The Arc New York

Achieve with us.

29 British American Blvd.
2nd Floor Latham, NY
12110
518-439-8311
thearcny.org

Office for People With Developmental Disabilities
Division of Policy and Program Development
44 Holland Ave.
Albany, NY 12229

To Whom It May Concern:

I am writing on behalf of The Arc New York in reference to The Office for People With Developmental Disabilities' proposed technical amendments to its 1915 (c) Comprehensive Home and Community Based Services (HCBS) waiver. The Arc New York is a family led organization that advocates and provides supports and services to people with intellectual, developmental, and other disabilities, emphasizing choice and community engagement. With 46 Chapters across New York state, our organization supports more than 60,000 individuals and families and employs more than 30,000 people statewide.

In late May, OPWDD and The Department of Health (DOH) notified providers of proposed technical amendments to the HCBS waiver. The proposed amendments, which are subject to CMS approval, would eliminate funding for vacancies, cut funding in half for therapeutic leave days, cap therapeutic leave days at 96 days annually, and halve funding for retainer days when individuals are hospitalized or in another long-term care facility funded by Medicaid.

The Arc New York opposes these cuts. They reportedly replace a 2% across-the-board cut to rate rationalized programs announced by the Commissioner during his budget testimony, which were anticipated to take effect in July. The Arc New York also opposed this cut to our already strained system. The newly proposed cuts appear to be far more significant. The 2% cut originally proposed was estimated at $100 million, whereas the cuts now proposed would likely equate to approximately twice that amount.

The proposed cuts are directed specifically at supervised residential programs and targeted to occur on October 1, 2020. These drastic cuts would come on the heels of the unprecedented COVID-19 crisis, which has already had a marked financial impact on these programs. Our system has experienced approximately 400 deaths in residential programs due to COVID-19, and these and other vacancies have been extremely difficult to fill during the crisis. In addition, our Chapters have significantly increased compensation to the direct support professionals (DSPs) doing heroic work caring for and keeping individuals safe despite the increased risk to their own health and well-being. We have received no increases in our funding to address the increased salaries necessary to ensure staffing during this pandemic – in some cases more than doubling wages. The scheduled increases for DSPs and clinical workers represent only a small portion of the increased staffing costs our Chapters have already expended. Further, we have incurred extraordinary costs for personal protective equipment (PPE), estimated in excess of $15 million for the I/DD system as a whole. We are hopeful that some of these expenses for overtime and PPE will be funded through federal FEMA grants, but we already know that will not cover our full costs.

Without prejudice to our position in opposition to these cuts, we offer the following information on each proposal and how provisions incorporated by prior OPWDD administrations recognizing that certain vacancies and absences are unavoidable and, in the case of therapeutic leave to visit family, highly desirable. For those reasons, they have historically been fully funded. We believe that OPWDD should understand and learn from its history by rethinking its approach to the proposed cuts for necessary vacancies, therapeutic leaves and retainer days.

Occupancy Adjustment (eliminates funding for up to a 5% vacancy rate)

When it was created in 1984, the former community residence program rate setting methodology included funding for up to a 3% vacancy rate. OPWDD recognized that upon the death or relocation of an individual, no provider could fill the residential opportunity without incurring a reasonable number of vacancy days. Prospective residents require screening and opportunities for visitation to determine if the certified residence will be a mutual fit. Even 35 years ago, OPWDD recognized that failure to include a reasonable measure of reimbursable vacancy days would incentivize poor decision making and create financial disincentives to placing individuals with compromised health conditions, who may present a higher risk of mortality and associated vacancy days.

Therapeutic Leave Days

When the current methodology providing for full reimbursement of unlimited therapeutic leave days was approved by the Centers for Medicare and Medicaid Services (CMS), it was noted by DOH that New York state would not implement any financial policy that interfered with families remaining closely connected with loved ones living in certified residences. The proposed limit on funding for therapeutic leave days will create a hardship for providers and families who want to continue to enjoy regular visitation with their loved ones, by cutting reimbursement in half every time an individual goes home for the night. Families are very concerned about DSP turnover, and they understand that a reduction in revenue for home visits will negatively impact their provider. Once again, we refer OPWDD to a previous community residence rate setting methodology, under which providers were fully reimbursed for a reasonable number of home visits. This methodology was based upon 40 home visits annually, multiplied by total certified capacity. Such an approach encouraged close connection between families and their loved ones, financially supported that connection, and recognized that, in almost all circumstances, no savings are derived by the provider when individuals spend overnights with families.

Retainer Days
The proposal to halve the funding for retainer days when individuals are hospitalized or in a long-term care facility will create a financial disincentive for providers to serve individuals with complex medical conditions. Such individuals experience frequent hospitalization. The proposal also ignores the State's ongoing support of a requirement imposed by the Willowbrook Community Advisory Board. Under this requirement, an individual's current placement opportunity must be reserved until their return from a hospital or nursing home, regardless of the anticipated length of stay or whether they are even anticipated to return. This circumstance is entirely outside a provider's control, and providers do not wish to challenge such decisions, due to the historical importance of the Willowbrook settlement agreement to our field and the individuals once served there. In recognition of this commitment, at least 14 days per individual per year should continue to be reimbursed at 100% of the provider's rate. We believe the funding formula could be reasonably reimagined to include reimbursement of days in excess of 14 per individual up to the current cap of 14, multiplied by total certified capacity at 50% of the provider's rate. This approach would recognize and support the fact that providers have no control in the management or occurrence of retainer days, yet they continue to incur ongoing operational costs while the individual is out of the residence.

If we do not understand our history, we are destined to repeat it. The current OPWDD administration should understand why and how previous OPWDD administrations – dating back almost to the very inception of a separate Office for People with Developmental Disabilities – took a different and more helpful approach to supporting and appropriately funding the essential opportunity for home visitation and unavoidable vacancies and hospital leaves. I thank you for this opportunity to comment.

Sincerely,

Mark van Voorst
Executive Director
The Arc New York

cc: Dr. John Kowalczyk, President, The Arc New York