipients said they'd send something in. DOH will stop payment of day services to ICF providers starting with rate cycle 2001 (effective 1/1/15). A letter will be sent that explains all of this to providers.
- In-house day programming rates will be loaded this week. This will create a funding stream for providers effective 1/1/15. The rate code will be added this week for rate cycle 2001.

- DOH has not turned on the recoupment. It will be turned on for the 2002 or 2003 rate cycle. DOH is working on kinks involving how to get \$\$\$ back from providers as aggressively as possible. It is still not clear how it will work. DOH will look at a pecking order of funding that providers owe to various entities before making a final decision. DOH doesn't want it to be devastating for providers (as the total amount owed is \$189 million).
- One idea is to spread the AR balance over all provider IDs to get a better balance. Another idea is to put all three rate segments in the same rate cycle. The first letter will not specify exactly what will happen but a follow up letter will better explain things.
- Providers will be encouraged to contact FMG on how to return funding. For example, in the 2001 cycle, the AR balance shows up. The 2002 and 2003 cycles will manually spread the AR value. It's estimated that this will amount to 10% to 18% among all provider IDs.
- DOH and providers have five weeks to get this worked out with FMG.

- Respite Update:
 - PA Issue: *During rate setting meetings, we have had several discussions regarding the diversity of services that are currently funded by respite rates. It has been said that some of these services could or should be funded through different means. We would like to have a discussion about what respite should be and then discuss how we can change our system so respite programs which do not fit that description can modify or change over time to meet the new expectation.*
 - OPWDD Response: OPWDD will establish a policy group (separate from the Respite Fiscal Workgroup which has already met three times) to discuss outlier issues outside the scope of reimbursement (i.e., crisis respite and need for transportation). Draft respite fees will be shared with the workgroup shortly prior to being circulated for public comment.

- General Rate Update Issues:
 - PA Issue: *Has a determination been made regarding the methodology for reducing IRA rates for services that will no longer be provided in those locations (speech therapy, occupational therapy, physical therapy, psychotherapy)? When will providers receive their IRA rate sheets? When will 10/1/15 IRA rates be amended for registered nursing services, nutrition and behavior therapy?*
 - OPWDD Response: DOH will provide a timetable.

- Action Items:
 - Establish a work group to discuss provider revenue lost to vacancy/leave days. PA members will email Maryann Riviello to express their desire to participate.
 - PA members want DOH/OPWDD to share dissatisfaction with CMS about the occupancy factor in day habilitation programs. Internal discussions will occur first and the topic will be placed on a future Provider Association agenda.
 - OPWDD fiscal staff to look at CFR rules for reporting respite rates (i.e., currently, transportation is not getting reported separately but within context of other services).

Electronic Fire Drill Reporting

Don Hughes used a Power Point presentation to provide a high level overview of the electronic fire drill reporting pilot. He advised PA members that the program, currently being tested in Central New York with Region 2 scheduled next for rollout, will be expanded statewide moving forward. He told PA members that their service providers should think about how they will accomplish the data entry of all fire drill reports. The relative advantages of electronic reporting were highlighted, particularly its merits as a helpful management tool and the fact that providers will be able to obtain their own information for their own programs. A voluntary agency is being sought to pilot the system at a future date to be determined – PA members were asked to forward the names of interested agencies.

Program Safety and Security

Richard Abdou, OPWDD's Safety Coordinator, discussed emergency preparedness with PA members, especially in light of recent events involving gun violence San Bernardino CA as well as threats of such activity. Several federal guidance documents are available for informational purposes from the U.S. Department of Homeland Security and Federal Emergency Management Administration (FEMA).

Clinical Services Implementation Update

- *PA Issue: Has the date for allowance of off-site Article 16 services been extended to April 1? If not, how prepared is the field to continue these services three weeks from now?*
- **OPWDD Response:** Yes, a letter was send on Friday, 12/11/15 announcing the delay in implementation. Despite CMS' rejection of OPWDD's second written request for a delay in implementation from 1/1/16 until 4/1/16, the NYS Division of the Budget (DOB) approved the funds to cover the rates for this time period. Services will be billed forward and then adjusted in March. OPWDD will continue to highlight priorities and work on the additional challenges of implementation.

- *PA Issue: What is the status of the Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD) rates?*
- **OPWDD Response:** A small group of stakeholders have been reviewing a package of materials that include draft IPSIDD fees. The fees OPWDD has proposed to use are Medicare fees developed by CMS. At least one reviewers feels these are too low.

Kate Marlay referenced a Power Point presentation prepared by DOH on IPSIDD rates; Maryann Riviello will email a copy to PA members. The ISPIDD rate will carve out the State Plan services that are delivered in HCBS Waiver Day Habilitation clinics and IRA programs and offsite Article 16 clinics. The titles slated to be part of preventative services are occupational therapy, physical therapy, speech language pathology and psychology. The rates will not contain capital. The current fees are not set in stone; they are subject to the upper payment limit based on Medicare rates. Next steps include feedback on draft rates and finalizing fees. OPWDD will work with DOH on the evolution request to get billing requirements in place. PA members requested an accommodation to use therapist to deliver clinical practice services without having to set up separate corporate structures due to costly overhead costs. DOH and OPWDD will meet internally and then set up a meeting with PA members on this issue.

- *PA Issue: Can ABSS services be provided in IPSIDD? If not, can we discuss what alternatives might be available?*
- **OPWDD Response:** Yes, ABSS services can be delivered in IPSIDD. The ABSS services are billed under the NPI of the licensed psychologist who supervises the ABSS. This provision is described in regulations that were published for comment. The adoption of these regulations have been delayed and public comment is now being assessed.

Incident Management Update

Megan O'Connor and Tammie Devine used a Power Point presentation to update PA members on the following topics:

- Changes in provisions in NYCRR Part 624 effective 1/1/16.
- Investigation Review Training.
- Follow up and closure of reporting significant incidents. PA members were encourage to talk to their members about resolving open incidents. Letters will be sent to executive directors in January 2016 about the number of open cases. Megan O'Connor will share the master list with PA members.

- Corrective action plans for reportable abuse/neglect incidents under the authority of the Justice Center.
- Registered providers and background checks. The Justice Center has informed OPWDD that there are some registered providers that are not completing all required background checks. OPWDD is working with the Justice Center to fast track a plan with involved parties to resolve the issue. Megan O'Connor will share a master list of registered providers with incomplete background checks with PA members.

Maryann Riviello will circulate the Power Point to PA members.

Aging Out Update

Abiba Kindo introduced Fechner Stecker and explained his new role overseeing special populations and providing technical assistance for aging out initiatives. He is also the point person to resolve issues and better address concerns with CRPs and 853 schools. A draft policy document will connect schools to the planning process. OPWDD is also working with the State Education Department on systemic difficulties associated with aging out and identifying areas of progress. Ongoing meetings are being held. Abiba will serve as the contact person for the CRP Centers for Excellence project.

Nurse Practice Act (NPA) Update

- *PA Issue:* During last month's meeting, we discussed the obstacles to finalizing the MOU with SED. We would like an updated discussion on this and how some of these issues will impact the upcoming discussion with providers regarding CONs related to these services. Additionally, we would like insight on what decisions have been reached about practices/policies related to this issue (i.e., storage, transportation, reimbursement for staff training and RN oversight, etc.).
- *OPWDD Response:* According to Roger Bearden, there has been no further response from SED regarding its interpretation of the MOU, particularly the definition of community-delegated nursing services in a "private home." Apparently, under SED's interpretation of the law, individuals who reside in non-certified settings are eligible to have medication administered in day service settings while those who live in certified settings are not. The hope is that once the system is put in place, a reasonable interpretation of its applicability will fall into place.
- As part of the NPA expansion, all previously uncertified services will become certified. In order to facilitate this process, all agencies with current provider agreements will be converted to an operating certificate. Agencies will be given the option to apply to provide community nursing services simultaneous with the conversion of the provider agreement to operating certificates. Changes have been made to the CON application to accommodate both the certification of waiver services and the application to provide community nursing services.
- A letter detailing a planned 1/12/16 webinar will be sent to all providers. It will include specific instructions and information on how to convert the provider agreement into an operating certificate as well as explain how to apply to provide community nursing services.
- OPWDD will further discuss the use of possible reimbursement of training costs and report back to PA members.

SEMP Issues and Workshop Guidance Update

- *PA Issue:* (1) What is the status of the decision regarding possibly retaining a SEMP contingency for agencies that can run deficits due to the new rate methodology?
- *OPWDD Response:* There needs to be an internal OPWDD discussion on this issue. It does not appear that there are any SEMP contingency funds available for this purpose. All SEMP funds were folded into the new SEMP rates. There are some providers that incurred losses early on who are now beginning to see a profit. The provider associations were asked to

collect these promising practices and share lessons with their members. Only NYSARC has done this. In addition the SEMP Administrative Memorandum (ADM) will assist in addressing some of these issues.

- *PA Issue: (2) Can OPWDD generate a report regarding the amount of SEMP claims (billings) per provider for the July-October period and compare it to the same period last year to study the impact of the new rates?*
- *OPWDD Response:* Yes this is something that OPWDD can do. Eric Harris would be the point person.

- *PA Issue: (3) What is the status of the amended ADM regarding SEMP?*
- *OPWDD Response:* There is a draft of the revised ADM that will be circulated to OPWDD Leadership by the end of this week. It will probably be issued in January. PA members suggested that due to the data reinstatement of SEMP contingency funds to help providers through the transition, the issue should be revisited at the January PA meeting so that more items are billable.

PA members were advised to keep checking the OPWDD website for the forthcoming sheltered workshop guidance document that incorporated feedback from the Integrated Employment forums. It was mentioned that this draft is clearer and more straightforward; it also correlates to the new HCBS settings rules. PA members were encouraged to continue to submit revisions until the end of the month. The final draft can now be found at:

http://www.opwdd.ny.gov/opwdd_services_supports/employment_for_people_with_disabilities/sheltered-workshop-guidance-now-available

Wrap-up

The next meeting of the Provider Association will be held on Monday, January 25, 2016 @ 10am @ 44 Holland Avenue in Albany.