

MEETING NOTES

OPWDD PROVIDER ASSOCIATION (PA) MEETING

Monday, July 20, 2015

10:00 a.m. – 2:30 p.m.

Conference Room 4B -- 4th floor

44 Holland Avenue, Albany, NY 12229

OPWDD Attendees: Acting Commissioner Kerry Delaney; Deputy Commissioner Helene DeSanto; Roger Bearden; Abiba Kindo; Kate Marlay; Martha Dalton; Sally Berry; Joanne Lamphere; Tamika Black; Maryellen Moeser; Jennifer O’Sullivan; Jill Pettinger; Cathy Varano; and Maryann Riviello.

Provider Association (PA) Attendees: Tina Chirico (Financial Managers Association); Susan Constantino (CP of NYS, Inc.); Pat Dowse (NYSRA – via teleconference); Rhonda Frederick (DDAWNY); Ann Hardiman (NYSACRA); John Kemmer (NYSARC); Ron Little (OPWDD Compass Agencies – via teleconference); Edie Mesick (UJA Federation); Anne Ogden (NYS Catholic Conference); Peter Pierri (Interagency Council of MR & DD Agencies); Seth Stein (Alliance of Long Island Agencies for Persons with Developmental Disabilities – via videoconference); Steve Vernikoff (Advance of Greater NY); Kirk Lewis (for Barbara Wale -- Executive Directors Association); and Yvette Watts (NYS Association of Emerging & Multicultural Providers, Inc.).

Commissioner’s Welcome and Update

Acting Commissioner Kerry Delaney welcomed PA members and OPWDD leadership staff to the monthly meeting and updated the group on several key issues.

- *Americans with Disabilities Act (ADA) 25th Anniversary Celebration:* On Friday, July 26th, OPWDD, the Self Advocacy Association of New York State (SANYS) and several sister state agencies will mark the 25th anniversary of the signing of the landmark federal ADA at noon in Albany’s West Capitol Park. PA members were encouraged to share information on OPWDD’s website with their constituencies.
- *Transformation Panel Update:* The Transformation Panel was convened in early March 2015 to address issues vital to the future of New York State’s systems of support for people with disabilities, including the transition to care management. The panel is comprised of 18 members including people with developmental disabilities, parents, agency executives, provider association leaders, advocates and experts in the field of developmental disabilities. The purpose of the panel is to shape clear and actionable recommendations to guide our path forward in implementing the transformation agenda, and to provide a stakeholder feedback process around the entire transformation agenda. In a brief period, the panel has met nine times and engaged a variety of issues—including self-direction, housing, employment and managed care. It will soon address long-term sustainability in the system. The panel will host forums for participation statewide to promote meaningful dialogue, discussion and input. These will be scheduled soon and announced on the OPWDD website. PA members and provider agencies were encouraged to attend. These listening sessions will be separate from statewide employment-related forums that will be launched shortly. The panel will review the public comments received at the forums, through email and other means, and make final recommendations around October. PA members can view the work of the transformation panel, including a summary and schedule of meetings, on OPWDD’s website. The panel’s recommendations will be posted there, and you can submit questions, comments and input by emailing transformation.panel@opwdd.ny.gov.
- *One-Day Symposium on Complex Needs Update:* A “Save the Date” email was sent out on July 15 to everyone on the Commissioner’s Correspondence distribution list detailing a one-day

OPWDD-sponsored symposium scheduled for 11/5/15 entitled “**Strategies for the Future: Supporting Complex Needs.**” The gathering, which will be held from 8am to 4:30pm at the Empire State Convention Center in Albany, will address the challenges of providing supports to individuals with complex medical and behavioral needs. Presentations, panels and discussion will focus on areas in OPWDD’s system transformation, such as self-direction, community housing, employment and meaningful community activities, technology and the workforce. OPWDD’s goal is to ensure that the personal outcomes achieved by the transformation agenda can be realized by everyone, including those with complex support needs. The conference is open to families, individuals, service providers and policymakers. Additional information will be shared in the coming weeks. OPWDD has spoken with more than 15 families and individuals as well as numerous provider agencies to begin to shape the day’s agenda. Panels and presentations are also in development. PA members were encouraged to have provider agencies share any recommendations to Dianne Henk, who is coordinating the event.

- *NYS Office of Community Living:* Edie Mesick updated PA members on the recent work involving a proposed NYS Office of Community Living (OCL) that was included in the 2015-16 State Budget. The NYS Office for the Aging (NYSOFA) has formed a steering committee with other state agencies to explore the creation of such an office. OPWDD is represented on the panel. The steering committee will soon launch a stakeholder survey to gather information on whether it is feasible to create and OCL. A report is due to the Legislature by December 2015.

Open Discussion

The group discussed several items on the Open Discussion agenda.

Property Thresholds Update

PA Issue: When will they be revised to reflect current market conditions for purchase and rentals? What is the status of rental increase for 2015?

- In response to concerns about year-to-year regulating of a property escalator (property thresholds were last updated in 2009), the State Division of the Budget (DOB), recently approved a 2.7% lease escalator retroactive to 1/1/15.
- This shift in policy will require regulatory changes which are under development.
- PA members noted that though there is overlap between this issue and ICF Transitions, the systemic issues inherent in property thresholds are much larger in scope.
- Kerry asked PA members to help OPWDD put together a workable solution to take to DOB regarding the elimination of gridlock resulting from caps on property thresholds. Thus far, Peter Pierri of IAC, Tina Chirico of the Financial Managers Association and Susan Constantino of UCP have offered to be part of this work group.

Balancing Incentive Program (BIP) Grants Update

PA Issue: An update on timeframes for contract approvals, distribution of funds and possible extension of grant period beyond 2015.

- DOH submitted the State BIP recast and is awaiting approval from CMS. Approval of the recast will authorize the state to extend BIP activities through September 2017. The state anticipates word from CMS in early fall and which will allow grants to be extended as needed.
- OPWDD will send a follow-up letter to BIP award recipients updating them on the contract approval and extension process. Staff will also keep PA members in the loop on contract status details.

CMS Guidance and HCBS Settings Rule Update

PA Issue: In light of new CMS guidance on this topic, what revisions will have to be made to OPWDD's transition plan? We would also like to discuss these settings rule as they relate to OPWDD's residential vacancy management process as well as OPWDD's recent health and safety alert regarding transportation.

- *Certified Residential Protocol*
 - OPWDD integrated some language from the HCBS settings and ADM # 2014-04 into the mission/guiding principles section of the CRO protocol, specifically:
 - The protocol allows Residential Providers to be in a position to anticipate the most appropriate individuals for available opportunities (based on individual preferences and needs) and maximize utilization of their residential resources.
 - The protocol also communicates as a guiding principle that people with disabilities have the right to choose where they live from among setting options including settings that are not disability-specific and the option for a private unit in a residential setting. These choices are based upon the individual's needs, preferences, and for residential settings, resources available to the person for room and board.
 - The Regional Office along with the Residential Providers must focus on matching a person's preferences and needs to available residential opportunities and/or services. Every effort will be made to respect and honor individual choice within the range of available needs-supported options.
 - Residential providers are expected to have mechanisms to assess satisfaction/dissatisfaction with living arrangements and provide individuals with a confidential opportunity to discuss issues or concerns regarding roommates. Revisiting choice of living arrangement with residents periodically is also expected as with all of us, preferences may change. Residential providers/staff are also expected to provide people with opportunities to work with the provider/residence to achieve the closest optimal roommate situation. People who are unhappy with their living arrangement should receive timely support and assistance from the provider/residential staff in coming up with alternative options.
 - Providers/staff and circles of support members listen to people in terms of where they would like to live and who they would like to live with and make every effort to support the person to help make these choices a reality. In practice, this means considering the choice of people moving into a new home as well as the choices of people currently living in a home and any risk management needs.
 - Alternative services must be explored in an effort to support an individual in the most integrated (least restrictive) setting possible based on individual preferences and needs before they are referred for an OPWDD certified vacancy.
 - OPWDD and PA members should develop forum/vehicle to bring magnitude of HCBS Settings Rule Update issue to the forefront. DOH needs to participate. Priorities and reasonable solutions (especially funding) must be identified. Bundle property threshold, vacancy management and HCBS settings issues together for greater impact.
- *Health & Safety Alert*
 - Aim of the guidance was to:
 - Encourage use of seat belts;
 - Ensure agencies were exercising due diligence to work with individual and advocates to understand risk;
 - Ensure someone known not to wear a seat belt is placed in front seat;
 - Identify supports for individuals for them to be included in the community; and

- Encourage providers to look at other types of devices and alternative strategies to ensure safe travel in vehicles (versus restricting an individual's behavior).
- OPWDD has received feedback on its recent guidance to the field on "Supporting Individuals to Safely Access Community Activities," which is being used to revise the guidance and issue further clarification.
- Whether the revised document will be issued as an alert or a memoranda has yet to be determined and will be contingent on further discussion with OPWDD Counsel's Office.
- The revised guidance focuses on implementation of individualized safeguards as appropriate per each person's needs.
- Accordingly the following clarifications are being made to specify the applicability of the guidance to:
 - Transportation by provider agency staff;
 - Contracted transportation providers;
 - **Not** Public transportation providers or natural supports;
 - **Not** intended for transportation arranged independently by the individual;
 - Therefore, information requirements regarding transportation providers, schedules, etc. are applicable **when individuals are determined to require support and assistance with transportation**, not intended for personally arranged transportation, natural supports, etc.
- Language referencing the use of seat belts:
 - has been revised to be in accordance with NYS law; and
 - suggests consideration of training, as needed, to assist individuals to make choices based on understanding regarding the use of seat belts and safety.
- Language regarding follow up on absences has been revised to be less directive but rather more focused on having mechanisms for decision making on what contacts and follow/up should occur, and that is individualized to person or situation.

IRA Room and Board Supplement Update

PA Issue: What is the status of plans to reimburse this at 100% -- instead of the current 66% level?

- OPWDD believes that the budget neutrality adjustment, including the one limiting funding for the OPWDD-funded supplement, has been removed as part of the 7/1/15 methodology changes. OPWDD will confirm this point with DOH. OPWDD will work in the coming budget cycle to ensure it is positioned financially to fully support such costs moving forward.

New Clinical Service Update

PA Issue: Providers have many questions regarding the new preventive clinical service and OPWDD's philosophy behind moving away from an approach of a coordinated clinical care model to one that supports independent clinical providers.

- Kate Marlay and Jill Pettinger updated PA members on this topic. The changes to clinical service delivery are not driven by a change in philosophy at OPWDD. There are federal rules regarding the reimbursement of Medicaid state plan services. CMS is requiring that the State come into compliance with those rules. Per CMS, services reimbursed under a "clinic" payment methodology are limited to the confines of certified locations. It is CMS's current position that the 1992 State Plan Amendment (SPA), which permitted Article 16 clinics to deliver services outside of certified locations and be reimbursed for such services under a

clinic payment methodology, was approved by its Regional Office in error. (It is worth noting that other state agencies, including OMH and OASAS, have proposed off-site service SPAs for clinics at various times since 1992. All such requests were turned down.) The only state plan options which permit the delivery of clinical services outside of the four walls of a clinic and hospital outpatient department are those that reimburse such services through independent practitioners. The advantage of the Preventive Service option is that it allows the State to cover services delivered by certain providers (i.e., ABSSs) that might not otherwise be recognized by CMS.

- OPWDD is doing everything in its power to ease the transition. To this end, it has announced its willingness to certify new satellite clinic locations in a streamlined manner. Where existing off-site Article 16 clinic services can be converted to on-site services, they may continue under the same, familiar Article 16 clinic treatment coordination and reimbursement rubric as in the past. Where this is not possible, Preventive Services is the only option to ensure the continuation of services after 1/1/16. As an independent practitioner claim, OPWDD will not be able to recognize the full administration and overhead costs of Article 16 clinics. Thus, it is its intent to minimize the administrative expectations for the Article 16 clinic vis-à-vis preventative services.
- Kate and Jill are drafting the new SPA and are working with DOH on a rate structure dependent on further clarification from CMS.

ICF Transitions Update

Dixie Yonkers provided an update on ICF Transitions.

- OPWDD has already met the 2015 goal for Developmental Center (DC) transitions and transitions out of state-operated intermediate care facilities (ICFs).
- This year, to meet the voluntary-operated (VO) ICF Transition Plan goals, OPWDD needs to reduce the VO ICF footprint from where it is today by about 1,200 people.
- OPWDD has reached out to providers throughout the state to assess their interest in and intentions to convert -- or downsize and convert -- their ICFs. Providers anticipate proposing conversions that would assist 1060 individuals to transition from ICF to waiver services. This is still under by about 180 what is needed to achieve the 2015 goal.
- OPWDD has begun receiving and processing proposals for ICF conversions.
- This year, 55 conversion proposals have already been received from voluntary provider agencies that will result in about 474 people transitioning from ICF services to waiver services.
- To date, 26 ICFs have converted to IRAs, and 242 individuals have converted to waiver services.
- Willowbrook (WB) attorneys have held up some conversions in order to ensure they could review the preliminary individualized services plan (PISP) of the class members. Their primary concern has been a diminishment of services once the ICF becomes an IRA.
- Sally Berry developed the guidance on Front Door procedures for conversions when WB class are involved and a PISP attachment that will clearly indicate no diminishment of services.
- All PISPs for WB class members involved in an ICF conversion will be shared with WB attorneys and CAB prior to conversion.
- The updated ICF conversion guidance document has been posted, along with a Q&A on ICF Transitions.
- On June 11, OPWDD notified all ICF providers of the importance of ensuring they are familiar with the ICF Conversion guidance document and the proper notification requirements and practices. We have had some issues with providers not using correct letters or sending them to the proper parties.
- OPWDD is working to determine the implications of the new HCBS settings rule for existing IRAs and day service settings as well as for ICFs that are downsizing and converting to IRAs.

- OPWDD is also analyzing cost data to understand the funding needed to support ICF downsizing and closure.
- A September webinar will help providers better understand the processes and requirements involved in converting an ICF to an IRA.

Martha Dalton provided a status update on larger ICF (over 14 people) property surveys.

- Information has been solicited from these providers regarding their property assets and debts in order to get an understanding of the resources and debts in the system.
- The deadline for ICF providers to submit property surveys was July 17; to date, only nine of 27 surveys have been received. PA members should be reminded to have their respective agencies submit surveys if they have not already done so – Martha Dalton will share an updated list with them. As of July 31, only four surveys had not yet been received.
- Staff will then work with the Funding Solutions ICF Transitions Work Group and the Large ICF Work Group to move forward once cost analyses are complete.
- An outreach plan is being developed around this topic to obtain input from individuals and family members.

Update on \$50 Million Infrastructure Appropriation

Martha Dalton updated PA members on the activities of a multi-agency (OPWDD, DOH, OASAS, OMH, OCFS) workgroup that has begun meeting to develop the procurement package that will be used to assess “eligible” proposals. The goal is to release the procurement sometime in August/September. Martha stressed that in order to receive funding, applicants **MUST be pre-qualified in Grants Gateway**. Since many OPWDD providers are funded through Medicaid, they may not have had a prior reason to enroll in Grants Gateway. Those providers already enrolled in the Grant Gateway should also ensure they are up to date with their Vendor Responsibility profile. PA members were urged to relay this information to provider agencies to ensure they meet this minimum requirement and start the process sooner rather than later.

Update on Residential Request List (RRL)

Emilie Wright stated that five RRL Regional Forums were held across the state in June. Comments were incorporated into RRL Survey and Script. OPWDD is working with MSC agencies on updating contact information for 11,333 individuals. Letter to individuals and families will be sent out in early August with details about the phone survey; advance copies of the survey were distributed to PA members. Phone calls will begin in early August from the NYS Office of Children and Family Services Human Services Call Center in Schenectady. Approximately 100 calls will be made during a pilot phase before the calls begin. All calls will be made between 8am and 8pm on weekdays as well as on Saturdays. It is expected that calls will conclude by late September. OPWDD will work with Pat Dowse at the New York State Rehabilitation Association (NYSRA) to develop a plan to address how to survey individuals and family members who are deaf and hard of hearing. OPWDD will ensure that individuals and family members don't confuse the RRL survey with the NYS Office of Community Living survey that is being conducted during a parallel timeframe.

Nurse Practice Act (NPA) Implementation Update

Jill Pettinger and Kate Marlay explained that OPWDD continues to work on planning for the implementation of NPA in community-based settings in the most streamlined and effective way possible. Among the components of this project include:

- Clarifying the applicability standards in the Memorandum of Understanding (MOU) with the State Education Department (SED).
- Redesigning the Certificate of Need (CON) Form and Processes to accommodate waiver service operating certificates and request to deliver nursing services in community based settings.

- Information Technology (IT) infrastructure needed to convert all Waiver Service Provider Agreements to an operating certificate for each provider for each HCBS waiver service.
- Determining how best to implement CON processes for the initial conversion of all waiver services with the least amount of burden on providers and regional office staff.
- Development of a detailed work plan and timeline for all implementation steps and the various processes.

Rate Transformation Discussion

Donna Cater (DOH) and Joanne Howard provided an update on rate transformation issues.

Joanne updated PA members on the timeline for the People First Community Services Fund.

07/03/15: Surplus/Deficit calculations sent to providers for comment.

07/13/15: Email sent to providers summarizing Surplus/Deficit comments received from providers to date.

07/18/15: Final comments on Surplus/Deficit calculations due from providers.

07/24/15: Revised Surplus/Deficit calculations to be sent to providers.

07/31/15: Comments on revised Surplus/Deficit calculations due from providers.

08/07/15: Calculate final awards (Providers must have a calculated deficit and have no outstanding CFR or QA issues).

8/10 to 10/2/15: Prepare and issue contracts (on a rolling basis).

HCBS Settings Update/OPWDD Transition Plan

Maryellen Moeser offered an update on HCBS Settings and the OPWDD Transition Plan.

- On June 26, 2015, CMS published a new 11-page Q and A on HCBS Settings Requirements of which nine pages addresses Heightened Scrutiny (HS) requirements. HS is a process where a state can submit evidence to CMS for settings that CMS presumes are not HCBS eligible settings where the state believes that such settings meet HCBS requirements and the state wants to retain these settings in its waiver). The state can justify its determination of HCBS eligibility through evidence and documentation submitted for public comment and to CMS. CMS then makes a determination on each submitted setting.
- This new guidance came out at the same time that OPWDD was finalizing the recommendations of the HS stakeholder work group that met between March and June 2015 to develop criteria for designating residential settings as HS in OPWDD's system; the process for determining whether a residential setting is subject to HS; and, the actions that OPWDD and providers must take as a result of the HS process for residential settings. This workgroup put together a communication for providers on this topic that was under leadership review at the time this new guidance was published.
- CMS clarifications that may alter OPWDD's timeline and action plan include the following:
 - CMS specifies that settings subject to HS must be identified for public input and submission to CMS by name, location, and number of individuals served;

- Notice of public comment must include sufficient detail about each particular setting so that the public can support or rebut the state's determination and must include any and all justifications by the state as to why the setting is HCBS and not institutional;
 - CMS expects the state to submit several types of information and documentation to support its position; site visits are strongly recommended by CMS;
 - CMS states that the standard of evidence submitted to CMS must be sufficient to explain and document that the setting does not have qualities of an institution and does have qualities of HCBS;
 - CMS approval of any HS request only pertains to the individual setting subject to the request. Any material changes to an approved HS setting such as an increase in capacity; establishment of settings or close proximity; or changes in the way community integration is realized will require the state to update CMS and may result in reevaluation of the setting.
 - During a call with states, CMS clarified that any new setting coming into an existing waiver was expected to meet the HCBS standards at the time it comes in—i.e., no transition plan for new waiver settings.
- The new Q and A process and requirement clarifications need to be reviewed more carefully by OPWDD in order to determine the impact the CMS guidance will have on implementation, administration and timeline for OPWDD's HS process. OPWDD must also work with DOH in this endeavor to ensure alignment with the Statewide Transition Plan.
 - OPWDD plans to reconvene the HS workgroup later this month to review the CMS clarifications and make recommendations.
 - It is clear that the new requirements impose a significant administrative burden on OPWDD given the volume of potential heightened scrutiny sites in our system.
 - Following discussion, it was agreed that OPWDD and PA members should develop a forum/ vehicle to bring the magnitude of the HCBS Settings Rule update issue to the forefront. DOH needs to participate in the process. Priorities and reasonable solutions (especially funding) must be identified. Property threshold, vacancy management and the HCBS Settings issues should be bundled together for greater impact.
 - OPWDD will share a list of HS triggers with PA members in writing.

Wrap-up

The next meeting of the Provider Association will be held on Monday, August 17, 2015 @ 10am @ 44 Holland Avenue in Albany.