

**Response to Public Comment on the OPWDD 1915 (c) Comprehensive Home
and Community-Based Services (HCBS) Waiver Renewal Comments**
Received December 23, 2015 through March 4, 2016

On December 23, 2015, OPWDD posted a copy of the 1915 (c) Comprehensive Home and Community-Based Services (HCBS) Waiver Renewal application to the Centers for Medicare and Medicaid Services for public comment. The proposed application describes key changes that would take effect October 1, 2014. These important changes in the Renewal included an update to the Home and Community-Based Services Transition Plan and changes needed to reflect care management provided by the Fully Integrated Duals Advantage Plan for individuals with Intellectual and Developmental Disabilities (FIDA-IDD). The FIDA-IDD is a voluntary managed care opportunity for Individuals with IDD who are eligible for both Medicare and Medicaid and live in a nine-county Downstate area. More Information is available at this link:

http://www.opwdd.ny.gov/opwdd_services_supports/people_first_waiver/care_management/FIDA_IDD. The Renewal included a proposed implementation of a new fee methodology for Respite Services in 2016 and described a multi-year transition process. In addition, the Renewal also proposed a new methodology for providing funding to agencies that are serving people with high staffing needs. This funding would be made available until such time as an agency's own cost reporting reflected the costs of serving this individual.

OPWDD conducted three Web Ex sessions to explain the Waiver Renewal on January 13, 2016; with over 1,200 people registering to participate. During these sessions, OPWDD received over 80 questions on 20 different topics. In addition to the feedback OPWDD received during the Web Ex sessions, OPWDD received submissions from 90 individuals or organizations on the following topics: waiver logistics; waiver access and capacity; Self-Direction; Day, Community, and Residential Habilitation; Respite; Employment services; housing and residential placement; provider guidance; rate setting proposals; Waiver oversight; outside waiver operations; and FIDA-IDD.

The OPWDD 1915 (c) Comprehensive Home and Community-Based (HCBS) Waiver Application can be found on the OPWDD website at the following link:

<http://www.opwdd.ny.gov/node/6344>.

The PowerPoint and audio recordings from the three Web Ex Sessions held on January 13th, 2016 can be found on the HCBS Waiver home page at:

http://www.opwdd.ny.gov/opwdd_services_supports/people_first_waiver/HCBS_waiver_services.

OPWDD Responses to Public Comments Received

WAIVER RENEWAL LOGISTICS

- 1. Several respondents expressed concern over the size of the Waiver Application and stated that the Waiver needs to be more user friendly.**

The structure of the Waiver document is created by the Centers for Medicare and Medicaid (CMS). As such, the New York State (NYS) Office for People With Developmental Disabilities (OPWDD) must adhere to required format and content, which is often technical in nature. OPWDD has posted materials discussed during the three Web Ex sessions held on January 13, 2016, in addition to a Q & A document from the sessions. OPWDD believes that these materials help summarize the waiver application and provide an overview of the proposed changes OPWDD requested of CMS during this Renewal application effective 10/1/2014. The presentation materials are available at:

http://www.opwdd.ny.gov/opwdd_services_supports/people_first_waiver/HCBS_waiver_services.

- 2. Respondents requested clarification on the highlighted text throughout the document.**

OPWDD has highlighted information throughout the Waiver Application to indicate the selection of a check box/circle.

- 3. A reviewer asked about the timeline for submitting this proposed Waiver Renewal to the Centers for Medicare and Medicaid (CMS).**

Since the conclusion of the public comment period, OPWDD has prepared responses to public comments received and evaluated any changes needed in the application. OPWDD is now in the process of formally submitting the Waiver Renewal to CMS. OPWDD hopes to have an approved Waiver Renewal by April 1, 2016 and will keep stakeholders updated as the process of formal submission to CMS continues.

WAIVER ACCESS and CAPACITY

- 1. Several reviewers noted the critical importance of the HCBS Waiver and the supports and services it provides. Respondents encouraged NYS and CMS to work cooperatively to maintain access to critical services funded by the HCBS Waiver.**

OPWDD agrees and will continue to work diligently on the HCBS Waiver application and its implementation to benefit the individuals OPWDD serves.

- 2. Several respondents recommended that OPWDD conduct more educational and outreach sessions for families on a variety of topics including availability and access of Waiver services, aging out transition and the safety of families caring for individuals with complex needs.**

OPWDD will evaluate the current training curriculum for necessary revisions. Local Developmental Disabilities Regional Offices (DDROs) and Central Office conduct multiple trainings on various topics throughout the calendar year. Announcements regarding Central Office training opportunities are posted on the OPWDD website. Additionally, the trainings available at the DDRO level can specifically be found at the following link: http://www.opwdd.ny.gov/welcome-front-door/information_sessions. Various DDRO liaisons can be contacted for information regarding specific situations such as Transition Coordinators and Aging Out Coordinators and DDRO Front Door staff.

- 3. Several reviewers expressed concern regarding the availability of waiver and Medicaid Service Coordination services and service providers. Similarly, some reviewers noted that certain not-for-profit entities offer desired services for individuals with intellectual and developmental services but will not participate in the HCBS Waiver. In these cases, families may be required to pay out-of-pocket for services that would normally be covered under the Waiver.**

NYS makes every effort to ensure the availability of sufficient providers across the OPWDD service system to provide State Plan and HCBS Waiver services to individuals with intellectual and developmental disabilities. While OPWDD cannot require that non-profit entities participate as HCBS Waiver providers, Developmental Disability Regional Offices (DDROs) can assist new organizations with the provider enrollment process. In some cases, DDROs have assisted new organizations to enter into cooperative arrangements with existing service providers thus expanding service offerings in the catchment area. Information regarding provider enrollment is available at:

http://www.opwdd.ny.gov/opwdd_services_supports/service_providers/how_to_become_a_service_provider

In addition, using self-direction with budget authority options (such as community classes) can be funded, further expanding available service options. Community classes must meet the following requirements to be funded:

- 1. The setting and class is open to and attended by the broader community*
- 2. The setting is not certified by OPWDD*
- 3. The setting results in interactions with other participants who do not have an intellectual or developmental disability*
- 4. The class is not being run by OPWDD or provider agency staff who are acting in their official capacities*

4. Several reviewers expressed concern regarding the availability of providers who specialize in NYS' aging population including individuals with dementia and Alzheimer's disease.

OPWDD shares the concern regarding the age-related specialized needs of the people we serve, particularly given that the average age of people served by OPWDD is anticipated to reach 50 by the year 2025. We will continue to work to ensure services are available throughout a person's lifetime and are reaching out to State Office for the Aging staff to build more collaboration. There is information available on the OPWDD website regarding the specialized initiatives to address these needs http://www.opwdd.ny.gov/opwdd_community_connections/aging_information_corner/resources_for_professionals_advocates. In addition, individuals and families can contact the local Developmental Disability Regional Office (DDRO) Aging Coordinator for assistance. The contact information is available at: http://www.opwdd.ny.gov/opwdd_community_connections/aging_information_corner/aging_contact_list_by_ddro.

5. A respondent expressed concern that individuals who live in residential school settings are not eligible for waiver services.

A residential school is considered an institutional setting and, therefore, people residing in residential schools are not eligible for HCBS Waiver enrollment. OPWDD understands that these individuals may still require supports and services and will work with families in several ways to meet the needs of their son or daughter who are placed in a residential school.

- The need for medical insurance coverage can be addressed via Medicaid enrollment. An individual who is certified as disabled and/or blind, and who is expected to be living out of the household for 30 days or longer, may be eligible for Medicaid coverage. In order to pursue Medicaid coverage, an individual would apply for a disability determination and Supplemental Security Income (SSI). Individuals who qualify for SSI benefits are automatically eligible for Medicaid. Local Revenue Support Field Operations (RSFO) offices may be a resource for any guidance that is needed with the Medicaid application.*
- Supports or services required by the student while s/he is at home from the residential school setting may be authorized by the Developmental Disability Regional Office (DDRO) as 100% state-paid services.*

The DDRO will work with families in advance of the student's completion of residential school services to ensure that HCBS Waiver enrollment and services are for the individual to transition back to the community.

- 6. Several respondents expressed concern for the direct support profession and the critical link to quality and availability of services. One respondent stated that OPWDD needs to attract more individuals to the direct support profession through the creation of financial and benefit incentives and provision of training to employees who express interest in assisting those individuals with complex needs. Another respondent recommended the creation of a payment incentive for Direct Support Professionals (DSPs) who complete person-centered planning trainings and excel in implementing those techniques in the field.**

OPWDD received numerous comments regarding the need to enhance the role of DSPs and better support all staff who work with individuals with intellectual and developmental disabilities. OPWDD has made significant strides in enhancing the DSP profession with the establishment of NYS Core Competencies and the adoption of the National Alliance for Direct Support Professionals (NADSP) Code of Ethics. Beginning April 2016, all DSPs in New York State will be evaluated based on these competency standards. Information on the Core Competencies is available at: http://www.opwdd.ny.gov/opwdd_careers_training/training_opportunities/core_competencies.

In addition, OPWDD oversees six Regional Centers for Workforce Transformation, which are virtual centers across the state dedicated to building DSP workforce capacity to reflect the service system transformation goals of person-centered planning, individualized services and community integration. Many free resources for DSPs, provider agencies, self-advocates and families are now available at: www.workforcetransformation.org.

Transformation of the direct support workforce is central to all system transformation efforts. Through the work of the Transformation Panel, OPWDD will continue to pursue strategies to enhance the quality of work for our direct support professionals and other staff and build upon existing work in this area.

- 7. A respondent stated that clarification was needed regarding the year-to-year waiver enrollment figures. The respondent cited the Amendment 07 Waiver Year 5 enrollment number of 79,589 and a memo from December 2015 stating in the final year of this Waiver, OPWDD projects \$6.4b of gross expenditure for 82,000 waiver enrollees.**

The 79,589 figure was an estimate of waiver utilization for waiver year 5 of the existing Waiver Application which ended in 2013-14; this estimate was made in 2009 using the most current information available at that time. For the current Renewal Application, the waiver data available in 2015 was trended over five years, which resulted in an estimate of 82,000 waiver enrollees by the final waiver year of this proposed Waiver (2018-19).

- 8. Several reviewers noted that OPWDD had ‘reserved capacity’ for people leaving Developmental Centers (DCs) and Intermediate Care Facilities (ICFs), but that these numbers did not appear to be sufficient in relation to the OPWDD Transformation Agenda’s ICF Transition Plan. In addition, a recommendation was made to reserve capacity for individuals who are aging out of Residential Schools and the Children’s Residential Program (CRP).**

The reserved capacity level was determined to address both the needs of people transitioning from ICFs to the HCBS Waiver and from other institutional settings. There is always some attrition from the Waiver each year, and the reserve capacity took into account that factor in an effort to balance the transition plan with the needs of individuals entering the waiver from non-certified settings. OPWDD will continue to evaluate the use of reserved capacity and request a future change, if needed.

- 9. A reviewer recommended the elimination of the requirement for a physician to provide a diagnosis for an individual during the reevaluation process because a Qualified Intellectual Disabilities Professional (QIDP) prepares the Level of Care (LOC) document. The reviewer added that the receipt of a diagnosis from a physician is unnecessary and adds time to the reevaluation process.**

For most individuals, the annual LOC redetermination must be reviewed and approved by a QIDP or a physician who is familiar with the participant’s functional level. For individuals who live in a Community Residence (CR), the LOC must be completed by a physician. During the redetermination process, the individual’s most recent psychological evaluation, psychosocial history and medical history are reviewed for accuracy. If questions arise regarding the individual’s LOC during the QIDP’s review, then a physician would be consulted. In order to maintain continuous eligibility for HCBS Waiver enrollment, it is crucial to have current LOC forms. OPWDD is willing to consider streamlining of the LOC process in the future, but cannot make the requested change in this Renewal.

- 10. A reviewer recommended that OPWDD increase its connection with the average family it serves. In addition, the respondent asked how language barriers are addressed for immigrant families.**

OPWDD strives to connect with all stakeholders throughout the OPWDD service system. In regards to language access, OPWDD materials are available in nine different languages to address the various language barriers faced by immigrant families. OPWDD Materials are available in: English, Spanish, Chinese, Russian, Italian, Haitian Creole, Yiddish, Urdu, and Korean. In addition, stakeholders may request a translator or interpreter at any time for any language including American

Sign Language. More information is available at the following link: <http://www.opwdd.ny.gov/resources/language-access>. Individuals and family members who would like to receive regular updates from OPWDD, including newsletters, messages from the Acting Commissioner and important services updates, can sign up on the OPWDD website at: <http://www.opwdd.ny.gov/opwdd-email-distribution-list>.

- 11. A respondent stated that the waiver renewal lacks viable non-medical transportation options that are critical for accessing services, in particular in rural and suburban areas. Also, individuals require transportation to pursue employment and enhance their independence and integration in the community. The respondent recommended the addition of more travel training and supports.**

OPWDD agrees that transportation is critical to accessing services. Currently, Supported Employment (SEMP) reimbursement rates include the costs of providing travel training. OPWDD has several initiatives underway to expand transportation options and these may result in future changes to the waiver. As part of the Commissioner's Transformation Panel, staff are now developing a work plan to explore ways to use "on demand" transportation and to expand paratransit in collaboration with the Department of Transportation (DOT). Also, the 2015-16 enacted State budget authorized OPWDD to fund an independent study of the mobility and transportation needs of people with disabilities. OPWDD has engaged with a contractor and work is now underway.

HCBS SETTINGS TRANSITION PLAN

- 1. A respondent asked which settings will be affected by the Federal HCBS Settings rule. Another respondent expressed concern regarding the federal Home and Community Based Settings Transition and stated that inclusion cannot be forced onto the developmental disabilities community. Additionally, one respondent expressed concern regarding the timeline of HCBS Settings compliance and recommended that OPWDD request more time to complete the transition.**

The HCBS Settings requirements apply to all settings in which HCBS Waiver services are delivered with an implementation date of no later than March 2019. These settings include: IRAs, CRs (including IRAs and CRs that are apartments), Family Care Homes, all Day Habilitation sites, Day Training and Prevocational sites and any other site where HCBS waiver services are delivered. OPWDD will work with Stakeholders to implement the new federal requirements in a manner that will support peoples' needs and support preferences and ensure the continuation of federal funding for critical services. The deadline of March 2019 is a federal requirement which all states, including NYS, must meet.

The intent of the federal regulations is to ensure that settings in which waiver services are delivered support full access to the broader community for all people served. Inclusion should not be forced, and there is no level of community interaction that is required, however, it is expected that the person-centered planning process will be used to assess people's interests and priorities for community participation and find ways to support and facilitate community participation that is of interest to each person. The process should include exposure and information about available opportunities so that the provider can assess peoples' interest and reactions and work to support and facilitate these experiences.

- 2. A reviewer expressed concern regarding Family Care Homes being private homes and suggested that Family Care Homes be included in the HCBS Settings regulation compliance.**

By March 2019, HCBS Settings requirements will apply to all settings in which HCBS Waiver services are delivered, including Family Care Homes. We recognize that revisions to the OPWDD regulations, as well as licensing and certification requirements for ongoing monitoring, including within Family Care, may be necessary for full compliance with, and enforcement of the HCBS Settings requirements.

- 3. A reviewer expressed concern that the detailed OPWDD Transition Plan would become less comprehensive as it is integrated in the State Wide Transition Plan.**

The OPWDD Transition plan will be integrated into the larger NYS HCBS Settings Transition Plan, but will retain the unique details associated with the needs of the OPWDD system. In addition, OPWDD will continue to communicate with stakeholders on our transition plan activities that are unique to OPWDD's service system.

GRIEVANCE AND APPEALS

- 1. A respondent asked for clarification regarding the appeals process for individuals and families when a particular HCBS Waiver service request is not authorized.**

Guidance regarding the grievance and appeals process for individuals in the OPWDD system, can be found in Appendix F of the HCBS Waiver Renewal Application, beginning on page 155 of the on-line document. Appendix F-1 describes the process for notifying an individual of the right to request a Fair Hearing to appeal decisions related to the HCBS Waiver. Appendix F-2 describes the grievance process available when an individual objects to the way a provider is delivering an approved HCBS waiver service. OPWDD is updating the notifications sent to individuals seeking service authorization and service amendments through the Front Door.

In addition, the Federal definition of when/how to request a Fair Hearing is described in the Code of Federal Regulations Title 42 Part 431 Subpart E available at the following link:

<http://www.ecfr.gov/cgi-bin/text-idx?SID=b7ecbdfd3075168cb4b17c93d0bfe968&mc=true&node=pt42.4.431&rgn=div5#sp42.4.431.e>

- 2. Several reviewers noted that individuals, families, and providers are concerned with the lengthy process involved when accessing OPWDD services and requesting HCBS Waiver enrollment. One reviewer added concern regarding the timely issuance of Notice of Decisions (NODs) including notices of the right to a local conference with OPWDD and/or fair hearing.**

OPWDD has implemented the Front Door, which is a process for assessing individual needs and allocating service resources based upon a standardized process. Part of the Front Door guidance clearly outlines the expected timeframe for a Regional Office to complete pertinent authorizations from the point at which all required documentation, accurately completed, is received by the Regional Office. In its ongoing efforts, OPWDD has implemented a new Eligibility, Assessment and Authorization (EAA) tool, EAA 2.0, in November 2015 to assist with the timeliness of HCBS Waiver enrollment requests and NODs. OPWDD will continue to evaluate the efficiency of the Front Door processes and will advise the public on any updates in the future.

- 3. A reviewer supports policies and procedures that provide individuals and their circle of supports with access to strong independent advocacy. The reviewer recommended that OPWDD ensure and strengthen its grievance and appeals practices, especially for the freedom of choice regarding housing options.**

OPWDD working to strengthen the grievance and appeal process to ensure statewide consistency. There are a number of advocacy organizations supporting our field and the contact information can be found at the following site:

http://www.opwdd.ny.gov/opwdd_services_supports/itsyourchoice.

RECOMMENDED CHANGES FOR SPECIFIC SERVICES

- 1. Several respondents recommended that OPWDD add Applied Behavior Analysis (ABA) as a waiver service.**

OPWDD is pleased with the developments in NYS related to the licensing of behavior analysts and potential this has for supporting individuals with developmental disabilities. OPWDD supports and encourages empirically supported therapies and

services and will continue to explore ways of providing these services in the most effective and efficient manner through various funding mechanisms. OPWDD cannot add therapy services to the HCBS Waiver at this time.

- 2. Several reviewers suggested that OPWDD streamline the definition for adaptive devices to identify more specific devices and reflect rapid advances in technology; back up support and the periodic replacements of devices which should be approved immediately.**

OPWDD recognizes the crucial role of adaptive devices in the lives of the individuals we serve especially with regard to maximum independence. Several Balancing Incentive Program (BIP) Transformation Grants are looking at ways to enhance the use of adaptive devices and technology in the OPWDD service system. We look forward to learning from these opportunities and to bring enhancements to future waiver operations. Currently, if an adaptive device obtained through the waiver is in need of replacement or repair due to normal everyday use, the individual can request a repair or replacement using the same procedures that were followed in originally acquiring the device. The request for a repair or replacement must include a clinical justification for the continued need for the particular device.

- 3. Several respondents stated that the documentation to initiate Intensive Behavioral Services (IBS) is a time-consuming process and that due to this delay, the situation evolves into a crisis management issue instead of a preventive service. One respondent recommended an increase in access specific to individuals living in Family Care Homes (FCHs).**

In response to these concerns, OPWDD initiated a review of the criteria to access IBS in the fall of 2014. Service authorization and service amendments for IBS are no longer processed at the OPWDD Front Door. This has made the approval process much more expedient for individuals requesting the service during initial waiver enrollment or at a later date. IBS continues to be available to individuals who reside in Family Care Homes and other settings that are not certified. OPWDD will continue to pursue ways of making IBS more accessible in a timely manner and evaluate the need for changes in future amendments.

ASSESSMENT

- 1. A reviewer expressed concern regarding the use and accuracy of the Developmental Disabilities Profile 2 (DDP-2). The reviewer noted that there is a lack of training for the individuals who administer the assessment and the DDP-2 does not encompass all individuals' physical, behavioral, and health and safety needs which produces inaccurate Individual Service Planning Model (ISPM) scores. The reviewer stated that these inaccurate ISPM scores leads to inaccurate service planning and self-direction budget determinations. The reviewer recommend that individuals be notified of the ISPM score in conjunction with the opportunity to appeal their ISPM score.**

OPWDD has begun implementation of a new improved assessment tool called the Coordinated Assessment System (CAS) which will eventually replace the DDP-2 tool in the future. Individuals will continue to have the right to request a Fair Hearing if they are determined not the meet the criteria for a developmental disability or if they are denied a Medicaid service. More information regarding the developmental disability determination process can be found in Appendix B of the Waiver application and on our website.

- 2. A reviewer asked if the Coordinated Assessment System (CAS) would be used to reevaluate the needs of individuals already receiving services including individuals who self-direct services with budget authority.**

Everyone receiving services from OPWDD will eventually take part in the CAS assessment process. The information from the CAS will be used in the person-centered planning process and will help to ensure that services match the person's needs. Ultimately, OPWDD will evaluate the current funding methodologies for both agency-managed and self-directed services using the CAS.

- 3. A reviewer asked how the CAS implementation will affect Fair Hearings.**

The implementation of the CAS will not change an individual's right to request a Fair Hearing. The right to request a Fair Hearing continues to be available when OPWDD denies, reduces, or discontinues an individual's access to a Medicaid funded service.

- 4. A respondent asked how the Coordinated Assessment System (CAS) will be adjusted for individuals with forensic backgrounds.**

The CAS includes several elements that will better identify the behavioral needs of individuals including individuals with a history of forensic involvement. The CAS tool includes specific items related to the person's involvement with law enforcement and the judicial system. These items and the resultant CAS summary reports will better inform the development of person-centered plans of support.

SELF-DIRECTION

- 1. A respondent asked why on page 150 where Goals for Participant Direction are presented, the total number of participants is set at 5,500 for Waiver Year 4 and 6,000 for Waiver Year 5. The respondent cited other Self-Direction material that refers to different figures.**

The 5,500 and 6,000 figures are estimate Waiver renewal figures for Waiver years 4 and 5 based on waiver data available in 2015. The data was trended over five years based upon the number of individuals who have been added or removed to the waiver during the intervening period plus an expectation of additional participants during the waiver year. Since these are estimates, the actual number of people who self-direct services may exceed the estimates included in the Waiver Renewal Application. These numbers are projections and do not limit the number of people who actually enroll in self-directed options.

- 2. A reviewer asked if this Waiver renewal proposes any changes to allow the utilization of self-directed staff outside of the typical Day Habilitation hours for people who live in certified residences.**

The rules regarding the scope of Residential Habilitation services and access to other habilitation services on weekday evenings and weekends for individuals living in certified residences are not changing in this application. When an individual lives in a Supervised IRA or CR, Supportive IRA or CR, or Family Care Home, CMS requires that OPWDD apply consistent rules regarding the Residential Habilitation provider meeting the person's need for community integration and habilitation services. In practical terms, this means that a person who lives in a Certified Residence can self-direct his/her services during week-day, day-time hours. This requirement was implemented in Amendment 07 of this Waiver.

- 3. Several respondents asked why individuals do not have the option to self-direct pathway to employment or prevocational services. One respondent recommended that OPWDD allow individuals to self-hire job developers for volunteer positions explaining that volunteer positions can transition into competitive employment.**

All employment services are driven by a person-centered planning process that integrates individuals' desired outcomes. Pathway to Employment is a person-centered comprehensive career planning and support service with a goal to assist individuals preparing for competitive integrated jobs in the community through the creation of detailed vocational career plans. Because Pathway to Employment has a structured curriculum, it is not appropriate for self-direction. Prevocational services

provide learning and work experiences to develop general non-job task specific strengths and skills that contributes to employability in an integrated community setting. The timing of prevocational service delivery is also based upon the person-centered planning process. Once OPWDD has more experience overseeing Community-based Prevocational Services, we may be able to extend the opportunity to self-direct this service.

An alternative service option which can be self-directed in regards to skill acquisition and career planning is Community Habilitation. In addition, an individual can receive job development support through Supported Employment (SEMP) which is another service that can be self-directed.

- 4. Parents commented that the self-direction model is overly restrictive. In particular, the respondents recommended that self-direction funds support individuals in settings where individuals are paid less than minimum wage.**

OPWDD will continue to investigate the opportunities available to individuals through self-direction. However, the rules regarding the scope of services that can be self-directed, including prevocational services, are not changing in this Renewal application.

- 5. A respondent recommended that individuals have the opportunity to request a Fair Hearing to exceed the self-direction budget target value of their Personal Resource Account (PRA).**

CMS requires OPWDD to set a limitation on the budgets approved for individuals who choose to self-direct their services. Thus, OPWDD cannot request this substantive change because CMS required that we implement a reasonable limitation in self-directed budgets. A participant has the right to request a Fair Hearing on a denial, termination or reduction of a self-direction budget, as long as the budget amount does not exceed the target value or maximum funding authorized for each specific service. The limitation of an individual's PRA is a requirement of the self-direction program and therefore not a decision that can be changed at a Fair Hearing.

- 6. Several respondents expressed concern regarding self-direction budgets and Personal Resource Accounts (PRAs). Recommendations were made to increase self-direction budget funding for safety and health concerns, administrative oversight, transportation, self-hired staffing, and consultant provided training opportunities for natural supports. A respondent stated the some of the maximum amounts on each self-direction budget line are arbitrary and do not meet the needs of the individual.**

The self-direction budget/PRA represents a target amount of resources available to the participant for the cost of the supports and services they need. The budget for a self-direction participant is limited to the maximum PRA based on ISPM score (more

information regarding how PRAs are set can be found on page 152 of the HCBS Waiver Renewal application on-line). The rules regarding the funding for self-direction budgets are not changing in this waiver renewal application. However, PRA values have been increased in the past, and may be increased in the future. For example, values were increased in 2015 (January and April) to reflect enhancements to reimbursement to clinician and direct care staffing. In addition, OPWDD will reevaluate PRAs with the advent of the Comprehensive Assessment System (CAS) – see below response.

- 7. A respondent expressed concern regarding Fiscal Intermediaries (FIs) having the option to “cherry-pick” the individuals they serve. The respondent added that FIs are refusing to accept plans over \$40,000, which is discriminatory. Additionally, the respondent recommended increasing FIs reimbursement to cover the cost of serving individuals with high support needs.**

OPWDD agrees that FIs should not be selective. OPWDD will work with FIs to help assure access to this service for anyone who chooses to self-direct his services. Moreover, all FIs are HCBS Waiver service providers and are subject to provider reviews conducted by OPWDD’s Division of Quality Improvement (DQI). OPWDD DQI addresses any individual and systemic deficiencies found during these provider reviews through the issuance of Statement of Deficiencies (SODs). Anytime an FI or any other service provider is issued a SOD, they are required to submit a Plan of Corrective Action (POCA) to OPWDD DQI. Following the submission of the POCA, OPWDD DQI will follow up with the provider to ensure the actions described in the POCA have been implemented.

- 8. Several respondents expressed that Support Brokerage training is a critical function within self-direction and should have higher standards than 12 hours of annual training. One respondent recommended that there should be more OPWDD direct oversight similar to Medicaid Service Coordinators (MSCs).**

OPWDD is looking at ways to enhance the quality of Support Brokerage. OPWDD currently offers a variety of different professional development opportunities throughout the year to service coordinators and support brokers.

- 9. A respondent asked how weekend Respite services are tracked in terms of unit and budget for self-direction. In addition, the respondent asked if unused resources ‘carry-over’ from one year to the next.**

In Self-Direction, Respite services are documented, paid and ‘tracked’ by the duration of services provided. A person’s Self Direction budget is available for services delivered during a single budget year. If funding is not used for services delivered during that year, then the unused funds do NOT ‘carry-over’ to the subsequent budget year.

- 10. A reviewer recommend that OPWDD focus more attention on individuals who are self-directing and transitioning from the school system to adult services.**

This issue has been considered by the OPWDD Transformation Panel. The final Transformation Panel Report can be found at the following link: http://www.opwdd.ny.gov/opwdd_about/commissioners_page/reports_to_legislature/transformation-panel-final-report-and-recommendations. OPWDD will continue to investigate mechanisms that ensure seamless transitions for individuals leaving the educational system and entering the adult services world.

- 11. Several reviewers expressed concern regarding the timeliness of self-direction approvals. A reviewer commented that the process for self-hiring is a lengthy process which includes delay in payment to the direct support person and discourages people from applying.**

In the redesign of self-direction, OPWDD issued several Administrative Memorandums to provide guidance and also established several mechanisms for communication with the DDRO's, Fiscal Intermediaries, Brokers, participants and stakeholders that will facilitate a timely review process. This process is under review, and OPWDD hopes to enhance the speediness of these reviews.

- 12. A respondent asked what is meant by the term "common law employer."**

"Common law employer" is a legal term. Generally, a person is a common law employer if he or she directs where, when and how a worker performs the functions of the job. It is used to distinguish between and independent contractor relationship.

- 13. A respondent suggested the individuals who self-direct and receive Individual Directed Goods and Services (IDGS) should not be required to have budget authority; adding that the MSC can assume the role of the Support Broker.**

IDGS is a service that is designed to support people who self-direct their services with budget authority. This is not a change that can be made to the HCBS Waiver.

- 14. Several reviewers asked why OPWDD changed the reimbursement criteria for memberships, community classes, camps, and other private programs through IDGS and self-direction. A reviewer added that individuals with developmental disabilities should not be forced to participate in programs that are integrated in the community.**

The purpose of Individual Directed Goods and Services is to promote an individual's integration into the community. Addendum A.11 of the waiver renewal application (page 472 of the on-line document) describes the goods and services that are

available through IDGS. In addition, this chart details the qualifications and limitations of these goods and services. This criteria was established in Amendment 07 of this Waiver application and has not changed in the waiver renewal. Individuals may choose the camps, classes, and other programs they attend. Some IDGS categories, such as Community Classes, specifically require the service itself to be integrated. A Community Class requirements are that:

1. The setting and class is open to and attended by the broader community
2. The setting is not certified by OPWDD
3. The setting results in interactions with other participants who do not have an intellectual or developmental disability
4. The class is not being run by OPWDD or provider agency staff who are acting in their official capacities

15. Several respondents expressed concern for the supports that will be available and provided to self-directing individuals when natural supports are no longer available. Respondents asked who will self-direct, advocate and oversee the care for these individuals.

OPWDD encourages families to develop a plan to assist individuals when natural supports are no longer available to them. Both purchased service and natural supports should be assisting the individual in increase his skills for individual living, and for identifying alternative supports needed throughout the individual's lifetime. Support from various OPWDD staff, including MSCs, are available to assist individuals who no longer have the support from natural resources. In addition, several statewide advocacy organizations can also assist parents with this important information. Contact information is available at the following OPWDD webpage: http://www.opwdd.ny.gov/opwdd_services_supports/itsyourchoice/parent_advocacy

RESIDENTIAL HABILITATION

1. A respondent asked for clarification regarding the effective date of the elimination of direct hands-on therapies in Residential Habilitation rates. The respondent added that there has been guidance 7/1/14, 10/1/15 and most recently 4/1/16.

There have been a series of changes implemented during 2015 and 2016 to meet the CMS requirement that Supervised Residential Habilitation and Day Habilitation do not fund direct, hands-on therapies (Physical Therapy-PT, Occupational Therapy-OT and Speech Language Pathology-SLP). These changes are described on the OPWDD website at the following site:

http://www.opwdd.ny.gov/opwdd_services_supports/people_first_waiver/HCBS_services/service_changes.

Effective October 1, 2015, Supervised Residential Habilitation Providers became responsible for nutritional and psychological services that are related to the provision of Residential Habilitation services. Effective January 1, 2016, NYS will make changes so that there is no federal payment for OT, PT and SLP “hands-on” services that were included in Supervised Residential Habilitation and Day Habilitation Rates. In these cases, OPWDD is providing state funding for providers so that needed services continue while services transition to either an Article 16 Clinic or an Independent Practitioner service.

2. A reviewer suggested that OPWDD unbundle Residential Habilitation rates specifically for safety supervision and limit residences to a maximum of 4 beds.

OPWDD is committed to supporting people in the most personalized, community-based way possible, and providing the supports each person needs to grow and become part of his/her community. At this time, it is not feasible to reduce the size of all IRAs to a maximum of four beds. The Transformation Panel is looking at housing options and a work plan is under development to address the needs for expanded housing options, including smaller apartments and more independent living opportunities.

3. A respondent asked what OPWDD’s plans are for placing individuals with complex needs (including behavioral needs) in the community.

OPWDD is committed to providing opportunities for all individuals with intellectual and developmental disabilities to live safely in the most integrated setting that is appropriate to the person’s needs. Each decision regarding a person’s services, including residential services, is based on a careful person-centered planning process including an assessment of any risks that need to be addressed to ensure successful community living. Through person-centered planning, appropriate supports are put in place to meet the needs of the individual; this includes the establishment of a risk management plan. In addition, OPWDD is actively implementing the evidence informed START model across the state. The START model focuses on prevention of behavioral crises through capacity building. Additionally START team members respond to crisis situations to support the individual and system of support in order to improve outcomes for the person.

RESPIRE

- 1. Several reviewers asked if the proposed Respite fees starting on page 304-305 of the on-line document apply to all HCBS Waiver providers and if these fees will replace the current rates issued by the Department of Health (DOH). In addition, one respondent asked if OPWDD would be eliminating the daily Respite cap.**

Since publishing the HCBS Waiver Application, OPWDD has received numerous comments from stakeholders on the importance of Respite and has been meeting with a workgroup of Provider representatives to review the proposed fee methodology. Based on these discussions and stakeholder input, and with the agreement of CMS, OPWDD will submit the Waiver Renewal Application without the proposed Respite Fee methodology. This means that the existing provider prices will remain in place, while we continue to work with providers and other stakeholders on a fee methodology to better fund needed services.

The provision that limits the daily claim amount for Respite in the Rate Setting section (page 302 of the on-line document) still remains. When an individual requires additional respite during the 24 hour period, providers are held harmless because OPWDD is "covering" the balance that the Federal government is not supporting. OPWDD will continue to work with CMS on a methodology that will no longer require implementation of the cap. Changes to the Respite funding methodology will be described in a future HCBS Waiver Amendment and will also be described in NYS regulations prior to implementation.

This additional time will allow work to continue with stakeholders. In addition, the Commissioner has asked each region of the state to examine its existing respite services and report on those factors that are inhibiting the availability of respite options in all areas and at all levels of need. Those reports are currently being examined on a statewide basis.

- 2. A reviewer asked for a clarification regarding the definition of the Respite service.**

Respite services are provided to participants who are unable to care for themselves and depend on an unpaid caregiver who needs periodic relief from caregiving. Respite services are furnished on a short-term basis to address the absence or need for relief of those persons who normally provide care for the participant.

*Respite care is **not** furnished or provided for the purpose of compensating or providing substitute staff in certified community residences. However, an individual may receive respite services outside of his/her home and in certified locations. Acceptable*

locations include: individual's home; Family Care home; Medicaid certified ICF/DD; Individualized Residential Alternative (IRA) or Community Residence (CR); and free-standing Respite facility under the auspices of OPWDD and other community locations.

- 3. A respondent asked if there will be the creation of crisis or emergency beds for individuals. The respondent added that OPWDD needs to create a trauma healing service.**

OPWDD will continue to look into the expansion of the Respite services to meet the crisis, or unplanned, needs of individuals and families. In addition, OPWDD is working to develop START networks throughout NYS. START is a community-based program that provides crisis prevention and response services to individuals with intellectual/developmental disabilities and behavioral health needs, as well as their families and those who provide support within the community. More information can be found at the following link: <http://www.opwdd.ny.gov/ny-start/home>.

- 4. A respondent expressed concern regarding a decline in the availability and provision of Respite.**

OPWDD is committed to supporting families and understands the need to stabilize and enhance the Respite program. It is one of the Commissioner's top priorities. The Commissioner has asked each region of the state to examine its existing respite services and report on those factors that are inhibiting the availability of respite options in all areas and at all levels of need. Those reports are currently being examined on a statewide basis. The delay in the implementation of the proposed fee methodology (see #1 above) will allow OPWDD and the New York State Department of Health (DOH) to incorporate this regional information into a new funding methodology.

- 5. A reviewer asked why a different methodology is needed following the July 2015 Respite Rate Rationalization.**

Effective with Respite services delivered on or after July 1, 2015, Respite payments are calculated using a consistent methodology to establish an individual hourly rate for each provider. While the methodology is consistent, the variation between providers is very large based on providers cost histories and other factors. Because of this discrepancy, when some providers deliver 24-hours of Respite to a person, the resulting payment can exceed the provider agency's rate for Supervised Residential Habilitation. CMS has declined to participate in the Respite payment for any 24-hour period that is above a provider's daily Supervised Residential Habilitation rate. OPWDD is holding providers harmless by "covering" the federal share. In order to

address the discrepancies among providers, and to eliminate the continuation of the cap, DOH is working on a fee methodology (see response #1 above). More detailed information regarding the Respite fee rate rationalization can be found on page 302 of the on-line document.

6. A respondent expressed concern regarding the elimination of funding for Medicaid State Plan Transportation services to site-based Respite services.

Medicaid Transportation is a State Plan service that is administered by DOH. The current Medicaid State plan and HCBS waivers approved by the federal government do not allow for the provision of transportation to and from OPWDD-based Respite programs. DOH and OPWDD agreed to extend Medicaid-funded transportation to the affected programs to allow additional time for alternate arrangements to be made for those situations that had been previously authorized through May 1, 2016. Work is underway to address the need for these services, where it had been approved in the past.

EMPLOYMENT SERVICES

1. A respondent stated that OPWDD Supported Employment (SEMP) providers need access to the students wanting services throughout their final year of schooling. The respondent added that currently there is not an instrument to evaluate and assess job discovery or job development before aging out or graduation.

OPWDD firmly supports and works with local school districts to assist students transitioning to adult services, including opportunities for employment and further education. Transition planning is the process schools must use to help students with disabilities and their families as they plan for their future after high school. Students and their parents may sign a confidentiality release form to involve OPWDD and provider agencies in the transition planning process. After such consent is provided, the school district must share the IEP and assessments with the provider agency to assist in the transition planning. Further information is available at:

http://www.opwdd.ny.gov/opwdd_services_supports/children/transition-students-developmental-disabilities.

In addition, ACCES-VR is a key partner in transitioning students from high school to employment. They begin employment planning 2 years prior to exit from high school and have created a Transition Unit to work in schools with teachers, administrators and families. Providers should be working with ACCES-VR as part of this process.

2. **Several reviewers expressed concern for the employment opportunities available for individuals who have the potential to maintain part-time employment due to the closure of sheltered workshops.**

OPWDD's pre-employment and employment services are available to individuals interested in both part-time and full-time employment.

3. **A respondent asked if OPWDD will prohibit the provision of prevocational services in integrated employment settings established by the sheltered workshop conversion.**

The December 2015 guidance to providers interested in converting their workshops into integrated businesses clarified that both prevocational and supported employment services will be available to individuals with developmental disabilities who are employed in the new integrated businesses.

4. **A reviewer expressed concern regarding the limitation of choices available to individuals currently in work centers because of medical, adaptive, or behavioral support needs. The reviewer stated that CMS and NYS needs to permit additional flexibility for those individuals who want to work but are unsuccessful or choose to participate in non-competitive work settings.**

We are committed to providing a range of vocational, day services and employment supports that meet the needs of the individuals we serve. In 2015, through the Balancing Incentive Program (BIP) payments, New York State provided over \$18 million in Transformation Grants to not-for-profit agencies to propose and test new models of employment and day supports to better address the needs of all individuals. The Commissioner's Transformation Panel's final recommendations direct OPWDD to address precisely the issue raised by the reviewer. Through the work of the Transformation Panel, OPWDD will pursue more flexible service opportunities and submit future HCBS Waiver amendments to implement the needed reforms.

COMMUNITY HABILITATION (CH)

1. **A respondent expressed concern of the inflexibility of Community Habilitation (CH). The respondent stated that the CH limit should reflect a weekly hourly limit not the time of day that the service can be delivered.**

This is a frequent concern from stakeholders who submitted comments regarding the HCBS Waiver Renewal. For people who live in certified residences, OPWDD cannot change the existing policy regarding the scope of Residential Habilitation services and the access to other habilitative services, such as Community Habilitation, on weekday

evenings and anytime on weekends. This requirement has been put in place to prevent duplicative billing for habilitation services and was required by CMS. On evenings and weekends, the Residential Habilitation provider is responsible to deliver the habilitation services needed by individuals living in certified residences.

The availability of CH services differs based on where a person lives and whether s/he attends school.

- Individuals who are not in school and who live in their own homes/leased residences or family homes may receive Community Habilitation services at any time.
 - People living in Family Care homes and IRAs or CRs generally may only receive Community Habilitation Services on week days during day time hours (start time prior to 3:00 pm). The Waiver allows for an exception when the CH service is delivered at the person's integrated and competitive job and the CH service allows the person to maintain employment.
 - The schedule for CH service delivery for children and young adults who attend school must be outside of regular school hours. The schedule for CH service delivery for children and young adults who are home schooled must not overlap with the planned schedule for educational instruction.
- 2. Several reviewers asked if direct support staff and/or Community Habilitation (CH) workers could administer medication. One reviewer noted that OPWDD needs to update Appendix G-3 c to reflect ADM 2015-3 which expands the ability for providers to have certain nursing functions performed by Nurse-trained and certified staff working in non-licensed community settings. Another reviewer noted that agencies will not have the funding to address the cost of nursing oversight.**

At this time, only Direct Service Professionals (DSPs) who work in certified settings and have appropriate training and oversight can administer medications or complete certain health-related tasks that are within the scope of practice of a Registered Nurse (RN).

OPWDD is working to implement legislative changes that will allow the delegation of medication administration and certain other health-related tasks to DSPs who deliver services in non-certified settings. Once this is an option in our service system, it will be available for both agency-managed and self-directed services.

OPWDD is taking steps to support the expansion of this DSPs authority in non-certified settings. HCBS providers that intend to have DSPs provide certain nursing tasks in non-certified settings have been invited to include such authority in the CON process

now underway to certify all Waiver provider agencies. The authorization requirements will be in described in a future publication of an Administrative Memorandum (ADM). The HCBS Waiver (Appendix G-3 c) will be amended to reflect the delegation of this authority to DSPs once the ADM is promulgated.

OPWDD and DOH will evaluate the cost of nursing oversight associated with the expansion of the delegation of nursing tasks to DSPs in non-certified settings. However, it should be noted that the CH fee includes a factor to address the staffing costs associated with clinical oversight.

3. Several respondents recommended a new definition of Community Habilitation (CH) be established to support “college campus based” and non-college based programs and also address people’s need for safety and oversight.

CH is a flexible service which can be delivered in any non-certified setting as long as it is not duplicative of other services or of funding available through the Education system. Habilitation services can and should address a person’s need for oversight so s/he can live safely and with the greatest degree of independence possible in the community and have been used to support individuals who attend college campus based programs. OPWDD is working with state partners on a Medicaid State Plan service option that will strictly address cueing and supervision without additional habilitation supports. More information will be forthcoming on this new service option in the near future.

PROVIDER GUIDANCE

1. A respondent asked how they can become an HCBS Waiver provider.

OPWDD has a process for those interested in becoming a first time OPWDD provider. A potential provider will complete a standard application and will submit information on its program, governance, and fiscal capabilities. The application will be reviewed and scored based on established criteria. Only those who receive a passing score based on these criteria will be considered for OPWDD funding opportunities. Agencies seeking information about the process of becoming a provider of OPWDD Home and Community Based Waiver services, can accessed the OPWDD webpage at this link:

http://www.opwdd.ny.gov/opwdd_services_supports/service_providers/how_to_become_a_service_provider.

- 2. A reviewer requested that OPWDD Developmental Disabilities Region Offices (DDRO) offer technical assistance to agencies on issues related to compliance issues, documentation and delivery of HCBS Waiver services.**

DDRO staff are a source of technical assistance for providers operating in its catchment area. If there are specific training subjects that are needed, please e-mail your recommendations to: peoplefirstwaiver@opwdd.ny.gov.

DAY HABILITATION & DAY SERVICE OPTIONS

- 1. Several respondents asked for clarification regarding when the elimination of direct hands-on therapies in Day Habilitation will occur.**

There have been a series of changes implemented during 2015 and 2016 to meet the CMS requirement that Supervised Residential Habilitation and Day Habilitation do not fund direct, hands-on therapies (Physical Therapy-PT, Occupational Therapy-OT and Speech Language Pathology-SLP). These changes are described on the OPWDD website at the following link:

http://www.opwdd.ny.gov/opwdd_services_supports/people_first_waiver/HCBS_services/service_changes.

Effective January 1, 2016, NYS is making changes so that there is no federal payment for OT, PT and SLP “hands-on” services that were funded as part of the HCBS Rate. In these cases, OPWDD is providing state funding for providers so that needed services continue while services transition to either an Article 16 Clinic or an Independent Practitioner services.

- 2. Several respondents asked how the waiver covers the cost of care for individuals who are not interested in receiving Day and Community Habilitation, specifically retired seniors and individuals with complex behavioral needs who refuse to attend meaningful activities.**

Once enrolled in the HCBS Waiver, a person can opt to self-direct his/her services, allowing a flexible package of services to be put together for the individual to enjoy retirement options outside of a certified setting. In addition, the Residential Habilitation provider can offer opportunities in the certified home. Some communities have Youth/Senior Programs and other community funded activities available for those individuals who are interested in participating. As part of the Transformation Panel work, ways to better support retirement options are under review and discussion.

- 3. A reviewer recommended that agencies pay individuals for the work they complete during their Day Habilitation without Walls program.**

Federal guidance does not allow OPWDD to pay individuals wages during Day Habilitation program time. Please refer to the 2011 bulletin from CMS on Employment and Day Services to get more information on this issue.

- 4. A respondent expressed concern with the term “meaningful” when describing activities in the community for retired individuals who attend Day Habilitation.**

OPWDD uses the term “meaningful” to reflect the importance of habilitation services addressing the person’s needs and add value to the person’s life. OPWDD is working with state partners on services that solely address the need for supervision and cueing without integrating habilitation. More information will be forthcoming in the near future regarding this option.

HOUSING AND RESIDENTIAL OPPORTUNITIES

- 1. Several reviewers recommended more affordable and less restrictive housing options in the community to assist families with this responsibility especially for individuals who required 24/7 care and will not have the natural supports from their families throughout their lifetime. In addition, reviewers requested assurances that government rules and regulations will continue to support these affordable and less restrictive housing options in the future. Another reviewer asked if OPWDD will create residential opportunities specific for children with significant disabilities.**

Among the important areas addressed by the Transformation Panel’s final report is the development of affordable and less restrictive housing options for people with Intellectual and Developmental Disabilities. OPWDD is currently developing work plans to address the recommendations developed by the Commissioner’s Transformation Panel and has directed that OPWDD develop a five-year plan to address housing needs based on an assessment of available housing and the needs of individuals for housing. This plan must integrate the needs of people who can live with relative independence and individuals with significant and specialized support needs. A copy of the report can be found at the following link:

http://www.opwdd.ny.gov/opwdd_about/commissioners_page/reports_to_legislature/transformation-panel-final-report-and-recommendations

- 2. A respondent recommended the addition of three new housing-related HCBS Waiver services (Individual Housing Transitional Services, Individual Housing & Tenancy Sustaining Services, and State-level Related Collaborative Activities). These options were outlined in a June 26, 2015 CMS bulletin entitled “Coverage of Housing-Related Activities and Services for Individuals with Disabilities.” Another respondent recommended the creation of house counselors to assist all individuals who are interested in accessing affordable and least restrictive housing that fully meet the outcomes addressed in the Olmstead decision.**

In his State of State address, Governor Cuomo announced his commitment to support initiatives that grow affordable housing options and opportunities for homeownership. In support of these important goals, the single state Medicaid agency (the Department of Health) in conjunction with other applicable state agencies including OPWDD, is reviewing the June 2015 guidance from CMS in an effort to develop a statewide approach to implement appropriate housing related services under the Medicaid program. Additionally, The Commissioner’s Transformation Panel has called for the development of a five year comprehensive housing plan that is currently under development. The Panel’s detailed recommendations, which are guiding the housing plan, can be found on the OPWDD website at the following location:

http://www.opwdd.ny.gov/opwdd_about/commissioners_page/transformation-panel/panel_report

Based on the recommendations stemming from this report, OPWDD will evaluate the need for service changes in future amendments. In the meantime, Community Transition Services continues to be an excellent resource for individuals moving into their own private residence that is currently available. OPWDD is a HUD Certified Housing Counseling agency and as such offers education and information on housing options and various types of counseling including: homebuyer counseling; credit counseling and rental counseling. We also operate the Home of Your Own Program (HOYO) that offers a low interest rate mortgage through a participating lender with 100% LTV financing and down payment and/or closing cost assistance for eligible buyers. Information on our housing counseling services and the HOYO Program can be found on OPWDD’s website at:

http://www.opwdd.ny.gov/opwdd_community_connections/housing_initiatives.

- 3. A reviewer asked why OPWDD only helps individuals who are enrolled in Medicaid. In addition, the reviewer recommended an increase of more non-Medicaid residential placement opportunities.**

OPWDD assists individuals who are not Medicaid eligible through 100% State paid services. The individual who is seeking non Medicaid services should contact their local DDRO for further assistance. Contact information for all DDRO locations can be found at

the following link: [http://www.opwdd.ny.gov/welcome-front-door/Front Door Contact Numbers](http://www.opwdd.ny.gov/welcome-front-door/Front_Door_Contact_Numbers).

Residential Habilitation is an HCBS Waiver service which is funded by Medicaid (50% federal and 50% state funds). However, other state paid supports such as housing subsidies may be available.

- 4. A reviewer recommended that Community Transition Services (CTS) should be available to all waiver participants-not exclusive for individuals who self-direct with budget authority.**

Community Transition Services (CTS) is available to all HCBS Waiver enrollees who qualify, not just people who self-direct their waiver services. A person qualifies for CTS if he or she is leaving an institution or a certified residence to live in his or her own or family home. The Fiscal Intermediary (FI) is the waiver provider that pays for the CTS items, bills Medicaid and retains documentation for audit purposes.

- 5. A reviewer asked what the timetable is for converting ICFs into IRAs and what these conversions will entail. In addition the reviewer asked if the transitioning residents will automatically be enrolled in the HCBS Waiver with the provision of Medicaid Service Coordination (MSC).**

OPWDD is working with stakeholders regarding the transition of ICFs to other residential opportunities and providing more integrated, community based services for people. We anticipate that many ICFs will convert by 2019. More information regarding this initiative is available at: [http://www.opwdd.ny.gov/transformation-agreement/mfp/ICF Transitions](http://www.opwdd.ny.gov/transformation-agreement/mfp/ICF_Transitions). People who live in an ICF that is converted to an IRA will be encouraged to enroll in the HCBS Waiver and choose a Medicaid Service Coordination agency.

- 6. A respondent expressed concern regarding OPWDD's effort to reduce institutional capacity, stating that the decrease may be insufficient to address the support and service needs of certain forensic and court mandated populations.**

OPWDD will continue to evaluate the needs for all individuals with intellectual and developmental Disabilities for housing supports that the person meet their needs and to live safely in the community. This will continue to be an important focus area for OPWDD. The need for comprehensive housing supports will be continually evaluated and may be the subject of future amendments to the HCBS Waiver.

- 7. A reviewer asked what needs assessment tool will be used to assess the needs of individuals as part of the residential placement process. In addition, the reviewer asked if the reimbursement for these transitions would be based on Valued Based Outcomes.**

The assessment tool now in use is the Developmental Disabilities Profile (DDP) as OPWDD works on implementing the Comprehensive Assessment System (CAS). More information regarding the implementation of the CAS can be found at: http://www.opwdd.ny.gov/people_first_waiver/coordinated_assessment_system. Also, OPWDD recently published its February 2016 report to the Legislature regarding the Residential Request List which is available at this site: (http://www.opwdd.ny.gov/opwdd_about/commissioners_page/residential_request_list). The report provides information on current operations and the work underway to address housing needs as part of the implementation of the Commissioner's Transformation Panel. Value Based Payment strategies are discussed in the Waiver Oversight section of this document.

- 8. Several respondents expressed concern about the availability of monetary support for families who support a family member with an Intellectual or Developmental Disability so that the family member can live in their own or the family home.**

Under certain circumstances, family members may be paid to deliver certain HCBS Waiver services. This provision is described on page 102 and 103 of the on-line waiver application. See also below response.

- 9. A respondent requested siblings to be allowed to be paid as caregivers when residing in the same home as the individual receiving OPWDD services.**

As described in the waiver renewal application (page 102 of the on-line document), under certain circumstances a family member may act as a paid staff-person to deliver certain habilitation services or respite. Live-in Care Giver (LIC) services is an HCBS Waiver service option that supports a person to live independently. LIC pays a room and board subsidy for an unrelated caregiver who lives with the Waiver enrollee and provides companionship and support. The federal service definition does not allow LIC funds to be provided for caregivers who are related by blood or marriage to the Waiver enrollee.

- 10. A reviewer noted that OPWDD Regulations (Part 636.14 (d)) permit Residential Providers to violate the rights of some residents in order to meet the needs of other residents who have a need for environmental restrictions.**

The NYS regulations contemplate the reality that individuals with varying needs will live in the same environment. The regulations provide guidance to maximize the rights of all individuals in a household. OPWDD has been working, and will continue to work to enhance understanding of strong person-centered practices, which is central to responding to people's needs.

RATE SETTING

- 1. A respondent expressed concern regarding current rate methodologies, specifically billing increments and regional fees, stating that billing increments of 15 minutes or an hour are wasteful and contradicts the goal of delivering quality services due to the large amount of paperwork that must be submitted during the billing process and regional fees are unfair and negatively affect the wages of direct support workers. The respondent recommended a streamlined approach to rate setting that will support quality service delivery.**

As described in the Commissioner's Transformation Panel's final report, OPWDD and the NYS Department of Health (DOH) are evaluating the rate rationalization methodologies for future improvements. The federal Centers for Medicare and Medicaid Services (CMS) has not agreed to more flexible unit of service designs, and without federal approval, the State will not receive federal funding for these services. For this reason, OPWDD and DOH are actively pursuing Value Based Payment strategies that offer the opportunity to reward quality service outcomes.

- 2. A respondent expressed concern regarding recent rate rationalization designs for Residential Habilitation and Day Habilitation; adding that it is not fair to hold providers to the "budget neutrality factor" and requested that OPWDD and NYS Department of Health (DOH) reinstate the rate appeals process.**

The budget neutrality is a CMS-approved element of the rate rationalization design for these services and will not be changing in this HCBS Waiver Renewal. OPWDD and DOH understand that the current methodology does not allow for a nimble assessment of a provider's reimbursement when there is a sudden change in provide costs. The adjustment to providers' costs is based on certified cost reporting, and for most elements of the reimbursement rates, these costs are reassessed every two years. In accordance with Transformation Panel recommendations, OPWDD and DOH are assessing ways to revise the current methodology to allow more rapid changes in reimbursement, when needed, due to the changing needs of individuals served.

- 3. A reviewer asked how the waiver covers costs associated with individuals who require enhanced staffing supports to ensure safe evacuations in emergency situations.**

Every individual residing in a certified IRA, Community Residence (CR) or Family Care Home (FCH) is required to have a Residential Habilitation Plan which includes a section on the individual's safeguards. This safeguard section will detail the staffing supports that the individual requires to ensure a safe evacuation in emergency situations. It is the responsibility and requirement of the provider agency to employ the residence with the necessary staff to ensure safety for all especially in evacuation situations. These staffing costs are reimbursed at an agency's Residential Habilitation rate. The rate methodology for IRA and CR Residential Habilitation includes an acuity factor that adjusts a provider's payment rate to reflect the assessed need of individuals.

- 4. A respondent expressed concern regarding E-score calculations stating that the calculations are based on subjective and ill-defined factors.**

The use of the E-score was modified in 2015 and now the extra need for staff support is addressed through the use of the acuity factor.

- 5. A respondent asked how staffing for Willowbrook Class Members staying in the hospital or rehabilitation center are reimbursed through the HCBS Waiver.**

Agencies' costs for Direct Support Staffing are reported in annual Consolidated Fiscal reports (CFRs). The rate methodology calls for a provider's rates to be recalculated every two years based on certified CFR cost data. In addition, there is also an acuity factor in the Rate Setting Methodology that adjusts providers' reimbursement based on several criteria including the number of Willowbrook class members the provider supports.

- 6. A respondent asked when the Special Populations Funding (Template Funding) for people who leave institutions or nursing home settings will be available.**

Special Populations Funding is an existing program that is described on the OPWDD website at the following link: <http://www.opwdd.ny.gov/node/3654>. In the HCBS Waiver Renewal, OPWDD proposed a technical change to implement a different flow of Federal funds for these services. Based on further discussions with CMS, OPWDD subsequently agreed to delay this technical change to a future amendment. The delay in this provision does not affect access to this funding.

If an individual is currently seeking to transition from an institution, these funds are available. For individuals who are receiving specialized funding now, they will continue to receive specialized funding.

- 7. Reviewers recommended that OPWDD and DOH expand the proposed Interim Funding (page 305 of the on-line publication). Reviewers noted that the proposed changes only addressed the needs of individuals who are new to services. The proposal does not address the needs of people who are already served by a provider and who experience sudden changes in the need for supervision and staffing based on newly emerging needs, particularly due to challenging behaviors.**

OPWDD and DOH will work with stakeholders to explore a more comprehensive approach, to be submitted to CMS, that will address ways to change the Residential Habilitation and Day Habilitation methodology to be more sensitive to the needs of people who are new to services and those who are already served by a provider.

- 8. A reviewer expressed concern regarding the rate setting proposals stating that they force a medical model; are complex and costly; and are not suited for long-term supports and services. This reviewer recommended the creation of a real time rate methodology to address all individuals including those with complex needs and those transitioning from Intermediate Care Facilities (ICFs).**

As described above, the Rate Rationalization Methodologies are under review as part of the Commissioner's efforts to implement Transformation Panel recommendations. As described in the response to the previous question, OPWDD and the NYS Department of Health are working on a future revision to the Rate Setting methodology that will support more timely response, where necessary, to changing service needs of individuals who receive Residential Habilitation and Day Habilitation services. The federal Medicaid program has greatly expanded use of waivers to support home and community-based services, not a medical model of services, for individuals in the past few years.

- 9. A respondent asked why one agency would have a higher rate than another agency and how the "take-over" proposal would work. (Page 306 of the proposed Waiver Renewal: <http://www.opwdd.ny.gov/node/6344>).**

This proposed language concerning "take over" funding recognizes that, for certain services, there are different payment rates between voluntary providers. While all rates generated for specific Medicaid services are calculated using the same methodology, the methodology allows for different payment rates being calculated for different providers, as providers have different costs. The rate methodology for most services relies on cost data from agencies' annual certified cost reporting. Agencies' cost reporting history will differ based on factors such as the population served by the agency, regional variations in wages and other program-related costs (for example, equipment) that will vary based on the population served.

As described in the response to question #2 (above), OPWDD and DOH are reevaluating the proposed Interim Funding methodology to see if it should be made more all-inclusive, thus integrating the needs of individuals already served in the OPWDD system. The ‘take-over’ funding proposal is also withdrawn from the HCBS Waiver Renewal submission. OPWDD and DOH anticipate that future changes to the HCBS Waiver can address both the proposed “take over” funding methodology and the need to address changes in staffing needs due to changing needs of individuals in a more streamlined manner.

WAIVER OVERSIGHT

- 1. Several respondents expressed concern regarding the quality oversight of the HCBS Waiver by OPWDD and DOH. In addition, respondents asked how waiver quality is measured.**

As part of this Renewal Application, OPWDD and DOH have updated the quality improvement strategy regarding the waiver. Quality oversight of the HCBS Waiver program is a critical component of service delivery that OPWDD and DOH continuously review with stakeholders to make necessary improvements. Throughout the Application document, there are quality measures that assess how OPWDD and its providers are performing. Each Appendix contains a quality improvement section which includes charts describing the measures throughout the Application.

- 2. A reviewer asked about the quality review of Residential Habilitation services and the types of measures and metrics that might be used in a value based payment methodology.**

OPWDD and DOH are working to evaluate the opportunities to use value-based payment strategies for all OPWDD services, including Residential Habilitation services. Value-based payments provide the opportunity to reward providers for quality outcomes rather than strictly tying reimbursement to the delivery of units of service (i.e., the quantity of services). The Commissioner’s Transformation Panel recommends pursuing this strategy. Also, the Fully Integrated Duals Advantage Plan for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD), will propose value-based payment options within managed care:

(See

http://www.opwdd.ny.gov/opwdd_services_supports/people_first_waiver/care_management/FIDA_IDD.) The measures that will be used to assess value-based payments are not yet established, but data from Personal Outcome Measures, Division of Quality Improvement (DQI) surveys, and individual and family satisfaction measures will be considered.

- 3. Respondents recommended that OPWDD include a discussion about “Day Habilitation without Walls” and safety monitoring to the Day Habilitation service description.**

For Day Habilitation Services, both those delivered in certified settings and in non-certified settings, the service description and objective of the service are the same. Whether a person participates in Day Habilitation services in a non-certified setting (without walls) or in a certified setting, the person’s need for safety monitoring must be addressed in the person’s Day Habilitation Plan as part of the required planning to support the person’s health and safety outcomes. These requirements are described in the Administrative Memorandum on Habilitation Plans (2012-01) available at the following link:

http://www.opwdd.ny.gov/opwdd_regulations_guidance/adm_memoranda/documents/admin_memo201201.

The Waiver application references the DQI oversight of all Day Habilitation services (site-based and non-site based). We do not think that changes are needed to the Waiver given that the OPWDD Division of Quality Improvement (DQI) is conducting a review of all protocols used for the review of HCBS Waiver Services. The redesign will promote a more person-centered review of service planning, provision of service, expected outcomes and associated safeguards for services that are community-based (non-certified settings) as well as delivered in certified settings.

- 4. Several respondents recommended the streamlining of objectives and regulations. A respondent recommended that OPWDD revise its protocols to focus more on individual supports and services; health and safety; OPWDD core values; and compliance with Americans with Disabilities Act (ADA). A respondent also recommended that NYS contract with an independent quality assurance entity.**

The Division of Quality Improvement (DQI) redesign of the HCBS Waiver protocols is underway and is focused on a person-centered approach to assessing quality to focus in a more holistic way on the way agencies support individuals. The review and protocol development is anticipated to be complete later in 2017. OPWDD structures its DQI operations to minimize conflict of interest. There are no plans to contract out this function.

- 5. A reviewer expressed concern regarding the decreased independence of not-for-profit providers, adding that voluntary providers are an extension of NYS and OPWDD which makes creativity and ability to try new ventures difficult.**

The Commissioner’s Transformation Panel has recognized the need for comprehensive regulatory reform and mandate relief. Such reform is the foundation for a future system that will improve quality, enhance equitability and lead to a sustainable

future. OPWDD concurs with the reviewer who noted that both OPWDD and providers must adopt a more entrepreneurial approach to the delivery of services and supports to support these outcomes and the development of successful managed care strategies that empower person-centered outcomes.

CARE MANAGEMENT AND PERSON-CENTERED PLANNING

- 1. Several reviewers expressed concerned about a conversion to Managed Care for all OPWDD eligible individuals and asked about the anticipated timeline for OPWDD clients to transfer from Medicaid Fee-for-Service to Managed Care.**

The Transformation Panel made recommendations regarding the development of managed care opportunities for individuals with intellectual or developmental disabilities. These recommendations call for a careful assessment of models before there is any mandatory enrollment in managed care. At this time, the only available Managed Care plan specifically designed for individuals with intellectual or developmental disabilities is the Fully Integrated Duals Advantage Plan for Individuals with Intellectual and Development Disabilities (the FIDA-IDD Plan). More information is available at: (http://www.opwdd.ny.gov/opwdd_services_supports/people_first_waiver/care_management/FIDA_IDD). In order to be enrolled in the FIDA-IDD, an individual must be eligible for Medicaid and Medicare and must live in a nine-county area in Downstate NY. An individual who is only eligible for Medicaid will not be able to enroll in the FIDA-IDD, but does have the option to enroll in a mainstream managed care plan for acute care services.

- 2. A reviewer expressed concerns regarding the Person-Centered Planning regulations and the additional costs that will be accrued due to the creation of Personal Outcome Measures (POMs) requirements and the implementation of the regulations regarding conflict of interest rules integrated for Medicaid Service Coordinators (MSCs) and Care Managers in Managed Care.**

Several providers raised concerns that the new OPWDD regulations governing person-centered planning will raise the cost of delivering Medicaid Service Coordination (MSC) services. The new regulations reflect the federal regulations governing Home and Community Based Services and existing programmatic and quality expectations of OPWDD. The new OPWDD regulations will not alter the billing and claiming reviews of MSC services.

While OPWDD is promoting the use of POMs throughout our service system, their use is not mandated. POMs are a valuable tool for helping organizations strengthen their person-centered practices. Also, POMs are being used as a means to evaluate person-centered planning for individuals who choose to enroll in the Fully Integrated Duals Advantage Plan (FIDA-IDD). The FIDA-IDD is a voluntary managed care option that will be available on April 1, 2016 in the Downstate area (see FIDA-IDD section below).

- 3. A reviewer expressed concern regarding Person-Centered Planning (PCP) regulations and certified settings. In particular, the reviewer noted that the NYS Regulations incorrectly narrowed the responsibility of the Service Coordinator to document the person's choice of living arrangement to situations where a person lived in a certified setting.**

OPWDD is in the process of issuing an Administrative Memorandum to provide guidance and clarification regarding the PCP regulations. This guidance will stress the importance of PCP practices for all individuals regardless of living settings.

- 4. Several respondents expressed concern with the quality oversight of Medicaid Service Coordinators (MSCs).**

Please note that MSC is not a Waiver service, it is a State Plan Service which is described in the HCBS Waiver for the purpose of identifying how Waiver enrolled individuals receive their care coordination. Nonetheless, OPWDD's Division of Quality Improvement (DQI) conducts annual MSC surveys which is described in Appendix D of the HCBS Waiver application (beginning on page 117 of the on-line document). During these MSC surveys, if individual deficiencies are found, they are documented on an Exit Conference Form. Then the care coordination provider under review must remediate these deficiencies within 30 days and send attestation of completion to OPWDD. If deficiencies are found that rise to the level of egregious, systemic, or pervasive, the provider will receive a Statement of Deficiency (SOD) requiring a Plan of Corrective Action (POCA). OPWDD follows up to verify that the POCA has been implemented.

OPWDD encourages individuals to address their concerns with the quality of service coordination first with their Medicaid Service Coordination agency and then with their local OPWDD Regional Office. Individuals have the freedom to change their MSC at any point in time especially if they are not satisfied with the quality of service coordination they are receiving. For more information about freedom of choice in regards to MSC please refer to Appendix D of the waiver renewal.

- 5. A reviewer questioned OPWDD's full implementation of the federal requirement for conflict-free case management.**

OPWDD supports individual and family choice of Medicaid Service Coordination (MSC) provider. In some cases, this has led to individuals receiving MSC and HCBS waiver services from the same entity. There are extensive fire-walls and protections in place to ensure the person's interests are protected. Further changes are currently under evaluation. In the MSC manual, providers are instructed that staff providing direct

services to a person cannot also serve as that person's service coordinator. This includes but is not limited to: residence managers, clinicians (e.g., psychologists, nurses), habilitation specialists, Family Care home liaisons and direct support staff. In addition, program managers with direct (first-line) administrative control over an individual's services or programs may not supervise the individual's service coordinator. The implementation of the FIDA-IDD and the work of the Commissioner's Transformation Panel regarding managed care will be developed in accordance with federal requirements.

FIDA-IDD

- 1. Several reviewers expressed uncertainty regarding the development of the Fully Integrated Duals Advantage for Individuals with Developmental Disabilities (FIDA-IDD). One respondent recommended that NYS adopt an entrepreneurial approach in regards to service delivery in the new managed care environment**

The OPWDD Joint Advisory Council (JAC) for Managed Care was formed in 2013 and continues to meet with OPWDD and DOH on a quarterly basis to guide the design and implementation of the FIDA-IDD program as well as other emerging managed care models. The FIDA-IDD plan is a non-profit Article 44 entity that is planned to begin operating in 2016 as described at the following link: http://www.opwdd.ny.gov/opwdd_services_supports/people_first_waiver/care_management/FIDA_IDD. OPWDD looks to this demonstration as the first opportunity to test and evaluate the coordination of care in delivery of Medicaid and Medicare benefits to individuals with developmental disabilities. OPWDD looks forward to working together to ensure long-term fiscal sustainability for people currently receiving services and for those who will need to access our services in the coming years.

- 2. A respondent asked about the advantages of enrolling in the Fully Integrated Duals Advantage for Individuals with Developmental Disabilities (FIDA-IDD).**

The FIDA-IDD is a health plan offering a comprehensive benefit package that includes health care, dental services, transportation, OPWDD services and other long-term services and supports, such as personal care. All of these services are brought together in a single benefit package which provides convenience in accessing the full continuum of comprehensive services. The FIDA-IDD is person-centered and uses a person-centered planning approach to address Participants personal goals for their life, and supports Participants to develop and put into action a plan to reach those goals. There are several opportunities to learn more about the opportunities with the FIDA-IDD at the following link: http://www.opwdd.ny.gov/opwdd_services_supports/people_first_waiver/care_management/FIDA_IDD.

- 3. Several reviewers asked if individuals living in Intermediate Care Facilities (ICFs) and Individualized Residential Alternatives (IRAs) will be eligible to participate in the Fully Integrated Duals Advantage for Individuals with Developmental Disabilities (FIDA-IDD). In addition, another reviewer asked if individuals who are receiving Consumer-Directed Personal Assistance Program (CDPAP) services are eligible for the FIDA-IDD.**

Individuals living in ICFs and IRAs can enroll into the FIDA-IDD. Individuals living in a Skilled Nursing Facility (SNF) /Nursing Facility (NF) or Developmental Center (DC) cannot enroll. Upon leaving the SNF/NF or DC, an individual may enroll in the FIDA-IDD. Individuals who are receiving CDPAP services can opt to enroll if they meet the other eligibility qualifications for FIDA-IDD. FIDA-IDD enrollees can continue to receive services from an ICF, IRA, or CDPAP.

- 4. A respondent asked what the differences are between a Care Coordinator who works for the Fully Integrated Duals Advantage Plan for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD) and a Medicaid Service Coordinator who works in Fee-for-Service Medicaid. In addition, the respondent asked what the case load limits will be for Care Coordinators in the FIDA-IDD.**

*For individuals enrolled in FIDA-IDD, they will have a two-person coordination team. A **care manager** who is a registered nurse or other licensed professional (for example Psychologist) will lead the interdisciplinary team (IDT), help assess Participants needs, help with medications, doctors' visits and answer health related questions. A **care coordinator** who is a Qualified Intellectual and Developmental Disability Professional (QIDP), will assist the Participant with community activities such as making appointments and arranging transportation and is responsible for the development of the Life Plan (LP). The qualifications for care managers and care coordinators are described in the FIDA-IDD Three-Way Contract between federal Centers for Medicare and Medicaid Services (CMS), New York State, and Partners Health Plan (PHP). The care management ratio in the FIDA-IDD varies based on the person's needs, their residential setting and whether they receive care coordination by virtue of living in an Intermediate Care Facility (ICF-IID). In most cases the care coordinator ratio will be 1:40.*

For individuals not enrolled in FIDA-IDD, the Medicaid Service Coordinator (MSC) is responsible for the development of the Individualized Service Plan (ISP). The requirements for an MSC is described in the MSC vendor manual: http://www.opwdd.ny.gov/opwdd_services_supports/service_coordination/medicaid_service_coordination_vendor_manual.

- 5. One reviewer wanted assurances that specialty care coordination for individuals with dementia and Alzheimer's will not be eliminated if individuals enroll in Managed Care organizations**

The FIDA-IDD is a voluntary enrollment managed care demonstration program for people with developmental disabilities, that includes a comprehensive benefit package of all medical needs including mental and behavioral health. This comprehensive benefit package is coordinated by a team of professionals called the Interdisciplinary Team (IDT). The IDT provides each participant with an individualized comprehensive care planning process in order to maximize and maintain his/her functional potential and quality of life, regardless of diagnosis.

- 6. A reviewer recommended that for individuals who self-direct and are enrolled in the FIDA-IDD that the Interdisciplinary Team (IDT) should be required to include the broker, unless the individual specifically objects. In addition, the reviewer stated that the broker and designated member of the Circle of Support should receive written notice of all scheduled IDT meetings.**

The Support Broker is not only welcome, but required to attend all IDT meetings for the participants on their case load who are enrolled in the FIDA-IDD. Members of the participant's Circle of Support are also welcome to attend all IDT meetings, as long as the participants agrees, but are not required members. The IDT is required to include the following: the participant and/or his/her representative; the participant's primary developmental disability service providers (including Support Broker) who have knowledge of the participant's desired outcomes and service needs; and the FIDA-IDD plan care manager. For more information, the FIDA-IDD IDT policy can be found on our website at the following link: <http://www.opwdd.ny.gov/node/6283>.

- 7. A respondent expressed concern regarding the inclusion of all the service providers who deliver services in the Individualize Service Plan (ISP)/Life Plan (LP) meetings.**

In accordance with person-centered planning requirements, all service providers who deliver services to an individual are required to attend ISP/LP planning/review meetings. The attendance of all service provider ensures that the content of the ISP/LP and the habilitation plans are coordinated and reflect the person's goals, outcomes, strengths, and needs. In addition to attendance of the participant, MSC/Care Manager, service providers, and the participant's advocate, the participant may invite any other family or friends that s/he would like to be involved in the ISP/LP process.