

**OPWDD Response to Public Comments Received August 1, 2016 - September 9, 2016 on the OPWDD 1915 (c) Comprehensive Home and Community-Based Services (HCBS) Waiver “Amendment 01”**

On August 1, 2016, the New York State (NYS) Office for People With Developmental Disabilities (OPWDD) posted a copy of the proposed 1915 (c) Comprehensive Home and Community-Based Services (HCBS) Waiver “Amendment 01” to the OPWDD website for a 30-day public comment period. In its approval of the March 31, 2016 HCBS Waiver Renewal, OPWDD committed to submitting an Amendment of the HCBS Waiver to the Federal Centers for Medicare and Medicaid Services (CMS) no later than October 1, 2016. CMS required NYS to include a transition plan to Conflict-Free Case Management (CFMC) in this Amendment submission to comply with the Federal Home and Community-Based Settings rule (42 CFR 441.301(c)(1)(vi)). The proposed Amendment describes proposed key changes effective January 1, 2017:

- Technical changes to both Community Transition Services, Environmental Modifications, and Assistive Technology Waiver services: to make them consistent with the New York State Plan Community First Choice Option (CFCO).
- A change of Residential rates: to facilitate increased staffing for people with high needs.
- A request for a new Respite fee methodology
- Proposal for the State to pay the ‘higher of’ calculated rate when a Non-State ceases operations associated with another Non-State provider: this ‘higher of’ rate will be in effect until a full year’s cost of providing services to the individual(s) impacted by the change in auspice is reflected in the “receiving provider’s” base year Consolidated Fiscal Report (CFR).
- Implementation of the Nurse Practice Act (NPA): delivery of delegated nursing services by approved direct care staff in the community.

OPWDD conducted three Web Ex sessions to explain the Waiver Amendment on August 2, 2016; more than 700 people registered to participate. During these sessions, OPWDD received more than 100 questions on 19 different topics. In addition to the feedback OPWDD received during the Web Ex sessions, OPWDD received submissions from more than 150 individuals or organizations on a variety of different topics.

The proposed OPWDD 1915 (c) Comprehensive Home and Community-Based (HCBS) Waiver Agreement, “Amendment 01”, the PowerPoint, and audio recordings from the three Web Ex Sessions held on August 2<sup>nd</sup>, 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](http://www.opwdd.ny.gov/opwdd_services_supports/people_first_waiver/HCBS_waiver_services).

**Response to Public Comment**  
**OPWDD Comprehensive Home and Community Based Services Waiver**  
**Amendment 01**

**Waiver Review**

- 1. Several comments expressed general concerns that the Notice to Stakeholders and the public comment period was insufficient for reasons such as the summer vacation schedules of stakeholders and the complexity of the Amendment. Several commenters also recommended that OPWDD hold forums to explain Waiver changes and provide a summary of changes. In addition, respondents expressed concern regarding the complexity of the Amendment document, especially waiver services definitions and limits that are also maintained in other documents, such as Regulations and Guidance documents.**

OPWDD's public notice of Amendment 01 satisfied all regulatory requirements. OPWDD published announcement of the review period in the State Register and published an overview of the changes proposed for the Amendment. OPWDD also distributed notices to all Stakeholder e-mail distribution lists, published Amendment materials on the agency website and made printed copies of the Application available at each Regional Office (DDRO). Three web-based information sessions were conducted at the start of the comment period. OPWDD published the materials and Question & Answer period responses from these sessions on the OPWDD website, where they are currently maintained.

[https://www.opwdd.ny.gov/opwdd\\_services\\_supports/people\\_first\\_waiver/HCBS\\_waiver\\_services](https://www.opwdd.ny.gov/opwdd_services_supports/people_first_waiver/HCBS_waiver_services).

The timing of the public notice was beyond OPWDD's control as its HCBS Waiver Renewal was only approved in March 2016 and OPWDD was required to submit Amendment 01 by October 1, 2016. OPWDD did extend the comment period through September 9, 2016, and also considered untimely comment submitted after that date.

Anyone who is interested in joining the OPWDD distribution list can "click" on the button labeled "Sign Up for OPWDD Updates on the OPWDD home page (<https://www.opwdd.ny.gov/>).

**2. Several respondents stated that OPWDD failed to take into account public comment in the prior submission of the Waiver for the Renewal (effective 10/1/14).**

OPWDD considers all public comments on its Waiver Renewal submission by evaluating each recommendation from the public comment process. Whether immediate action is taken on a particular comment or suggestion is determined by federal requirements, state policy, ongoing reforms that need to be addressed and availability of needed funding. In many instances, the recommendations are already being addressed as part of the Commissioner's Transformation Panel.

**3. Several respondents suggested that changes to the Waiver should be able to be addressed as needed.**

The process for updating or amending the Waiver Agreement is established by federal statute and regulation and OPWDD must comply with that procedural framework.

**4. Several commenters stated that the representation of individuals and families on NYS Medicaid planning committees needs to increase.**

OPWDD greatly values the input of its stakeholders and has worked in cooperation with individuals, families, providers, advocates and regulators over the years to improve our service system. There are multiple opportunities for greater stakeholder involvement including the Joint Advisory Council (JAC) established in April 2013 (information available at:

[http://www.opwdd.ny.gov/opwdd\\_services\\_supports/people\\_first\\_waiver/opwdd-joint-advisory-council-managed-care](http://www.opwdd.ny.gov/opwdd_services_supports/people_first_waiver/opwdd-joint-advisory-council-managed-care)).

**Community First Choice Option**

**5. Respondents asked for clarification about the individual eligibility and eligibility determinations for Community First Choice Option (CFCO) Services.**

CFCO services are available to individuals who are:

- Eligible for Medical Assistance (Medicaid) under the State Plan;
- Have an institutional level of care; and
- Living in their own home or a family member's home (not a congregate setting or an IRA).

Children who obtain Medicaid by waiving parental income are not eligible for CFCO services.

Individuals receiving services through CFCO can receive other HCBS Long Term Care (LTC) services and supports through another Medicaid State Plan, waiver, grant or demonstration, as appropriate. However, individuals will not be allowed to receive duplicative services in CFCO or any other available community-based services.

OPWDD will make the determination whether an individual meets an Intermediate Care Facility – ICF-IID level of care. The level of care determination is one of the first steps in accessing CFCO services.

**6. A commenter asked how Community First Choice Option (CFCO) will impact Self-Direction budgets.**

OPWDD does not anticipate that CFCO will affect self-direction budgets.

**7. A respondent asked how “medical necessity” is defined in regard to the “soft limits” that were established for Environmental Modifications (E-mods), Vehicle Modifications (V-mods) and Assistive Technology (AT)?**

Broadly, medical necessity for these types of services will be evaluated based on the equipment or modification’s ability to improve the participant's independence, decrease reliance on staff, or provide a cost-effective aid for community integration.

**8. A respondent raised concerns that the new medical necessity, soft cap, and bidding process requirements for E-mods and AT have the potential to cause delays and eliminate or reduce the amounts of supports and services administered.**

OPWDD is working with the Department of Health and other State Agencies on ways to streamline the approval process to minimize delays and ensure consistency in the approach for similar services under the State Plan and the Waiver options. OPWDD believes this design appropriately balances the needs of beneficiaries with the need to coordinate with other state agencies. The advantage to this design is that OPWDD will have greater flexibility when there are high cost needs.

**9. A respondent recommended that the State use additional federal reimbursement from CFCO to fund 100% State-Funded programs that are not eligible for Federal funding, such as transportation.**

OPWDD’s current Financial Plan provides that CFCO reimbursement will be used to help fund new services required for individuals with developmental disabilities who are aging out of the school system.

## Proposed Changes to Waiver Services

- 10. A respondent recommended that OPWDD create AT funding for initial equipment, continuous maintenance fees, ongoing support to enable proper use of the adaptive equipment, and staff training.**

The current Amendment does not address these types of recommendations. However, through the Balancing Incentives Program (BIP), eleven grants were funded that focus on using assistive technology to support individuals in achieving goals of independence (10 OPWDD Transformation Grants and 1 NYS Department of Health Innovation Grant). A total of almost \$5 million was provided. Many of these projects will conclude in 2017, and OPWDD and technology grant recipients intend to create a learning opportunity for interested parties on the BIP-funded technology projects. OPWDD anticipates that AT services will be modified based on the grant projects.

- 11. A respondent requested that the Waiver be expanded to include Family Peer Supports. The service would be delivered by credentialed Family Peer Advocates in keeping with service Models in the Office of Mental Health (OMH).**

This is not an action that can be taken in Amendment 01. The OPWDD Commissioner's Transformation Panel is separately developing peer support and mentoring programs to foster relationships between people with developmental disabilities and their non-disabled peers.

## Conflict-Free Case Management

- 12. A reviewer asked about the indications that the current MSC system is not working and requires a change, specifically asking if the indications were related to quality of care or budgetary concerns.**

OPWDD is adopting "Conflict-Free Case Management" in order to comply with Federal regulations governing Home and Community-Based Settings (see 42 CFR § 441.301(c)(1)(vi)). OPWDD will use the opportunity of Conflict-Free Case Management to improve person centered planning in the OPWDD system.

- 13. Several respondents support OPWDD's plan to implement Conflict-Free Case Management (CFCM) and stressed the importance of stakeholder involvement, outreach, and planning during this process.**

OPWDD will continue its engagement of stakeholders, including in the development of Conflict-Free Case Management. During the next year, OPWDD will consult stakeholders on design elements of how to address transition challenges to assure the design and implementation supports individuals' choices in order to live meaningful lives.

- 14. Several respondents recommended that OPWDD establish distinct and separate Case Management entities. These entities should be affiliated with organizations that have experience working with individuals with intellectual and developmental disabilities and should demonstrate how the transition of front line staff will be achieved to minimize staff disruption while ensuring compliance with the standards.**

OPWDD agrees that case management services must meet the federal requirements for Conflict-Free Case Management and that the new organizations should have experience in developmental disabilities services. Further information will be forthcoming regarding the expectations for Conflict-Free Case Management organizations.

- 15. Another respondent recommended that OPWDD create a conflict-free solution that contains elements that will work under either fee-for-service or managed care systems. The respondent advised that the current Medicaid Service Coordinator (MSC) role be split into two separate positions through the creation of a "Personal Advocate" and "Care Coordinator." The two positions would separate advocacy services and person-centered planning development.**

It is OPWDD's intent that the new care coordination organizations would be effective in and compatible with any health care delivery environment. The recommendation regarding the recognition of separate roles for advocacy and person centered planning will be considered as part of the development of Conflict-Free Case Management organizations.

- 16. Several respondents cited problems associated with implementing the proposed plan to address Conflict-Free Case Management. The concerns raised included: increased costs, restriction of choice, and maintenance of current workforce. Ultimately, respondents felt these issues would result in a lower number of individuals served and a diminishment in the quality of person-centered planning.**

Conflict-Free Case Management is a requirement for OPWDD's HCBS waiver services set forth by CMS in federal regulation. CFCM is intended to increase individual choice and reduce unnecessary costs. It is OPWDD's intent that the new care coordination organizations would be effective in both fee-for-service and in a managed care

environment. This will address both conflict-free case management requirements and also provide a transition for Medicaid Service Coordinators to develop the expertise that is necessary for supporting more integrated service planning today and in the future under managed care. OPWDD anticipates the inclusion of quality oversight that will have a focus on measurement of the success of person-centered planning based on the outcomes achieved by the person receiving services.

- 17. Several respondents expressed concerns about the negative impact of the conflict-free rules on established care management relationships. One respondent recommended that OPWDD be clear with individuals, families, service providers and case management staff that it is possible that the Medicaid Service Coordinator who is currently supporting an individual and family today may not be supporting them under this new model.**

CFCM will benefit all care recipients, including those that may develop relationships with new case management providers. OPWDD also intends to form a workgroup that includes stakeholders to address transition issues, including the ability for beneficiaries to maintain and maximize current case management relationships. With the advent of Conflict-Free Case Management, individuals and families will have the choice of Conflict-Free Case Management agency. Additionally, OPWDD will evaluate the applications of Conflict-Free Case Management agencies based on the degree to which the new entity has affiliations with existing Medicaid Service Coordination agencies. OPWDD cannot commit to any individual or family that the same MSC case manager that they work with today will be the same under conflict-free case management. Even in today's MSC system, there is no guarantee that individuals and families have continuity of MSC staffing. A high priority will be given to continuity of care, and that comprehensive networks of MSC providers will be included in conflict-free organizations. OPWDD is committed to making investments in workforce so that current MSCs have opportunity to transition to Conflict-Free Case Management and to have increased opportunities for promotion and a "career ladder." Also, funds available to support the transition to Conflict-Free Case Management will be used to enhance person-centered planning and better services for individuals and families.

- 18. A respondent noted that Case Management and service provision by the same agency, when executed properly, is highly beneficial for those who choose to receive their services in this manner as the sharing of information among colleagues promotes a stronger supportive resource than fragmented communication among separate agencies.**

Conflict-Free Case Management is a requirement for OPWDD's HCBS waiver services set forth by CMS in federal regulation. CFCM will enhance person-centered planning and

will provide financial resources to allow significant investments in Information Technology that will address effective communications among agencies and with individuals and families and promote person centered planning. It is recognized that this does not replace close, collegial relationships that exist. Every effort will be made to build on the strength of the existing Medicaid Service Coordination system as new conflict-free options are established.

**19. Respondents raised concerns about the effect of Conflict-Free Case Management on agencies that have expertise serving a particular population/culture. The concern expressed is that these providers will be forced out of providing case management or HCBS Waiver Services to individuals with intellectual and developmental disabilities in order to comply with these regulations.**

The federal rules do allow for an exemption from conflict-free rules for situations where there are limited numbers of qualified providers in a particular region. OPWDD will propose to CMS that this same exemption be extended to providers that serve unique populations. That exemption will be narrowly defined. Specialized providers will be encouraged to choose affiliation with Conflict-Free Case Management organizations rather than be “carved out.”

**20. A respondent asked for clarification regarding how Conflict-Free Case Management affects individuals who reside in an ICF where case management is part of their benefit "package."**

The federal rules for Conflict-Free Case Management do not apply to ICFs (Intermediate Care Facilities).

**21. What will prevent agencies from forming subsidiaries to deliver case management and waiver services under two different names that are run by the same administration, while preserving the critical case manager/person supported relationship?**

OPWDD will oversee and monitor the formation of new care coordination agencies in order to meet the CFCM requirements under the federal regulations.

**22. Several respondents asked about other options for addressing Conflict-Free Case Management requirements. Recommendations included: an annual notification to individuals and families of their right to select a different case management provider; an independent entity to assess the independence of the case management provision in cases where a person receives both case management and services from the same entity; and, allowing grandfathering for existing enrollees.**

Conflict-Free Case Management is a requirement for OPWDD's HCBS waiver services set forth by CMS in federal regulation. The only exception included in the rule is when the State demonstrates that the only willing and qualified case management entity in a geographic area also provides HCBS, as discussed above (See # 19). In these cases, the state must devise conflict of interest protections like the kinds recommended here. These recommendations cannot substitute for the Conflict-Free Case Management requirements, but may be helpful in establishing the requirements for evaluating allowable exceptions.

**23. A respondent asked why the OPWDD Front Door, which is a separate assessment, eligibility and resource allocation entity, isn't sufficient to address the Federal Government's major concerns regarding Conflict-Free Case Management.**

There are many components of the OPWDD system that meet the federal requirements. CFCM addresses, among other issues, the separation of the roles associated with the development of the person centered plan and the provision of services described in that plan.

**24. A respondent asked if the implementation of Conflict-Free Case Management and Community First Choice Option (CFCO) services will mean that individuals and families might potentially work with three or more organizations/entities.**

The implementation of Conflict-Free Case Management will create a change in the available providers for case management services. The implementation of Community First Choice Option services will not alter individuals' and families' provider relationships. For example, Community Habilitation is a service within Community First Choice Option. All providers approved to deliver Community Habilitation under the OPWDD Comprehensive HCBS waiver are also approved to deliver Community Habilitation under the Community First Choice Option.

**25. How will care management issues that arise in daily care be resolved in a timely and efficient manner?**

Potential providers of Conflict-Free Case Management services must demonstrate how they will be able to meet daily care needs. The ability to address daily care needs in a responsive manner exists in the system today and will remain regardless of the service delivery model.

**26. The proposed Conflict-Free Case Management (CFCM) plan does not currently state the cultural exception that would be requested in multiple training sessions on CFCM. We are particularly concerned for the Deaf community as our agency specializes in services for deaf/hard of hearing individuals with intellectual and developmental disabilities.**

OPWDD agrees and will adjust Amendment 01 accordingly.

**27. A respondent recommended that OPWDD consider using a pilot to test Conflict-Free Case Management prior to bidding out the service.**

OPWDD currently intends to implement Care Coordination organizations on a regional basis to allow for targeted focus on a more limited area and to resolve potential issues, such as assuring organizations can meet readiness review standards, before implementing statewide.

**28. A respondent recommended that OPWDD consider allowing provider agencies to continue to provide Conflict-Free Case Management and HCBS waiver services, but not allow the agency to provide both case management and services to the same individual.**

OPWDD considered this option, however it could potentially have negative consequences of constant monitoring of providers and could lead to future service disruptions for individuals and families.

**29. A respondent recommended that OPWDD consider allowing direct service providers to continue providing Plan of Care Support Services (PCSS) in accordance with the current ADM. This would enable providers to continue to employ staff who are “qualified MSCs and enable them to continue to provide PCSS.”**

OPWDD can consider the role of PCSS in the Conflict-Free Case Management design.

**30. A respondent recommended that OPWDD incorporate the past work and recommendations of the OPWDD care management work group and care coordination work for the behavioral health system, and utilize products of Balancing Incentive Program (BIP) grants centered on care coordination as a resource for the CFCM plan development. NYS should proceed with a plan that studies the fiscal impact as it will be vitally important that funding be sufficient to support the design.**

OPWDD agrees with the respondent’s fiscal concerns and is considering the recommendations and feedback of the prior workgroups and the experience of the BIP-funded pilots and other agencies that have made similar transitions.

**31. A commenter recommended that the roles of Medicaid Service Coordinators (MSC) and Fully Integrated Duals Advantage (FIDA-IDD) Care Coordinators become more professional positions similar to the Direct Support workforce. OPWDD should reassess the competencies, qualifications, and credentialing required for these key positions as they directly affect the quality of service and quality of life for individuals in their care.**

The work on Conflict-Free Case Management will include appropriate focus on the professionalization of the workforce.

**32. Several respondents asked for more details included in Conflict-Free Case Management (CFCM) transition plan; specifically about the new CFCM organizations, oversight to these new organizations, impact on the OPWDD Front Door, and the administrative, legal, technology and human resources costs that will be associated.**

OPWDD will be working with stakeholders to design these organizations. More information will be forthcoming on additional trainings and requests for stakeholder input on the OPWDD CFCM Transition Plan.

**33. Several commenters asked what services are affected by Conflict-Free Case Management (CFCM); specifically Plan of Care Support Services (PCSS), Support Brokerage, Fiscal Intermediary, Non-Waiver services (such as FSS or Counseling), Health Homes, and the Fully Integrated Duals Advantage for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD) Plan.**

The Conflict-Free Case Management rules apply to Medicaid Service Coordination and Plan of Care Support Service. Support Brokerage and Fiscal Intermediary services are not case management services and these providers do not author the Individual Service Plan (ISP). The FIDA-IDD is responsible for developing the person centered plan, but does not directly deliver Home and Community Based Services.

### **Managed Care**

**34. A respondent noted that Managed Care and self-direction are contradictory.**

OPWDD disagrees. The Fully Integrated Duals Advantage Plan for Individuals with Developmental Disabilities (FIDA-IDD) is a Managed Care plan that includes self-direction of HCBS waiver services. The Personal Resource Account level (PRA) that is set by the state is available to a person choosing self-direction within a managed care plan. Additional information can be found at the following link:

[http://www.opwdd.ny.gov/opwdd\\_services\\_supports/people\\_first\\_waiver/care\\_management/FIDA\\_IDD/FAQ](http://www.opwdd.ny.gov/opwdd_services_supports/people_first_waiver/care_management/FIDA_IDD/FAQ)

**35. A respondent noted that Managed Care could be proven to be less effective for individuals with Developmental Disabilities once a well-executed and independent care management system is implemented.**

Managed care environments already incorporate care coordination and a Conflict-Free Case Management system, which will provide individuals with more comprehensive care coordination, is compatible with all service delivery models.

**36. A respondent expressed concern about providers' readiness for Managed Care.**

There are continuity of care provisions in place for OPWDD services, and there is similarity in the reporting and payment systems.

### **Waiver Access**

**37. A provider agency commented that the OPWDD Front Door process is slow, cumbersome and leaves individuals without supports and services for lengthy periods of time. Since the Front Door was established more than three years ago, the respondent recommended that a review be conducted to determine the length of time individuals wait until they receive Waiver service authorization.**

OPWDD continually monitors the Front Door process and, as a result, has made modifications and will implement new Information Technology ways to enhance efficiency in the waiver enrollment process. No change to Amendment 01 will be made in response to this comment.

**38. A provider agency asked what is the rationale for a reduction in growth of Waiver participants in Years 4 and 5 from 2.6%-3% to 1.3%? An anticipated decrease is questionable based on historical percentages. If there is no cogent rationale, the increase should be 3% as with the earlier years.**

The rationale for the projections was based on assumptions regarding the full implementation of Community First Choice Option (CFCO) and the expectation that some individuals who will request only Environmental Modifications, Assistive Technology or Community Habilitation could be served through CFCO and not require waiver enrollment.

## Self-Direction

- 39. A reviewer noted that in accordance with 42 CFR §441.301(b)(1)(ii), Waiver services are not furnished to individuals who are in-patients of a hospital, nursing facility or ICF/IID; this needs to be changed for individuals who self-direct and live in a private home.**

This is a federal standard for participation in Home and Community Based Services Waivers and cannot be changed by New York State.

- 40. Several respondents requested clarity regarding self-direction funding and recommended the OPWDD create a specific list of expenses that are appropriate to charge to self-direction according to the Office of Medicaid Inspector General (OMIG).**

OMIG does not establish service parameters. OMIG reviews Medicaid billing against federal and state regulations and policy guidance. For self-directed services, Medicaid standards are described in Administrative Memoranda and the Waiver agreement for Individual Directed Goods and Services. As recommended by the Transformation Panel, OPWDD is reviewing the information provided to families regarding the rules and requirements of self-directed services (See Transformation Panel Report available at the following site:

[http://www.opwdd.ny.gov/opwdd\\_about/commissioners\\_page/transformation-panel](http://www.opwdd.ny.gov/opwdd_about/commissioners_page/transformation-panel))

- 41. Several Therapists recommended that the Individual Directed Goods and Services (IDGS) requirement of a communication/audio disability in order to receive Aquatic, Art, Massage, Music, Play Therapy should be removed. The Therapists also recommended that professional qualifications should include professionals who are not licensed by the NYSED, but meet the minimum of the national certification credential available to their area of practice.**

The requirement for a specific communication or audiological requirement for the services applies only to Music Therapy. Please refer to the IDGS Chart on page 468 of the Amendment. OPWDD may not expand the qualifications for clinicians by the Education Department's Office of Professions in this amendment and is outside the scope of OPWDD's authority.

- 42. A reviewer recommended the removal of the IDGS requirement for instructor-only provision of hippo therapy and therapeutic riding.**

This is not a change that can be made at this time, although OPWDD will evaluate a need for such changes in future Waiver Amendments.

**43. Several family members expressed concern regarding the flexibility of Individual Directed Goods and Services (IDGS) and the difficulty of funding self-directed services that are provided in group settings and are targeted to individuals with special needs.**

It is not possible to expand non-integrated services for groups of individuals through self-direction. First, federal approval of the self-directed services required that community classes could not be provided by OPWDD providers and that non-integrated services funded as part of self-direction could only be provided as part of the transition service. Transition services are an IDGS option and are limited to a two-year period per individual following the completion of the person's educational program. In addition, Mental Hygiene Law requires, with few exceptions, that OPWDD certify or license non-residential services for individuals with intellectual and developmental disabilities (§16.03 a. 3.). Entities that provide such services are encouraged to pursue certification by OPWDD.

**44. A parent recommended that camps serving individuals over the age of 16 under Individual Directed Goods and Services (IDGS) should not require county certification.**

OPWDD will examine the appropriateness of continuing to apply the standard from Subpart 7-2 of the State Sanitary Code to camps for adults.

**45. A family member stated that Personal Resource Accounts (PRAs) should be equal for individuals who receive agency directed services and those who chose to self-direct staff.**

The PRA is based upon individual need level and is derived from the utilization pattern of services, including residential services, for people with similar needs throughout the OPWDD system. The PRA for a person who Self-Directs with Budget Authority is not altered by his/her decision to receive self-hired, Agency Supported or Direct Provider Purchased services.

**46. A respondent noted that Personal Resource Accounts (PRAs) must be increased to reflect equal amounts for individuals living in certified and non-certified settings.**

As described in #45, PRA levels were established based on an analysis that included the cost of residential services, see E-2bii. Additional analysis of PRA levels will take place in the future to correspond with implementation of the Comprehensive Assessment System (CAS).

**47. A family member suggested that individuals who chose not to self-hire their own staff should be allowed to hire non-direct consultants.**

The category is established specifically to provide consulting for self-hired staff; the suggested change cannot be made in this Amendment.

**48. Several respondents asked about the protocol for Fiscal Intermediaries (FIs) who refuse to serve individuals interested in self-direction, including those FIs who are contracted with the Fully Integrated Duals Advantage (FIDA-IDD) plan.**

Affected persons should notify their local Self-Direction Liaison for assistance.

**49. Several reviewers noted that the current Fiscal Intermediaries (FIs) fee structure does not compensate the work involved in supporting self-directing individuals with extensive or complex needs. The reviewers asked if OPWDD will be increasing the reimbursement rates for FIs.**

Per the Transformation Panel's recommendation related to self-direction (see #40), OPWDD has convened an FI workgroup that is examining FI fee levels and evaluating the cost experience of providers since the implementation of the new self-direction model.

**50. A parent noted that the current self-direction structure restricts options and prevents choice. The parent also expressed concern regarding the funding available in self-direction budgets to conduct specialized trainings for self-hired staff.**

Self-Direction is designed to offer services in the most flexible manner possible. Established restrictions are required to maintain Self-Direction within the Waiver.

**51. A provider agency noted that the Amendment contains several references to offering "an option for individuals or their families to act as a common law employer" in relation to Self-Direction with Employer Authority. The provider asked when this option would be available to individuals and families.**

Also known as Fiscal Intermediary (FI) Level II, OPWDD continues review this option as it presents several policy and compliance-related concerns.

**52. A respondent stated that the Assessment scoring process which establishes Personal Resource Allocations (PRA) values is not explained in the Waiver.**

The explanation for the PRA values is included in the Waiver in E-2bii, page 173-175.

**53. A respondent recommended that Independent Support Broker services remain an option in the OPWDD waiver.**

Independent Support Broker services remain available in this Amendment.

## **Respite**

### **54. A respondent expressed concern that Respite programs have had their rates reduced in recent years.**

Overall, Respite rates were increased to reflect cost of living adjustments for Direct Support Professionals and Clinical Staff and were also recently adjusted upward to reflect a .2% trend as established in the 2015-16 budget. Further adjustments to reflect the minimum wage will be made as necessary. OPWDD is proposing a new respite fee methodology, based upon the concerns of providers regarding a recent rebalancing of rates.

### **55. Several respondents stated that funding for Respite should be increased and should not be subject to a daily cap.**

The “cap” limiting federal financial participation to the daily rate for residential services was a CMS requirement implemented with the renewal of the OPWDD Comprehensive HCBS Waiver due to concerns about the wide range in provider reimbursements. It is important to note that in the past OPWDD has “covered” the costs of the provider’s reimbursement over the cap by reimbursing the federal government for their contribution to the Medicaid payment. In effect, every provider has been paid the full value of its Respite claims even if the claim exceeded the residential rate. The Waiver Amendment when approved by CMS will end the daily cap.

### **56. Several respondents stated that eligibility for Respite services is easily obtained however, finding staff to provide the service particularly to individuals with complex needs is difficult.**

Based on the Respite survey responses that were received, there are relatively few providers actually providing the service to individuals with complex or intensive needs. OPWDD is proposing Intensive Respite as a new service category and will monitor the effects of this proposal.

### **57. OPWDD was asked if separate program codes will be needed for each category of the proposed Respite services.**

Yes.

**58. A respondent asked, based on the definition of Respite services on page 66 of the proposed Amendment, if Respite services are now available to paid and unpaid caregivers.**

Respite services separately billed to the person's Medicaid card continue to be allowed only for the relief of unpaid caregivers. The language has not changed in this Amendment.

**59. A respondent recommended that OPWDD delay the effective date of the new Respite fees. Draft rates and the impact of the new fee methodology should be available to providers.**

OPWDD will maintain the current effective date and will soon distribute materials to providers. The majority of Respite providers participated in a survey over the Spring/Summer of 2016 and survey participants should have good information about how the proposed fees relate to their current revenues.

**60. Several reviewers noted that Respite should remain highly flexible from the individual and family perspective, otherwise, it will not work. The reviewers recommended that the revised fee structure for Respite should cover the costs providers incur in offering this support to individuals and families.**

The Amendment increases respite flexibility from what is available under the daily cap by including six different proposed categories to appropriately fund the various varieties of programming and support now funded as Respite, including In-home, Intensive, Camp, Recreational, School Age, and Site-Based Respite Services.

**61. Provider agencies expressed concern regarding the proposed regional fees, stating that the new methodology does not better reflect the various types of Respite services with the exception of recreation. The provider agencies explained that the regional fees do not adequately address the cost of community, rather than site-based services.**

The proposed regional Respite fees will be based on responses from provider surveys. Providers were strongly encouraged to respond to the Respite survey in order to accurately reflect their cost of providing the service. Work will continue with Respite Providers to examine the proposed fees and other changes that may be needed to support the growth in the service.

**62. Several reviewers noted that the effective date of the regional fee structure is not clear.**

The new Respite fee methodology will be implemented after CMS approves Amendment 01 and a State regulatory process. OPWDD is targeting January 1, 2017 for CMS

approval. State regulations must be filed and the regulatory process includes publication of a notice in the State Register as well as a public comment period. After OPWDD has received and considered public comment on the proposed regulatory changes, a Notice of Adoption must be filed with the Department of State before the new rates are effective and the changes are implemented.

**63. A provider agency expressed concern regarding the fourteen day limit for overnight camp, stating that this restricts individuals' choice.**

The new limits are proposed for the different categories of Respite to allow greater flexibility in fee setting. OPWDD believes that the camp limit of fourteen days is adequate to meet individuals' needs.

**64. A reviewer recommended that OPWDD increase the reimbursement rate for Family Support Services (FSS) Respite.**

FSS Respite services are not described in the Waiver agreement as it is not an HCBS Waiver service.

**Rate Setting**

**65. Several providers recommended that OPWDD should not penalize providers who need to interchange funds between Waiver programs in order to sustain the delivery of all waiver services available at that agency due to the loss in revenue based upon the establishment of cost-based rates under recent rate rationalization.**

Reimbursement methodologies relate to particular service categories, and the type of interchange recommended is not possible in fee-for-service rate setting. The current rate setting methodologies were established only after extensive work with the provider community and work continues.

**66. Respondents recommended that the rate setting methodology's budget neutrality calculation should be eliminated because it limits the amount of funds available for providers to carry out day-to-day waiver operations.**

Budget neutrality is a component of the rate setting that cannot be eliminated in this Amendment. There are several changes proposed in Amendment 01 that attempt to address certain higher costs that providers may encounter and offer some greater degree of flexibility in the rate methodology.

**67. A respondent asked why the same rate methodology is not acceptable for both State Operated and Voluntary Operated services.**

Different methodologies for State and voluntary agencies are required in order to maintain compliance with federal rules.

**68. Several respondents recommended that rate reforms are necessary to facilitate flexibility and to align incentives with effective care and valued outcomes. Several respondents also stated that value-based payment models must be designed to directly benefit individuals' valued outcomes and establish a fair and appropriate incentive payment and that the proposed Amendment does not discuss the transition to value-based payments.**

OPWDD is committed to moving the OPWDD payment system to a value-based payment system that recognizes high quality services and achievement of outcomes for individuals. The DOH and OPWDD are actively reviewing rate reforms that will increase the quality of care and improve outcomes.

**69. Several respondents recommended that OPWDD should fully fund room and board supplementation and assist providers to refinance long-term debt.**

Room and board costs are not subject to federal Medicaid/waiver financing and cannot be addressed via this Amendment. OPWDD and the Department of Health can discuss such options at the Monthly Provider Association meeting.

**70. Several respondents commented that the Supported Employment (SEMP) reimbursement design needs to be reviewed by OPWDD to evaluate the structure for a valued-based design and sustainability specifically for the extended phase of SEMP delivery.**

OPWDD is committed to developing value based payments in managed care and agrees that the extended phase of Supported Employment is a service that is well suited to outcome based payments.

**71. Several respondents commented on the High-Needs proposal included in Amendment 01. Recommendations included the expansion of this approach to individuals transitioning to Intermediate Care Facilities (ICFs), transitioning from a Supervised Individualized Residential Alternative (IRA) to a Supportive IRA, and individuals receiving Day Habilitation. In addition, the proposal will be labor intensive for provider agencies and will cause delays for individuals moving to a new setting.**

Based on the concerns of several respondents, the Amendment now includes changes that were made regarding funding for ICFs that transition to IRAs. This interim rate for these new IRAs will be based upon a review of the average direct care and/or clinical support hours provided in the ICF/DD from which the individual is transitioning. Additional details can be found on pages 351-353 of the Amendment.

**72. Several reviewers stated that providers have limited resources to adequately meet the needs of individuals with complex needs. Amendment 01 and the HCBS Transition Plan devote insufficient attention or funding to serving high need individuals.**

Amendment 01 and the HCBS Transition Plan do address high needs individuals. OPWDD and the Department of Health have worked with CMS to integrate several funding opportunities to address the needs of individuals with high staffing needs, including the use of acuity measures in certain services, a new category of Respite to address the need for specialized staffing, specialized funding for people leaving institutions and the newly added provision that addresses changing needs for people in Supervised and Supportive residences. In addition, OPWDD spends annually \$3 million dollars to provide additional State funding in extraordinary situations where the Medicaid-funded resources are insufficient. OPWDD will continue to work with providers on acuity-informed reimbursement strategies that can be implemented in future Waiver Amendments.

**73. A respondent asked what assessment tool will be utilized for the High-Needs reimbursement rates.**

OPWDD is in the process of implementing the Coordinated Assessment System (CAS) tool which will ultimately be the primary tool for defining needs.

**74. Several provider agencies expressed concern regarding Specialized Funding/Template fees. The providers stated that the Template fees should be maintained at the current levels after January 1, 2017 for individuals with new OPWDD eligibility or existing OPWDD individuals with complex needs.**

Template funding is proposed to remain in place for individuals authorized for such funding on or prior to 12/31/16. Amendment 01 includes a High Needs Funding proposed interim rate for individuals residing in a Supervised IRA or Supportive IRA who have been determined to need additional direct care and/or clinical support hours. Additional information on High Needs Funding can be found on pages 351-353 of the Amendment.

**75. Several provider agencies recommended that OPWDD establish and fund an auspice change policy to support mergers, consolidations, partnerships, or collaborations among provider agencies. The agencies recommended that the policy allow for the carry-over of staff wages**

**and benefits. Additionally, the agencies recommended that OPWDD re-visit the proposal included in the proposed Amendment to maintain the higher rate until the receiving provider furnishes consolidated costs for at least one complete twelve month Consolidated Fiscal Reporting (CFR) period.**

OPWDD is investigating options to support providers who are seeking to enhance efficiency by merging operations. It is not a subject for the current Amendment, but may be integrated in future amendments.

### **OPWDD Home and Community-Based Settings (HCBS) Transition Plan**

The **NYS Home and Community-Based Settings Statewide Transition Plan** was also available for public comment during the same time period as the **OPWDD Comprehensive Home and Community-Based Services Waiver**. Questions specific to the OPWDD Home and Community-Based Settings Transition Plan received during the HCBS Waiver public comment period are described below. Respondents who submitted questions to the Department of Health (DOH) during the **NYS Home and Community-Based Settings Statewide Transition Plan** will be made available on the DOH website at the following link: [https://www.health.ny.gov/health\\_care/medicaid/redesign/home\\_community\\_based\\_settings.htm](https://www.health.ny.gov/health_care/medicaid/redesign/home_community_based_settings.htm).

#### **76. A provider agency stated that OPWDD should implement the HCBS Settings Transition Plan by the March 2019 deadline with the exception of Conflict-Free Case Management.**

The NYS HCBS Settings Transition Plan addresses the proposed timelines for action items towards full implementation with the federal rules. CMS requires full compliance with the HCBS settings rules for settings where waiver services are delivered no later than March 2019. The changes for Conflict-Free Case Management are being addressed separately.

#### **77. A respondent recommended that the OPWDD HCBS Transition Plan should include Intermediate Care Facilities (ICFs) operated or funded by OPWDD.**

The HCBS Settings Transition Plan is specific to services funded through Medicaid HCBS. ICFs are not funded through Medicaid HCBS and, therefore, are not included as part of the HCBS Settings Transition Plan. However, ICFs can and are encouraged to adopt, implement, and enhance person-centered planning and person-centered service delivery practices regardless of whether they are funded through Medicaid HCBS.

**78. A reviewer asked how “general community” or “broader community” are defined.**

A community-based setting is integrated with the surrounding community and provides people in the setting the same degree of access to the community as people not receiving Medicaid Home and Community-Based Services. This full access to the broader community must include opportunities for each HCBS participant to live independently, work in competitive integrated employment, engage in community life and control personal resources, and decision-making, as they are able.

**79. Several family members stated that the HCBS compliance rules are unclear about the effect on agricultural programs. The respondents explained that farm based programs such as Triform and Camp Hill are not institutional settings and should not automatically be targeted for Heightened Scrutiny. Families stated that farm settings offer multiple opportunities for individuals to participate and contribute to their community in a beneficial and meaningful way, especially for those individuals who are not comfortable in urban environments or mainstream and institutional settings such as Individual Residential Alternatives (IRAs) and Intermediate Care Facilities (ICFs). It was noted that farm work provides education, utilization of various skills, and has been documented to have therapeutic value.**

In CMS’ guidance document titled “GUIDANCE ON SETTINGS THAT HAVE THE EFFECT OF ISOLATING INDIVIDUALS RECEIVING HCBS FROM THE BROADER COMMUNITY”, that can be found at the following link: <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>, farmstead or disability-specific farm communities are used as examples of settings that have the effect of isolating individuals because “these settings are often in rural areas on large parcels of land, with little ability to access the broader community outside the farm. Individuals who live at the farm typically interact primarily with people with disabilities and staff who work with those individuals. Individuals typically live in homes only with other people with disabilities and/or staff. Their neighbors are other individuals with disabilities or staff who work with those individuals. Daily activities are typically designed to take place on-site so that an individual generally does not leave the farm to access HCB services or participate in community activities as part of their daily lives. Thus, the setting does not facilitate individuals integrating into the greater community and has characteristics that isolate individuals receiving Medicaid HCBS from individuals not receiving Medicaid HCBS”. However, the state can present evidence for public input and CMS approval to overcome this presumption by showing how the setting is community integrated and does not isolate people from the broader community. CMS agreement and approval of the setting’s evidence overcoming the institutional and

isolating presumption is required in order for continued waiver funding of settings presumed to isolate such as farmsteads or disability specific farm communities. HCBS settings will be subjected to assessment for heightened scrutiny.

**80. A few respondents recommended a provision to “grandfather” settings in which individuals have lived for numerous years, stating that removing individuals from a familiar setting to an unknown setting will cause significant issues for our population who have difficulty adapting to change.**

OPWDD has no plans to displace people from their homes as a result of the CMS HCBS settings rules or the Transition Plan. In the event that a particular setting cannot meet the HCBS settings rules and/or overcome a heightened scrutiny presumption, OPWDD will work with the provider to determine available options for technical assistance to the provider and/or other options to facilitate continued residency while exploring HCBS compliant residential alternatives.

**81. A commenter expressed concern regarding the risk of provider agencies incurring loss of revenue in their employment programs due to OPWDD defined integrated community settings.**

OPWDD welcomes the opportunity to dialogue further with providers about the implementation of changes to both prevocational and supported employment services. This includes dialogue about how to ensure that the fees and allowable services reflect the costs of providing services.

**82. A respondent stated that ICFs are not institutional settings and should not be closed down. ICFs are much less restrictive institutions and allow for community integration with more intensive supports and intervention than that in group homes in the community.**

The federal Centers for Medicare & Medicaid Services (CMS) considers all facilities that operate under the ICF-IID model of care (developmental centers and community-based ICFs) to be institutional in nature. OPWDD is pursuing the closure of most of its developmental center and community-based ICF capacity per an ICF Transition Plan, which was approved by CMS in 2013. While community-based ICFs may operate in ways that are less restrictive than the campus-based developmental centers, the community-based ICFs do not provide the individualized plans of service (ISP) that the HCBS Waiver employs. The ISP ensures that each individual is provided an individualized plan of supports and services, chosen by the individual and tailored to meet his/her unique needs and desires for their life. In addition, the HCBS Settings rule ensures that

residential settings that provide waiver services provide each individual with choice of his/her services (including residential services), do not isolate individuals with IDD from individuals who do not receive Medicaid HCBS in the broader community, and provide the same degree of access to the community as that available to individuals without disabilities. These assurances are not applicable in the ICF model.

**83. Several comments were received regarding the OPWDD policy to limit the size of certified residences to no more than four individuals beginning in 2019/2020. A few commenters opposed the policy stating that the number is arbitrary and borderline discriminatory. Several respondents supported the policy and questioned why the OPWDD Commissioner can grant exceptions to this policy as there are not valid clinical, health or safety reasons why more than four individuals should reside in a certified residential setting. A commenter asked if the policy applies to non-certified settings. Another commenter stated that OPWDD needs to identify the funding mechanisms in place to ensure individuals' safety during residential transitions.**

CMS does not prescribe a size limit for determining whether a setting can meet the HCBS settings rules and has stated that size alone does not lead to a heightened scrutiny determination. While size can impact the ability or likelihood of a setting to meet the HCBS requirements, the Federal regulation does not specify size. Even a very small residential setting may have policies that restrict individual access to items such as food and telephone use that would not be inconsistent with HCBS requirements, while entities that serve a larger number of individuals may have structured their system in a manner that comports with the qualities required.

The policy decision to limit the size of new certified residential settings to no more than four unrelated individuals unless there is an exception granted by the Commissioner is consistent with national and state data trends that show that smaller settings tend to lead to higher quality of life outcomes for people. OPWDD needs to maintain the flexibility for the Commissioner to make an exception to this policy if the need arises based on sufficient justification that a larger size is needed. This will be evaluated on a case by case basis. This policy will apply only to new certified settings that are developed beginning at the end of 2019/beginning of 2020. Existing group homes will not be impacted by this policy. There is no intent nor does OPWDD have the authority to limit the number of unrelated people who can reside together in a private non-certified setting. However, many localities have local laws that are applicable to the number of unrelated people that can reside together in a home.

**84. Several respondents expressed concern regarding the possible loss of individuals' and families' freedom of choice following the implementation of the Federal HCBS Settings rule.**

The intention of the federal HCBS settings rules is to ensure that individuals receiving services and supports through Medicaid's HCBS programs have full access to the benefits of community living and are able to receive services in the most integrated setting and that HCBS Medicaid funding is not used to fund settings that are institutional and/or that isolate people from the broader community. As discussed in #87 (above), a setting presumed to be institutional and/or isolating can submit evidence under the heightened scrutiny process for public input and CMS approval that the setting is community integrated and does not isolate people.

**85. A respondent stated if the health and safety of a particular group home resident cannot be adequately met without restricting the rights of other residents of the facility, then that particular resident must be moved to a setting that can meet his or her needs without violating anyone else's rights.**

ADM #2014-04 provides guidance on rights modifications under the HCBS settings rules. If there are rights modifications that affect others in the home, the expectation is that the provider works with all involved to ensure that other peoples' rights are not limited by a particular individual's need to have a rights modification. This may involve accommodating others' rights in different ways such as providing keys to locked food pantries, for example.

**Employment Options**

**86. A respondent noted that page 70 states, "Supported employment supports do not include vocational services provided in facility based work settings or other similar types of vocational services furnished in specialized facilities that are not a part of general community workplaces." Does this mean OPWDD will allow HCBS Supported Employment funds to be used in "converted" workshops?**

The requirement that supported employment services be provided in the general workforce has not changed. Providers that choose to convert sheltered workshops must meet the requirements of the HCBS final rule, including any application of heightened scrutiny review.

**87. A commenter asked for clarification regarding the ACCES-VR definitions of Job Developers vs. Job Coaches.**

OPWDD provides training on supported employment services to voluntary agencies and self-directed staff. These trainings clarify the roles of a job developer and job coach. A job coach provides training of an employee using structured intervention techniques to help the employee learn to perform job tasks to the employer's specifications and to learn the interpersonal skills necessary to be accepted as a worker at the job site and in related community contacts. A job developer assists individuals to find employment. A Job Developer may identify/create job opportunities for individuals and match qualified participants with these employment opportunities.

**88. A respondent asked for clarification regarding the following sentence on page 59: "Prevocational services do not include vocational services provided in facility based work settings that are not integrated settings in the general community workforce."**

This means that prevocational services cannot be provided in settings that isolate individuals with developmental disabilities from the community. It also means that prevocational services can't be provided in workshops which is why new enrollments for workshop ended in 2014.

**89. A provider noted that the service limitations for Supported Employment services do not include the provision for OPWDD to authorize additional hours of services under certain conditions (page 71 of the Amendment).**

OPWDD will adjust the Amendment to add the following provision:

"If a service provider considers that an individual needs more than 365 days of Intensive or Extended services and/or additional hours, the service provider may submit a written request to OPWDD in accordance with the guidelines established in Regulation."

**90. A provider asked for clarification regarding the description of Supported Employment services and the ability of a person to participate in other day services (Prevocational Services, Day Habilitation and Pathway to Employment).**

OPWDD will adjust the Waiver Application to be clear that a person who is enrolled in Supported Employment can also be enrolled in other day services (Prevocational Services, Day Habilitation and Pathway to Employment).

**91. Providers asked for clarification regarding volunteer activities in employment services.**

Volunteer and discovery activities are provided as part of Pathway to Employment, Community Prevocational and Day Habilitation services. Unpaid activities are not a part

of SEMP. SEMP services focus on seeking and maintaining paid employment in the community where an individual earns at least minimum wage.

- 92. A commenter noted that on pages 98 and 99 Pathway to Employment is overly prescriptive and structured in a way that limits the opportunity for an organization to best assist a person. Additionally, the commenter added that on page 99 the lifetime cap of 556 hours should be changed to more than 3 years of Pathway Services.**

Pathway to Employment is a time limited service that allows up to 2 years to explore possible career interests. If more time is needed, other services such as Community Prevocational services should be explored.

- 93. A respondent expressed concern regarding the lack of transportation for community based-employment activities especially for individuals transitioning from Day Habilitation and Pre Vocational Services where they are eligible for Non-Emergency Medical Transportation.**

OPWDD has been authorized to fund a mobility management study. A report and recommendations related to the transportation needs of people with disabilities will be submitted to the Governor and Legislature in December 2016.

- 94. A commenter asked what the definition of “competitive work” is and why individuals with intellectual and developmental disabilities are required to be employed.**

Competitive employment is employment in the general workforce. The Americans with Disability Act (ADA), Olmstead Supreme Court decision and the US Department of Justice- Civil Rights Division have all clarified that individuals with disabilities should have opportunities to live and work in the community in settings that are not isolating.

### **Direct Support Professionals**

- 95. Rates being paid to voluntary providers are insufficient to recruit and retain quality workers. New York State must first fully commit to raising rates to a level high enough to offer wages and benefits appropriate for high-quality staff with experience working with people with Developmental Disabilities. Staff who work with individuals with complex needs should be compensated at a higher wage as well. This raise in pay is vital in order to maintain quality of service delivery for the OPWDD population.**

The Transformation Panel recommended that OPWDD conduct an overall review of compensation in the system for direct support professionals and other staff, including reimbursement methodologies with a focus on supporting competitive compensation. The Panel also recommended enhanced focus on recruitment, retention and promotion

of the field of developmental disabilities as an employer. An OPWDD workgroup is currently conducting this review.

### **Nurse Practice Act**

- 96. A respondent commented that the increased caregiver workload and the declining numbers of Registered Nurses (RNs) with the professional nursing skills capable of providing the required rigorous training and ongoing supervision of OPWDD's DSP threaten the quality of care and safety of people receiving services. OPWDD was asked how many agencies have been approved through the Nurse Practice Act (NPA) Certificate of Need (CON) process. Individuals and families are waiting for agencies to begin offering these services.**

The implementation of the NPA is being carefully overseen by OPWDD's Division of Quality Improvement (DQI). Agencies requesting the ability to participate in the expansion must submit written policies and procedures that will ensure safe delivery of services, training, and monitoring by a Registered Nurse. Currently, 34 agencies have expressed interest in providing the delegated nursing services in the course of delivery of community based waiver services. Eleven agencies have submitted policies and procedures for DQI review and nine agencies have been authorized at this time.

- 97. A respondent noted that the proposed amendment simply replaces the ADM referenced as ADM#2015-03. OPWDD should clarify for CMS, providers and other stakeholders the specific implications of this proposed change.**

The changes in the Waiver application bring the federal application up-to-date with state policy as described in ADM # 2015-03 "Registered Professional Nurse Supervision of Unlicensed Direct Support Professionals in Programs Approved by the Office for People With Developmental Disabilities." Both the policy document and the waiver describe how delegated nursing services can be provided by approved direct care staff in the course of the delivery of community based services (e.g. during Community Habilitation or Respite). This augments the language in the waiver that described OPWDD's long standing policy to allow such delegation of nursing services in certified sites. The ADM can be found at the following link:  
[http://www.opwdd.ny.gov/opwdd\\_regulations\\_guidance/adm\\_memoranda/documents/ADM2015-03](http://www.opwdd.ny.gov/opwdd_regulations_guidance/adm_memoranda/documents/ADM2015-03)

## Residential & Housing Options

- 98. A respondent noted that there is a housing crisis for people with intellectual and developmental disabilities with various level of care needs. The costs for housing are high in conjunction with limited availability. Supporting people to find housing opportunities is challenging and there is no evidence in the amendment to improve this issue.**

While Amendment 01 does not specifically address increasing housing opportunities for individuals with developmental disabilities, OPWDD fully supports increasing access to housing and is exploring initiatives which will assist individuals in locating non-certified housing options in New York State.

- 99. A respondent stated that OPWDD needs to end the practice of bundling group-rate habilitation services with residential settings. The agency should use hourly billing for individual supports that are tied to the service recipient, not the residence, in all cases in order to adequately meet individuals' needs.**

There is no bundling of Group Day habilitation rates and residential supports.

- 100. A respondent expressed opposition to the transfer of ICFs from OPWDD operations to Voluntary provider agencies. The provider agencies do not have the staff required to meet the complex needs of the individuals who are currently living in ICFs.**

This is not an issue that can be addressed in the Waiver as ICFs are not funded in the waiver agreement.

## Waiver Oversight

- 101. A respondent asked how OPWDD will execute and enforce provider and DDSOO accountability for the Nurse Practice Act (NPA) without an electronic health record.**

The delegation of nursing task is subject the direct oversight of a Registered Nurse, who most train the Direct Support Professional, ensure competency for the assigned tasks and continually review that the tasks are being correctly performed. Records must be maintained, regardless of whether the format is electronic or paper and these records to subject to review by the Division of Quality Improvement.

- 102. A respondent raised concerns with OPWDD Division of Quality Improvement's (DQI) oversight of Fiscal Intermediaries and Support Brokers.**

A new protocol for the fiscal review of Fiscal Intermediary services and Support Broker services has been developed and is being tested prior to wider roll out on a statewide

basis. In addition as the new Person-Centered review protocol is rolled out, Broker services will be integrated into the quality survey process.

- 103. A respondent asked why the description of Prevocational Services includes a statements that the Division of Quality Improvement will make a determination of the prevocational or vocational intent of the service provided.**

OPWDD will adjust the Application to remove the statement.

- 104. Several provider agencies noted that OPWDD should review the cost implications related to annual audits conducted of provider agencies.**

Audit requirements are not changed in this Amendment. OPWDD audit and review requirements must be responsive to federal and state requirements.

### **Assessment**

- 105. A respondent questioned the Comprehensive Assessment System (CAS) validity study and why it is not complete and available to stakeholders.**

The Coordinated Assessment System (CAS) is based upon an already validated assessment instrument, the interRAI Intellectual Disabilities assessment. OPWDD further conducted studies on the CAS which concurred that it is a valid instrument. The final report is being reviewed and will be shared shortly.

- 106. A respondent noted that, in the health care field, an array of evidence-based screening and assessment tools are key to identifying high-risk patients, selecting appropriate interventions, supporting real-time data exchange and tracking health and social services utilization outcomes. OPWDD can greatly benefit from the wealth of experience and availability of tools that are integral to an effective care coordination system or managed care entity. This will require financial investment, workforce development, and developing and implementing a robust research and evaluation agenda.**

OPWDD works closely with the other New York State agencies specific to the needs of people with Long-Term Supports and Services. Benefits of assessment instruments and care planning tools continue to be discussed amongst agencies and providers.

- 107. Respondents recommend that the new assessment is closely aligned with fiscal tools to allow for a more precise and accurate process for determining the resources an individual needs. This will provide the opportunity to more accurately assess changes in need over time that can and should rapidly inform the process for individual resource allocation.**

OPWDD is currently working on the process of aligning the assessment instrument with resources.

- 108. A respondent noted that guardians are not mentioned in Part A, Services and Supports planning process of the person-centered review assessment tool. Guardians have legal rights and responsibilities and should be included in the planning process.**

The administration of the new needs assessment instrument, the Coordinated Assessment System (CAS), includes an interview or observation with the person, people that know the person well, and a records review. Legal guardians are contacted, and included in, the administrative process.

### **Availability of Services**

- 109. There are no services for children during school holiday and summer breaks. The few programs that are available can only provide services to a limited amount of individuals.**

It is often difficult for agencies to find qualified staff who are available to work during school holidays and summer breaks, given that there is competition among the available workforce to support the entire school age population during these timeframes. Some families have been able to meet these needs using self-directed staff.

- 110. A respondent raised concerns that the delays in the provision of adult services are significant for young adults who age out of the school system. The respondent noted that delays can take as long as two years in some cases.**

OPWDD is aware of the critical need to improve the transition of school age, young adults to adult services in a timely manner. For this reason, the revenues generated from OPWDD participation in Community First Choice Option (CFCO) are directed to the service needs of young adults leaving the education system. Additionally, DDRO staff continue to reach out to school districts in their catchment areas to make sure that individuals and families are connected to OPWDD and service coordination well in advance of the student's completion of school. Improvements at the Front Door will help OPWDD better identify when there are delays and improve the initial authorization process. The lengthiest delays often occur for students transitioning with higher needs. Ultimately, a funding system that is shaped by individual acuity will improve access. In the current Amendment OPWDD and DOH are proposing High Needs funding that is designed to improve access to certain services for individuals with high staffing needs.

- 111. A respondent noted that individuals who often experience multiple medical, behavioral health and social challenges would benefit from the utilization of Health Homes. The Health**

**Home model utilizes a robust, individualized, conflict-free care planning process with a multi-disciplinary team comprised of a dedicated care manager and a variety of specialists relevant to the individual receiving care.**

A conflict-free, robust case management service that increases access to the full range of services will benefit the people served. Working with Stakeholders, OPWDD will explore the resources available to best enhance case management.

- 112. A respondent stated that there are insufficient supports for waiver participants with behavioral challenges. Concerns were raised about the restrictive definition of Intensive Behavioral Services (IBS). Instead, the stakeholder recommended that parents be provided greater flexibility to hire specialists in their own communities.**

OPWDD staff are engaging voluntary providers to assess what changes can be made to IBS to make the service more broadly available. In addition, in 2016 the NYS Medicaid State Plan was expanded to include a new fee schedule to address behavioral support needs of individuals with intellectual and developmental disabilities. Qualified professionals can apply to be a Medicaid provider of these Independent Practitioner services, and we encourage these professionals to do so. Further information is available at the following address:

[https://www.opwdd.ny.gov/opwdd\\_services\\_supports/people\\_first\\_waiver/ipsidd\\_clinician\\_application\\_for\\_opwdd\\_approval](https://www.opwdd.ny.gov/opwdd_services_supports/people_first_waiver/ipsidd_clinician_application_for_opwdd_approval).

- 113. A respondent recommended that State leaders at OPWDD and the Office for Mental Health need to take action to work together in order for individuals with developmental disabilities to receive mental health services.**

OPWDD is in full agreement with this recommendation. OPWDD has also been working diligently with our partners at OMH on improved communication protocols to ensure timely collaboration and problem solving on cases involving individuals with I/DD who are in emergency room and CPEP settings, and we are partnering on multiple other pilot projects focused on provision of more effective intervention and treatment to individuals in crisis who are in need of specialized inpatient hospitalization.

- 114. A respondent recommended that Assistive Technology services should better reflect the current, rapid advancements in technology. In particular, the respondent recommended that the Waiver fund cell plans for mobile devices, smart phones, tablets, and smart watches (including the applications available through the Google Play Store and/or Apple App Store) which have been proven to increase independence and goal attainment consistent with ISP valued outcomes should be added to the available adaptive devices through the Assistive Technology service.**

OPWDD plans future amendments to the service definitions based on the outcomes of various Balancing Incentive Plan (BIP) grants for assistive technology. In collaboration with other State agencies, it is anticipated that changes will be made as Assistive Technology is now available as a Community First Choice Option (CFCO) service.

- 115. For Day Habilitation, do not replace allowable services found in Part 635-10, instead add services defined in the waiver application to the menu of services which already exists. Return Individual Day Habilitation as an option to support Person Centered Services.**

OPWDD is committed to providing a flexible array of day service options for individuals. Individual Day Habilitation (IDH) was terminated on 10/1/15. The termination of IDH was necessary due to the recent expansion of Community Habilitation services that resulted in no significant difference between the scope of services and activities included in IDH and the scope of services and activities that could be funded through either Community Habilitation and/or Group Day Habilitation. Eligibility for Community Habilitation services was expanded on 10/1/14 to include not only individuals residing outside of OPWDD certified settings, but also individuals who live in OPWDD-certified settings.

- 116. A growing need currently exists for Housing Navigation or Housing Counseling services to be administered as part of the waiver case management activity. Housing Navigation or Housing Counseling would assist a person with I/DD to assess their housing needs and options, provide assistance in securing housing, and establish procedures and contacts to create and retain housing. The Community Transition Services do not extend to supporting the individual in securing a home and we recommend that OPWDD provide this service though the HCBS waiver and include this provision in the final Amendment 01.**

Recommendations of the Commissioner's Transformation Panel align; and maintain that the availability of housing resources is critical to a person's success in securing a community based integrated home of their choice. OPWDD anticipates that the enhanced care coordination design will consider this role in the context of the care team and envisions a specialized niche for housing navigation and counseling that may be connected to or a component of the care management system.

- 117. A respondent recommended that OPWDD include three housing related activities and services outlined by the Centers for Medicare and Medicaid Services (CMS) in that federal government entity's June 26, 2015 Informational Bulletin: Coverage of Housing- Related Activities and Services for Individuals with Disabilities. The three services include: Individual Housing Transitional Services, Individual Housing & Tenancy Sustaining Services and State-level Related Collaborative Activities**

OPWDD is examining these options and considering the development of conflict-free case management transition. As a critical component to quality of life, OPWDD and the Panel are exploring opportunities within the care coordination design to connect to and maintain working relationships with communities and the housing resources available to access community based integrated homes for individuals with developmental disabilities. Work is also underway based on the outcomes of the Balancing Incentives Program Transformation grants to evaluate these housing supports as part of self-direction or as a stand-alone waiver service in a future amendment.

### **Other**

**118. A reviewer asked if rest time for seniors enrolled in Day Habilitation is considered billable if no activity is occurring.**

Please refer to the December 30, 2010 OPWDD policy memo titled “Responding to the Day Service Needs of the Medically Frail and Elderly Individuals Enrolled in the HCBS Waiver” addressing medically frail and aging individuals enrolled in Day Habilitation and Administrative Memorandum #2006-01. These documents provides service documentation requirements and guidance with regard to Group Day Habilitation.

**119. A respondent recommended that OPWDD allow the billing of services provided during lunch at Day Habilitation programs.**

Administrative Memorandum #2006-01 for Group Day Habilitation outlines service documentation requirements. Lunch is not included as a billable service time and there are no changes to this requirement in this Amendment.

### **Other Topics Outside the Scope of the HCBS Waiver**

OPWDD received comments regarding topics that are outside of the scope of the submission of the HCBS Waiver Amendment 01. The responses to those questions are addressed here.

**120. A respondent recommended that providers join together in providing certain services that are costly and can be shared, such as transportation. A bus system could be set up with various routes so that one bus system does a run out to a central stop, various individuals’ homes and the individuals’ various agencies.**

OPWDD supports collaborative efforts between providers, but this is not a recommendation that can be implemented in this Amendment. Based on recent NYS legislation, there is work currently underway to study transportation services across the

various New York service sectors. OPWDD is conducting an assessment of the mobility and transportation needs of persons with disabilities and other special populations including, but not limited to, those receiving behavioral health services.

It is expected that this report will inform future amendments to the OPWDD Comprehensive HCBS Waiver.

**121. One commenter recommended that OPWDD increase outreach to individuals and families who speak English as a second language.**

OPWDD met its public notice requirements for Amendment 01 and regularly reviews its outreach efforts to all communities, including those met in which English is not the native language. OPWDD will look at ways to better reach all communities.