

**New York State Office for People with Developmental Disabilities (OPWDD)  
Home and Community Based Services (HCBS) Waiver Renewal  
Responses to Public Comment**

On May 3, 2014 the Office for People With Developmental Disabilities (OPWDD) posted for comment a description of the comprehensive Home and Community Based Services (HCBS) waiver renewal application which highlighted key changes in the application that will take effect October 1, 2014. The notice for public comment was distributed broadly and available on the OPWDD website for 30 days. OPWDD received 38 pages of written comments and is publishing this document to address the issues and questions raised by stakeholders during the month-long comment period. This document is organized around the topic areas that were raised by respondents and summarizes the questions raised and OPWDD's responses.

### **Format of the Solicitation**

Several respondents asked why the state was not publishing the full text of the application and commented that their ability to provide meaningful feedback was hampered by not being able to view the entire text. OPWDD strives to provide information to stakeholders in a timely process. Publishing the full text of the application is not practical given that we are in the process of finalizing the application. The posted information and prior presentations on waiver developments and reforms have identified all changes to the current waiver. The existing waiver (without the changes proposed for the renewal) can be accessed on the Centers for Medicare and Medicaid Services (CMS) website [http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Waivers\\_faceted.html](http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Waivers_faceted.html). We will share the application with stakeholders once it is approved and will continue to keep stakeholders informed of the outcomes of negotiations with CMS and key programmatic and policy developments.

### **Timeline for the Move to Managed Care**

Several respondents asked about the statement in the May 3<sup>rd</sup> solicitation for public comment that OPWDD was seeking waiver authority to create a managed care system that will allow individuals to opt into managed care plans on a 'purely voluntary' basis. The question arose because, in previous communication with stakeholders, OPWDD has been clear that the approach for the development of managed care for the intellectual and developmental disabilities (IDD) system would initially be voluntary, but would ultimately involve mandatory enrollment in keeping with the Governor's "Care Management for All" initiative.

OPWDD's intent has not changed related to the development of managed care. We will begin the development of specialized managed care for individuals with Intellectual and Developmental Disabilities (IDD) in a voluntary enrollment environment, but ultimately transition to mandatory enrollment in managed care. At the time we asked for public input, the intent was to request a two-year 1915(b)/(c) application and during this proposed two year period we would not be seeking authority for mandatory managed care.

### **Change in the Application Approach**

On May 3, 2014 OPWDD informed the public that the upcoming submission would implement a 1915 (b)/(c) concurrent comprehensive HCBS waiver on October 1, 2014. In subsequent discussions with CMS, it was agreed that the July 1 submission would be limited to a 1915(c) application to renew our HCBS waiver for a two-year period (10/1/14 – 9/30/16). OPWDD and DOH will submit a 1915(b) application with the objective of implementing specialized managed care for individuals with IDD on October 1, 2015. OPWDD continues to plan for initial voluntary enrollment and the 1915(b) application will request authority for a managed care delivery system that will be purely voluntary and allow individuals to opt to enroll in a Developmental Disability Individual Support and Care Coordination Organization (DISCO).

### **Self-Direction**

#### Self-Direction Redesign:

OPWDD received a wide range of comments regarding the 1915(c) HCBS waiver renewal, including many comments focused on self direction. These comments stressed the importance of preserving an individual's ability to self-direct their services and expressed concerns that the redesign of Consolidated Supports and Services (CSS) will limit self direction opportunities.

Within the renewed waiver, individuals will continue to be able to self-direct a variety of HCBS waiver services including Community Habilitation, Supported Employment (SEMP), and Respite. The services that support self direction will continue to be available and include Live-In Caregiver (LIC), Support Brokerage, Individual Directed Goods and Services (IDGS), Community Transition Services (CTS), and Fiscal Intermediary (FI) services. OPWDD is redesigning its CSS waiver service and working to meet the October 1, 2014 date that the CMS has required for the restructuring of CSS. Existing CSS plans must transition to a new budget template that aligns with the new proposed rate methodology.

We disagree with the comment from a respondent that the following statement in our solicitation was incorrect: "...a person can self-direct some or all of his or her services." The respondent cited the fact that self-hired staffing is available only in certain program areas (further discussion of self-hired staffing is in the following section of this document). In fact, a person can opt to receive some services from a provider and opt to self-direct other portions of his or her service plan. For example, a person living in a Supervised Individualized Residential Alternative (IRA), can opt to self-direct his or her day services. Some services are not appropriate for self direction, for example Intensive Behavioral Services (IBS), which are clinician directed services.

The programmatic goal of the self direction redesign and OPWDD's ongoing work with self direction stakeholders is to create a broad self direction program that offers flexibility. This flexibility translates into increased choice that the individual may utilize to self-direct his/her supports and services using employer authority or budget authority. The individual may choose a mix of supports and services that works best, how and when those services are provided and the staff and/or organizations which provide these services. This may include a combination of HCBS waiver services, state-funded services or other natural and community supports. It is important that continuity of care is preserved.

#### Self-Direction and Self-Hired Staffing:

Several respondents expressed concern about the lack of detail that is available to the public regarding the specific elements of the new self direction methodology, particularly as it relates to the components of IDGS. Despite concern, there was approval expressed regarding the ability to set wages for self-directed workers which are not to exceed the payment to provider-based services.

OPWDD is striving to develop a methodology that fully supports the individual to self-direct staff who deliver one of the following types of waiver services: Community Habilitation, Respite or SEMP. Individuals will have the ability to self-direct these services through employer authority, which provides options for staffing choices. Self-directing individuals will have a choice as to their level of responsibility in directing these services. Individuals can self-hire staff to provide services with minimal Fiscal Intermediary (formerly Financial Management Services (FMS)) involvement or the person can hire self-directed staff where the Fiscal Intermediary agency would manage many employer responsibilities. Individuals and families will have the flexibility to pay staff different rates for different services. An individual can set the wage for

staff based on an assessment of their qualifications. However, per federal Medicaid regulations, the wage cannot exceed the amount it would cost to have a voluntary agency provide the same service.

#### Self-Direction and IDGS:

Many comments received by stakeholders focused on the critical issue of transportation. OPWDD realizes that transportation is a significant issue for many individuals. Respondents also shared their strong support of having a more flexible approach to IDGS, such as not requiring an arbitrary (and too low), expenditure cap.

IDGS is a new waiver service category proposed in the waiver renewal that has been added as part of the self direction redesign to accommodate allowable Medicaid expenses that may fall outside of traditional waiver service categories. Other states which currently offer IDGS have included items such as transportation, clinical services not covered by the State Plan, assistance with training staff, gym memberships that relate to community integration and music and art therapy. New York is following a similar path as these other states which offer IDGS. However, states are prohibited from replicating services that can be obtained elsewhere (such as in the Medicaid State Plan or which are otherwise available through the HCBS Waiver in other service categories). OPWDD is awaiting feedback from CMS on the proposed IDGS service design.

Effective October 1, 2014, transportation costs for individuals who self-direct their services may be funded through IDGS. In addition, mileage costs for service-related transportation provided by self-hired Community Habilitation or employment staff using their own vehicle may be funded through the self-hired Community Habilitation or Supported Employment (SEMP) budget categories. These options allow for the individual to have a choice in the structuring of his or her budget so the transition of the plan can support a smooth transition and continuity of current self-directed service plans.

One organization recommended that OPWDD establish a separate waiver transportation service in order to better understand the cost of transportation in the IDD system. OPWDD will be better able to identify transportation costs within self direction with the development of IDGS. OPWDD will not be pursuing a separate transportation service at this time.

Regarding the flexibility needed for the total IDGS expenditure limits, since the publication of the solicitation for public comments there have been subsequent conversations with CMS and additional developments in the IDGS design that provide for additional flexibility in terms of the overall expenditure limit for IDGS within the person's Personal Resource Allocation (PRA) (i.e., self-directed budget amount). As details are finalized with CMS, further information will be forthcoming. We can state, however, that IDGS expenditures will not be limited to the \$5,000/person cap that was initially discussed.

Stakeholder Input and Next Steps:

Respondents noted OPWDD's outreach activities, but stressed the importance of OPWDD's ongoing engagement with individuals and families to build a lasting infrastructure for self direction. Issues noted included the need for ongoing engagement with stakeholders, the need for medication administration in non-certified settings and the need to support access to healthcare for self-directed workers.

OPWDD has initiated a plan for stakeholder engagement. This includes a series of videoconference meetings about the self direction redesign held for individuals, families and Fiscal Intermediary agencies this past April. OPWDD has posted the Q&A document from these videoconferences at the following link: <http://www.opwdd.ny.gov/node/5449>. Additionally, OPWDD has been meeting with various stakeholder groups, including individuals, families, and Fiscal Intermediary agency representatives. These meetings continue and are providing valuable input as the self direction redesign moves forward. On June 30, 2014, OPWDD presented a People First Waiver videoconference update to providers, individuals and families which included information on the status of the self direction redesign. OPWDD indicated progress with CMS and the intent to meet with a small workgroup to negotiate specific parameters of IDGS.

OPWDD continues to work closely with CMS on the details of the self direction redesign and has been setting up various meetings and trainings with district staff, support brokers, Medicaid Service Coordinators (MSCs) and others as we move forward and prepare to transition existing CSS plans to the new compliant self direction format and budget template. It should also be noted that OPWDD is working aggressively with the New York State Education Department on a new Memorandum of Understanding (MOU) that will lay the ground work for properly trained and supervised direct care staff to administer medications and perform certain other health related tasks in non-certified settings. Further information will be available later this summer

about these developments. Once the MOU is finalized, the waiver application will be updated to reflect new protections for the expanded ability to oversee medication administration in non-certified settings and, at that time, provision of this option can begin.

While there is specific focus on the transition to the new self direction methodology, OPWDD concurs with respondents who stressed the importance of ongoing dialogue regarding self direction services. Beyond attending to issues of federal compliance, OPWDD is committed to continue to work with stakeholders regarding system improvements to streamline, simplify and ensure access to self-directed services for those who are interested in this option.

## **Employment**

Many comments received in response to our public notice on the 1915(c) HCBS waiver renewal focused on employment for individuals with developmental disabilities. Some respondents expressed support of the cessation of referrals to sheltered workshops, although others expressed concern with the alternative vocational options, particularly for young adults leaving school. This is a critical issue for OPWDD and there are several key ways that our agency is working toward supporting employment outcomes, some of which are reflected in the waiver renewal application.

OPWDD continues to work to create the infrastructure and capacity that will increase opportunities in competitive employment outcomes. Current infrastructure and capacity building activities underway include the creation of the new Pathway to Employment waiver service, training of SEMP providers, improvements in the collection of employment data, initiatives to create incentives to assist individuals in transitioning from Day Habilitation and Sheltered Workshops to competitive employment, efforts to redesign SEMP rates, strengthening partnerships with Adult Career and Continuing Education Services-Vocational Rehabilitation (ACCES-VR) and the Office of Special Education (OSE) and working closely with the State Employment Leadership Network (SELN).

New York has used its state budget-making process as an opportunity to create employment outcomes for people with developmental disabilities. Approximately \$30 million in non-Medicaid dollars is used to fund Sheltered Workshops. The 2014-15 enacted budget proposed a \$4.5 million reduction in this funding to take effect July 1, 2014. OPWDD is working with

impacted providers to identify individuals who could transition to the new Pathway to Employment service, SEMP, Community Habilitation or other more integrated services that allow individuals to be engaged in their community. The enacted budget also supports the transition of interested individuals from Day Habilitation to Pathway to Employment and/or SEMP services.

#### Pathway to Employment:

OPWDD has facilitated trainings for new providers who had not previously delivered SEMP services and held trainings for many MSCs. According to New York State regulations, a provider must already be authorized for SEMP services before Pathway to Employment services can be delivered. Meetings have been convened across the state with voluntary and state operated providers that might be interested in the service. OPWDD also continues its efforts to increase the capacity of SEMP providers to deliver high quality services by continuing the Innovations in Employment training series.

#### Redesigning SEMP:

Initial work has commenced on the redesign of the SEMP waiver service to transition the service from a monthly to an hourly unit of service. OPWDD has been working with the Department of Health (DOH) to develop new SEMP fees that create incentives for increasing employment outcomes and retaining employment and include performance-based outcomes. OPWDD and DOH continue to work closely with CMS on the restructuring of SEMP.

#### Strengthening Partnerships to Increase Competitive Employment:

Many comments received by stakeholders focused on the need to create strong partnerships to increase competitive employment opportunities for individuals with disabilities. The Partnership in Employment Systems Change Grant continues to serve as a venue to strengthen collaborative efforts between OPWDD, ACCES-VR and OSE. ACCES-VR and OPWDD continue to have discussions regarding mutual efforts to improve employment outcomes for youth transitioning from high school. As ACCES-VR seeks to engage students and families in their services two years prior to exiting high school, discussions with OPWDD have focused on ways to share data so that students and families are also aware of the Pathway to Employment service and other OPWDD services. Discussions have also focused on a joint ACCES-VR and OPWDD process for identifying individuals who may be interested in receiving Pathway to Employment services. OPWDD has also collaborated with OSE to provide employment information to high school students and administrators. Additionally, OPWDD held two train-

the-trainer sessions with teachers on how to incorporate the process of “employment discovery” into their transition planning.

The Future of Employment for Individuals Being Served by the OPWDD Service System:

The transition of individuals moving from high schools, workshops, and Day Habilitation programs will be gradual and an immediate increase in Pathway to Employment and SEMP is not anticipated. However, by June 2015, it is anticipated that competitive employment outcomes will begin to significantly increase due to delivery of Pathway to Employment and the restructuring of the SEMP waiver service.

**Community Habilitation and Restrictions on Services for Individuals Living in Supervised Residential Settings**

OPWDD also received several comments from stakeholders regarding the restrictions around the schedule of certain services provided to individuals who live in supervised residential settings where staff are present at all times when people are in the home. These restrictions are currently in place for Day Habilitation and Prevocational services, which cannot be provided on weekday evenings or anytime on weekends to people living in supervised residences. It should be noted, however, that SEMP can be provided at any time and any day of the week in recognition of the fact that a person’s work schedule must be accommodated. OPWDD appreciates the need for flexible service provision. However, there will be no change to this policy given that supervised residential settings are responsible for these days/hours and separate Medicaid reimbursement for these times would be duplicative. A potential strategy for resolving this issue would be to transition Supervised Residential Habilitation to an hourly unit of service, but OPWDD has rejected this approach as impractical.

There will, however be a change in waiver operations related to Community Habilitation. In the waiver renewal, OPWDD will be requesting authority from CMS to expand Community Habilitation to those residing in certified settings. With CMS approval, Community Habilitation will now be an option for individuals residing in:

- Individualized Residential Alternatives (IRAs)
- Community Residences (CRs)
- Family Care Homes (FCHs)

The waiver renewal will build upon recent self direction redesign efforts and expand choice in services and opportunities for more individuals. This change also aligns with the expectations of the final HCBS Settings Regulations through offering true choice of person-centered day options for people who reside in certified settings. Although individuals in these settings can opt to receive Community Habilitation, these services cannot be provided in a certified setting and the same evening/weekend prohibition will apply to this service for individuals living in supervised settings.

## **Front Door**

OPWDD received several comments by stakeholders focused on the effectiveness of the Front Door. One respondent suggested that there are elements of the Front Door process that are state waiver assurances (e.g., statewide access), and that DOH should review these elements as part of its HCBS waiver oversight. OPWDD and DOH are engaged on several other areas in terms of DOH review (incident management, performance outcomes, fiscal oversight, and care planning review). The review mechanisms are evaluated at a quarterly meeting of the two agencies and the recommendations gathered during this public comment period will be discussed for possible future action.

One respondent noted that the Front Door and the implementation of the new HCBS federal requirements related to person-centered planning are integrally linked. Another respondent recommended that the Front Door process be modified to streamline the HCBS waiver enrollment process by allowing the Preliminary Individualized Service Plan (P/ISP) to be developed at the Front Door by DDRO staff. OPWDD fully agrees with both statements and is redesigning the process to begin the P/ISP development at the Front Door.

The Front Door was launched last year to improve the way people access services while giving them as many opportunities as possible to direct their own service plans. As a result of valued

input during the solicitation for comment and in other venues, OPWDD has been able to make many improvements to the Front Door process to get better response times, streamline access to services and better manage residential opportunities. OPWDD plans to announce significant improvements to the Front Door process which include:

- Development of an informational video to ensure that all individuals and families receive consistent information about available services
- A new Access to Services Guide for individuals and families to explain step-by-step the process of applying for OPWDD services
- Roll-out of a new Front Door manual for OPWDD staff to ensure consistency of process statewide
- New and improved processes for identifying and developing residential opportunities and supports individuals need through person-centered planning

OPWDD will also be scheduling information sessions for all stakeholders to explain in more detail the changes to the Front Door process.

## **Managed Care**

### Overview:

As is noted earlier in this document, OPWDD and CMS have agreed to delay the submission of the 1915(b) application in order to support an October 1, 2015 start of Developmental Disabilities Individual Support and Care Coordination Organizations (DISCOs). In light of recent progress with waiver amendments, and in collaboration with CMS, OPWDD will be posting to its website an updated timeline for managed care implementation that OPWDD and CMS have jointly agreed upon as the path for moving forward. Leading up to the October 1, 2015 start, OPWDD will take steps to implement specific elements needed for the specialized developmental disability services within a managed care delivery system through the DISCO application process. Eligible organizations must be controlled by one or more non-profit organizations with a history of providing or coordinating services to persons with developmental disabilities. DISCOs will be responsible for providing individualized care coordination and long-term supports and services for individuals with developmental

disabilities who voluntarily enroll, initially beginning October 1, 2015. Mandatory enrollment will be implemented after the transition period into voluntary enrollment is assessed.

#### Start-up Costs:

One respondent commented that the state had not provided sufficient information regarding how the administrative costs of operating a DISCO would be addressed in the transition to managed care. OPWDD recognizes that there will be start-up costs related to establishing DISCO care coordination functions and, as a result, has initiated the Certificate of Authority (COA) application process for DISCOs will be initiated and will include a Start-up Grant Application. The start-up grants will support the development of the care coordination and IT infrastructure, but these cannot be applied against financial reserve requirements. Funding for DISCO start-up costs will be provided through the federal Balancing Incentive Program (BIP). New York State's participation in the BIP will allow the State to build upon current efforts to rebalance the delivery of long-term services and supports (LTSS) and to promote enhanced consumer choice.

Grant applicants will be selected on the basis of the successful completion of the initial phase of the COA process to operate a DISCO. The initial phase of the COA review process will be conducted to ensure that the applicant successfully meets the Article 44 New York State Public Health Law (NYSPHL) requirements in the following areas:

- Organizational Structure
- Management of the DISCO
- Character and Competence
- Governing Board
- Service Area
- Enrollment Projections and Target Population
- Finance

#### Public Information and the Move to Managed Care:

Several respondents appreciated that OPWDD is taking a thoughtful approach to managed care development and commended the decision to start managed care on a purely voluntary basis. However, several respondents commented that there was a lack of detailed information regarding contracting standards, for example. To address these concerns, the state intends to post a draft DISCO model contract to its website as well as a draft COA application for DISCO

funding for informational purposes. OPWDD intends for this process to be transparent and to include stakeholder input at all stages of development.

OPWDD's initial focus for managed care is the establishment of DISCOs. However, following approval of the People First Waiver, OPWDD will seek further changes to federal agreements that will allow managed long-term care plans (MLTCPs) and mainstream managed care plans to offer specialized services and supports to individuals with developmental disabilities. The law requires that all organizations coordinating OPWDD services will be subject to all requirements applicable to DISCOs for quality assurance, grievances and appeals, informed choice, person-centered planning and marketing. The law further requires that MLTCPs and mainstream managed care plans that offer specialized developmental disability services have the ability to provide or coordinate services for persons with developmental disabilities. If a potential MLTCP or mainstream plan does not itself have adequate experience in this area, it must establish an affiliation arrangement with an entity or entities with experience serving people with developmental disabilities. In these instances, the affiliated entity will oversee or directly carry out the coordination and planning of the OPWDD services.

#### Capitation Development:

One respondent asked for more detailed information related to the source of funds for managed care reimbursement. Actuarial work has begun on capitation development which will fulfill a federal requirement of the 1915(b) application for such work to be performed by certified actuaries. OPWDD plans to share updated data books and will post proxy DISCO rates in Fall 2014 to inform entities that are planning to make application to become a DISCO so they will be able to include required fiscal projections as part of the application process. Webinars will be held for providers to review and discuss rate development with the state actuary, DOH and OPWDD. The DISCO rate-setting methodology will be finalized in spring 2015 and final rates will be published.