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**Assembly Standing Committee on Mental Health,  
Mental Retardation and Developmental Disabilities**

**Assembly Standing Committee on Codes**

**Assembly Standing Committee on Oversight, Analysis, and Investigation**

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**Public Hearing**

**June 13, 2011**



**Good morning Chairman Ortiz, Chairman Lentol, and other Assembly members. Thank you for the opportunity to speak with you today about efforts at OPWDD to improve health, safety, accountability, and transparency.**

The issues raised in a series of articles in *The New York Times* are deeply disturbing to all of us. Since coming to OPWDD in March, my top priority has been the health and safety of people with developmental disabilities in our care. There must be **zero tolerance** for the mistreatment of people with developmental disabilities, both in State-operated facilities, and in the nonprofit agencies that we regulate. The work of the agency is critical to the health and well-being of tens of thousands of New Yorkers, and we have an obligation to correct the concerns of the past. I thank you for your partnership in this effort, as does Governor Cuomo, who has supported me in carrying out these much-needed reforms.

The very first action I took when I came to OPWDD was to direct our highest level administrators in the field, DDSO directors, and deputy directors, to make unannounced inspections to all State-operated community homes. These visits are occurring weekly in homes throughout the State during evening and weekends when people who live and work in the homes are present. In DDSOs with campus-based programs, directors and deputies are also visiting the residences at our developmental centers. Since I ordered this directive in March there have been more than 500 visits to community homes and more than 160 visits to developmental center residences by directors and deputies. These visits are in addition to the regular oversight provided by DDSO administrators.

It is my expectation that every OPWDD employee, whether a direct support professional or administrative staff, takes reports of abuse and neglect seriously and acts swiftly to ensure safety in our system. This is an obligation we have to the 126,000 New Yorkers with developmental disabilities and their families whom we support. In just a few short months, I have spent many hours listening to the concerns and suggestions of parents, advocates, providers, legislators, and employees so that we can all work together to improve quality and make our system safer.

### **Systematic Action Steps Taken**

I have already implemented, and will continue to move forward with a comprehensive range of reforms. I have taken actions that address everything from:

- The quality of people that we are hiring and how we are supporting them once they are hired so they are properly trained and supported;
- Creating a culture where individuals, families, and workers feel safe to report any abuse or problems they see; that they know their reporting will result in action; and that safety and respect for the people we serve is paramount. If an incident does happen, it is dealt with swiftly, consistently, and firmly;



- If an incident needs to be investigated, using highly trained and certified investigators, ensuring an arm's-length relationship of the investigator and who they are investigating, and reviewing those investigations centrally to ensure they are more timely and consistent;
- If an incident rises to the level of a crime, ensuring it is reported in a timely way, that adequate information is reported, and that we partner with law enforcement to ensure follow through;
- Ensuring that our voluntary/nonprofit providers are also handling incidents properly and that they meet high quality standards; and
- If we find we have bad workers, ensuring we can act strongly to remove bad people so that the individuals we serve are safe.

As you know, the Governor's office is undertaking a comprehensive review of New York's systems for caring for vulnerable populations, under the leading national expert, Clarence Sundram, the Governor's special advisor on vulnerable persons, and my agency is cooperating in that review. This review will lead to recommendations for thoughtful comprehensive changes to these systems and for assuring that an appropriate design for abuse prevention and remediation is in place. That comprehensive review will take more time, but I have taken immediate steps to heighten protections for individuals receiving services in the OPWDD system. Today, OPWDD will be advancing a departmental bill to ensure that individuals employed in the system are of the highest caliber and ensure that individuals receiving services in the OPWDD system receive the needed safeguards and protections afforded other vulnerable populations. It will also protect them from sexual advances by individuals employed by OPWDD or its authorized agencies.

- The bill that we are advancing today would prohibit OPWDD and its authorized agencies from hiring individuals convicted of certain violent and serious crimes, such as homicides, sex offenses, and assaults; and
- Would recognize that an individual with a developmental disability who is receiving services from OPWDD or an authorized agency is legally incapable of consenting to sexual contact with a staff person of the office or agency where the individual receives services.

I urge you to pass this important legislation before the end of the legislative session.

Given this overview, let me provide specific detail on the range of actions I have taken in each of these areas. Let me begin by explaining the actions I have already taken to improve the quality of the workforce and hiring practices.



## Hiring Standards

- On April 1 of this year, **I tightened hiring standards for all State direct care applicants.** New hires will have at least a high-school diploma or its equivalent and will undergo psychological and fitness testing, mandatory drug testing, and will be vigorously vetted against the Statewide Central Register of Child Abuse and Maltreatment, and the Medicaid Excluded Provider Registry (federal and State). The current requirement of criminal background checks for new hires will also continue.
- In addition, verification of education and credentials (diplomas, licenses, etc.) and past employment references will be checked. For employees who will be performing direct care functions, in addition to the psychological, fitness, and drug testing, we will be verifying that they have a valid driver's license and a safe driving record.
- Employees must now serve their full probationary period, regardless of previous experience.
- I am aggressively pursuing potential actions to address the issue of individuals with felony convictions who seek employment in our system. I have instructed all my directors, and have strongly suggested to the nonprofit providers, **not to re-hire anyone who has been terminated from State employment**, or who has resigned in lieu of termination because they were found to have abused or neglected an individual in our care.
- I also directed OPWDD staff to work with the Department of Civil Service to create a new job title of Direct Support Assistant for State staff, replacing the title of Developmental Aide, effective April 1. This new position clearly outlines job expectations when recruiting applicants and creates tools that provide a consistent message on the details of job functions for prospective applicants.

## Training

- I have created the New York State Developmental Disabilities Talent Development Consortium (NYSTDC), which will bring together a wide variety of stakeholders and national experts to review and recommend a uniform approach to developing a single set of core competencies for direct care staff.
- I have required all 23,000 OPWDD employees to complete a training to reinforce principles of individual respect, dignity, and professional ethics in the care of those we serve, as well as methods of preventing and reporting abuse and neglect. To show you how serious I am about this, my Leadership Team and I also took part in this mandatory training.



- We have also provided resources to the nonprofit agencies we regulate so that the same training can be made available to their staff.
- This training will now be **required** for every employee of both State and nonprofit providers on an annual basis. In addition, an attestation has been developed for employees so that their responsibility to report abuse and neglect is constantly reinforced.
- Supervisors also receive training on preventing and reporting abuse and neglect. Supervisors participated in the training that was just completed on preventing and reporting abuse and neglect and are part of the annual refresher training, as well.
- Although training is an important component, culture within OPWDD as it relates to abuse and neglect is even more critical. Knowing this, I have directed senior staff to undertake a cultural assessment regarding OPWDD's climate in the area of reporting abuse and neglect. The process will involve a cross-section of staff from the agency, including direct care staff and representatives from the labor unions.
- I have renewed the agency's focus for training our front-line supervisors and we are exploring new methods of videoconference connections to enhance training and effective communications, and the monitoring of remote sites.

### **Investigations and Incident Management**

- One of my first action steps as Commissioner was to create an **Incident Management Team**, which is a centralized unit now in place that is charged with oversight, analysis, and follow-up on all reports of incidents of abuse and neglect in both the State and nonprofit provider systems.
- I have restructured the **agency's investigative process** to make investigations independent from operations and to ensure consistency statewide. This means that the 13 existing investigative teams working for the local districts will now be overseen entirely by the OPWDD Office of Investigations and Internal Affairs, organized under five regions statewide. This is critical for oversight and accountability.
  - **Additionally, I am hiring a new Director of Investigations** to oversee this process, which will ensure that there is an objective arm's-length approach to all investigations.
  - **Since arriving in March, I have required that investigators undergo training from a nationally recognized consultant. As of this past week, our agency has newly certified 51 investigators under our new standard.**



## Disciplinary Review

- In May, I issued a new interim disciplinary policy, which is designed to improve the effectiveness of OPWDD's agency program. The redesign will also better ensure that employees who engage in misconduct, abuse or neglect are held accountable and that there is greater consistency in the application of discipline and the assignment of penalties statewide, across all OPWDD worksites.
  
- **I restructured the agency's disciplinary review process, creating a Statewide Disciplinary Panel** to ensure consistent application of disciplinary actions across the system that reflect the quality of care values held by OPWDD, across all worksites.
  - This means that in disciplinary cases that are substantiated, the employee is now suspended without pay rather than remaining on administrative leave.
  
  - Termination of employees will be pursued when appropriate; and no settlements will be accepted in abuse cases.
  
  - I have instructed our Employee Relations Office not to agree to any incident-specific probations.
  
  - I am doing everything I can to tighten standards for direct care staff, and I am optimistic about working with the unions and other entities to find a way to get bad people out of our system. I am sending a strong message to the field that abuse and neglect will not be tolerated. We are currently exploring avenues toward this that we have not explored before.
  
  - If there is a serious incident that is substantiated, we will be suspending employees while seeking their termination, and will not settle during arbitration. This sends a strong message to our front-line workers that it is worth their time and vigilance to report instances of abuse.
  
  - All disciplinary actions are taken within the requirements of the negotiated agreements between the labor unions and New York State. We will not violate these contractual requirements but will do everything we can to ensure individuals in our system are safe.



## Regulating Voluntary Providers

- It is extremely important that quality services are provided by both State and voluntary providers. To that end, I have taken steps to provide consistency across systems.
- I have reconstructed the **agency's Early Alert Committee, which oversees nonprofit providers to better prevent serious and/or systematic problems from occurring**, as well as to take more timely and definitive action when providers are unable to demonstrate that they can sustain quality services.
  - This committee is now chaired by the Acting Deputy Commissioner of Quality Management, and includes Associate Commissioners of all divisions, as well as other members of upper-level management.
- The use of the Incident Report and Management Application (IRMA) is being mandated to all nonprofit providers of OPWDD services, and all agencies will be trained for full implementation of this system by the fall of this year. This will allow data relative to incident reporting to be in real time and analyzed to be used to improve OPWDD systems.
- We redesigned and issued a new and more complete incident reporting form for all State and nonprofit providers. **By the end of August, all nonprofit providers will be trained to enter incident reports electronically.** Trainings to support this are now underway.
- Nonprofit provider agencies will continue to conduct extensive background checks on the individuals they hire.
- I have required nonprofit providers to report all incidents immediately, overriding the three-day waiting period that has existed in the current regulations. I have directed my staff to seek changes in the regulations to reflect this.
- The State Mental Hygiene Law allows for the imposition of fines to address failures to comply with the terms of an operating certificate or with the provisions of any applicable statute, rule, or regulation. **Mental Hygiene Law specifies that the Commissioner may impose a fine of up to \$1,000 a day or \$15,000 for each violation. I have notified nonprofit providers that I will do just that**, through the Early Alert Committee, and may choose to impose a fine or take other disciplinary measures when an agency's action—or inaction—poses a significant risk to one or more individuals. Nonprofit agencies that have severe or repeated performance issues will be evaluated for additional action, including potential revocation of a nonprofit agency's operating certificate.



- Examples of situations that may result in fines include, but **are not** limited to: failure to protect health and safety, failure to report and take immediate actions to protect people who are at risk; fire safety issues; physical plant issues; facility operation issues; and limitations of individual rights.

### **Law Enforcement Partnership**

- I am requiring immediate notification to law enforcement of all incidents of physical and sexual abuse that may be a crime.
- I would like to direct your attention to Appendix A on page 11 of my testimony; there you will see that as a direct result of this directive:
  - Reporting of all allegations of physical abuse increased from **16.8% to 60.8%**
  - Reporting of all allegations of sexual abuse increased from **74.7% to 87.6%**
- This represents a 10-week period of reporting between March 15, 2011 and May 31, 2011. During this time, expectations on timely reporting in IRMA as well as IRMA training and revisions to the incident report form and IRMA data entry were all in the process of implementation. I expect to see even more uniform and timely reporting in IRMA when these system improvements on reporting are fully implemented.
- In addition, OPWDD is collaborating with the State Police to ensure that we are meeting our obligation to ensure that abuse which may be a crime is reported to law enforcement. We are establishing a protocol with the State Police to roll out statewide in the coming days so that OPWDD and its provider agencies will consistently report abuse to the police where a crime may have been committed.
- OPWDD has provided training to law enforcement in working with people with developmental disabilities and we are currently working with the State Police toward a partnership to provide additional training opportunities.

### **Building Positive Relationships through Culture Change**

- All of our recent reforms support the need for a culture change in the agency and the service system as a whole. OPWDD's guiding principle of putting people with developmental disabilities *first* centers on positive relationships and interactions, and an organizational culture where abuse is not tolerated.



- We are seeking to be supportive of people who observe shortcomings in the system. We intend to make information more transparent and available to all of our stakeholders. To begin this process, I am creating a team, which will include direct care workers, to comprehensively address culture change and to develop methods to measure our progress in a way that is accountable to the public. Today, we have launched a dedicated section on our website that outlines our reforms.
- I know that for individual safety to improve—both for the people we support, as well as for the agency’s employees—it needs to be constantly at the forefront of everything we do. As I have said before, health and safety is OPWDD’s No. 1 priority.
- Those in direct care are in the unique position of improving the safety of the people with developmental disabilities we support and serve, and I am in the position to offer them the opportunity to report maltreatment, abuse, and neglect without fear of retribution and with support and encouragement from supervisors and other leadership within OPWDD.
- I want—and need—staff to speak out whenever an individual is at risk. I understand that this will not change overnight, but we are already beginning to address this issue.
- I have established a dedicated email address, [people.first@opwdd.ny.gov](mailto:people.first@opwdd.ny.gov), which will enable people who may have allegations of abuse or concerns they would like to raise to do so without fear of retribution.
- I also have a dedicated comment line where people can call to report, anonymously, if needed, any incidents of abuse or neglect (1-866-946-9733). We also have a TTY number, as well, for those who need it.
- I am encouraging staff to think, act, and focus on creating a more positive approach to safety. The focus of our work is to proactively improve the quality of the lives in our care; never losing sight of the intended goal of safety first, and not to get distracted or to allow obstacles to interfere with OPWDD’s vital mission of helping people with developmental disabilities live richer lives.

**In closing**, I want to thank you again for the opportunity to speak with you today—and I want to assure you that the steps I have outlined for you are only the beginning.

These are changes that we were able to implement immediately; many of the more extensive changes we intend to make require coordination with other entities and legal or regulatory changes. As you know, OPWDD is a large and complex agency. Change does not come easily. But I want to make it clear to you that I am changing things quickly and significantly.



In the few months that I have been at the agency, any instances of alleged serious abuse have been responded to quickly and vigorously. None of the alleged perpetrators are currently engaged in the care of our individuals. Anyone with a substantiated allegation of serious abuse has been suspended without pay as they await arbitration, and I assure you that I will personally oversee their disciplinary proceedings and make sure that if we conclude they cannot be trustworthy caregivers, they will never again be in a position to harm the individuals we are so privileged to serve.

Finally, let me assure you that as we go forward to implement these plans, we will continuously monitor our performance. I am gratified that in the approximately 90 days that I have been Commissioner, our data show that the frequency of incidents has declined and our follow-up has been more rigorous. We have also increased the number of people suspended when there is a substantiated allegation. We have seen the percentage of incidents reported to law enforcement increase. I have provided that data in the appendix of this testimony.

Meeting this formidable challenge must be considered a work in progress. We will learn as we go along and we will continue to strive for higher levels of performance, measuring our progress, and making those measures of progress available publicly.

Like the thousands of dedicated care providers throughout New York State, I am very passionate about the people and families OPWDD supports and serves, and **I am intensely committed to creating a culture of zero tolerance. Abuse and neglect cannot—and will not—be tolerated in this agency.** I take this responsibility very seriously and appreciate the opportunity to present the positive changes I have implemented.

The Governor has made it clear that these reforms are critical and now I am asking for your support as dedicated lawmakers to work with me on the critical reforms we are undertaking, and which may need legislative approval, so that OPWDD can once again be thought of as a national model of care for individuals with developmental disabilities.

Thank you; I would be happy to take questions.



## Appendix A

