TESTIMONY SUBMITTED TO THE NEW YORK STATE LEGISLATURE

Joint Hearing of the Senate Finance and Assembly Ways and Means Committees

2020-2021 Executive Budget
Mental Hygiene

Presented by
Alliance of Long Island Agencies

Cerebral Palsy Associations of NYS, Inc.

Developmental Disabilities Alliance of Western NY

InterAgency Council of Developmental Disabilities Agencies, Inc.

NY Association of Emerging and Multicultural Providers

Representing More Than 250 Providers in New York State

Good afternoon Committee Chairs Krueger, Weinstein, Carlucci, Gunther and members of the Senate Finance Committee, Assembly Ways and Means Committee, and the Mental Health and Developmental Disabilities Committees. Thank you for your ongoing support of people with Intellectual and Developmental Disabilities (I/DD) and for the opportunity to speak with you today regarding Governor Cuomo's 2020-21 budget proposal.

Our five associations – the Alliance of Long Island Agencies, Inc. (ALIA), Cerebral Palsy Associations of New York State, Inc. (CP of NYS), the Developmental Disabilities Alliance of Western New York (DDAWNY), the InterAgency Council of Developmental Disabilities Agencies, Inc. (IAC), and the New York Association of Emerging and Multicultural Providers (NYAEMP) –came together because people with disabilities, their families, and the organizations that support them recognized the need to unify in our efforts to preserve and enhance services for New Yorkers with I/DD and their families. We represent over 250 not-for-profit agencies across New York State which provide supports and services to over 100,000 New Yorkers with I/DD and employ more than 120,000 dedicated professionals with combined annual operating budgets of nearly $5.2 billion.

We are grateful to the Legislature for your prior commitment to the #bFair2DirectCare initiative and our workforce. We seek your continued support and investment in our programs to preserve and strengthen the system of supports and services for individuals with I/DD that we have proudly built together. We must work in concert to uphold the promises we have made to those who depend on us every day.

OPWDD BUDGET BACKGROUND

With continually rising expenses, spending reductions and virtually no Medicaid trend for inflation since 2010, our providers are experiencing an unprecedented crisis. While we were more than appreciative of the increases for certain staff salaries in 2015, 2018 and 2019, the budget has included zero dollars for inflation to pay for other staff salaries, the rising cost of workers comp, liability insurance, employee health care costs (which have risen by nearly double digits annually), rent and the myriad other fixed costs involved in providing services. Dating as far back as 1993, a Medicaid trend was provided every year. These increases enabled providers to keep salaries competitive and maintain fiscal health while providing needed services. The absence of these trends, and the $2.6 billion in cuts and $5 billion in denied funding has led to the system's current lack of stability, with many providers financial status falling well below acceptable norms for liquidity and other performance ratios. The poor fiscal health of many providers comes at a time when investments in systems needed for the planned transition to managed care are absolutely necessary if these providers are to continue to fulfill the non-profit community's role as delivery system providers. Not only, are disability providers as a whole ill-positioned to transition to managed care, they have lost considerable ground in the fierce competition for workers who will help them fulfill their missions.

In addition, the rate rationalization" rate setting process requires fiscal neutrality so that the funding must remain flat for all services. As a result, even though providers costs have risen, the overall funding must remain the same. Because of this, ALL OPWDD nonprofit provider rates will be cut by 2% effective July 1, 2020. Therefore, with the combination of no trend for almost ten years, increasing costs for food, rent, insurance etc. and a 2% across the board cut to all

OPWDD rates effective July 1, 2020, it's no wonder that our providers are on the brink of insolvency.

Clinics, which serve individuals with developmental disabilities, have continually lost almost 20% on operations but were able to continue to provide life-sustaining services due to surpluses in other programs that have now been eliminated. The current "no margin" environment is forcing the closure of programs that cannot sustain themselves, reducing access to services and penalizing providers supporting more complex and higher cost individuals.

Individuals may have received authorization for services, but due to the staff shortage crisis, in conjunction with the enhanced staffing that some high needs individuals require (for which there is inadequate reimbursement), actual services are unavailable. We look to the Legislature to work with us and the funding agencies to review the impact of the reimbursement policies of the State as they impact the whole of services available to support people with I/DD and their families.

To summarize, providers of supports and services for individuals with I/DD are facing: the continuing rising cost of providing services; reimbursement policies which penalize providers serving the highest need individuals, a population whose needs are growing in intensity; aging parents and caregivers who need more help with their loved ones just to maintain status quo; a staff recruitment and retention crisis; total system transformation into a managed care environment; and all of this with reduced funding.

3for5

The lack of COLA/trends for many years has prevented non-profit providers from keeping up with rising costs, paying competitive salaries, and has created the dire staffing emergency that the #bFair2DirectCare Campaign sought to address. This year, we join our colleagues from every corner of Human Services to ask for **3for5**. 3for5, as the name implies, seeks a 3% annual increase for 5 years beginning in the next finalized budget. Prior to 2011, Medicaid funded OPWDD supports and services received yearly increases to cover the rising costs of providing services, called "Medicaid trends," similar to a COLA for non-Medicaid expenses. In 2010, a COLA/Medicaid Trend of 2.08% was given to both state and non-profit operated programs. Since that time, with the exception of 0.2% given in 2017, non-profit OPWDD providers have been denied any COLA/Trend to support agency operations. Federal and State laws require that all payments to providers be based upon the reasonable cost of services. Reasonable costs take into account both direct and indirect costs, including personnel, administrative, employee pension plans, rising health and liability insurance costs, workers comp and normal standby costs (related to unoccupied beds). As an alternative to a COLA, we seek **3for5** so the communities that depend on our services can thrive. Not only have disability services providers not received increases for costs related to fuel, staffing, insurance, and other business expenses, we have not received the needed regulatory relief for the overwhelming and outdated paperwork and system approval processes that are continuously being added due to changes in interpretation of longstanding and outdated statutes, the Justice Center, new regulations which are retroactively implemented, cumbersome new billing requirements, etc., all which add to the regulatory burden and costs without any additional funding. Expenses related to staff background checks, the

OPWDD Front Door process, outdated regulations and the Justice Center have grown steadily at the same time that our funding had been cut.

DEVELOPMENT

After so many years of flat funding and reductions, even the most optimistic allocation is inadequate to meet the needs of the thousands waiting for community-based services. While we appreciate the inclusion of an additional $120 million (all shares fully annualized) in the Governor's proposal, the need for services, including day, at home support, out of home residential and other services, far surpasses this proposal, particularly for those who can no longer live safely with their families.

We also support the inclusion of another $15 million in the Executive's proposal to expand affordable housing. Quality, affordable, accessible housing with the services and supports necessary to permit individuals with disabilities to become part of the community is essential. This funding is, however, spoken for even prior to the dollars becoming available and OPWDD providers have had difficulties accessing the larger affordable housing pool under the Division of Housing & Community Renewal (DHCR).

Additional supports and services must be made available for those with complex medical and behavioral challenges, especially in light of the aging I/DD population for whom the current system is not responsive. Individual Support Services (ISS) funding, which covers the rent for those able to live more independently in non-certified residential settings, is another option which could serve to create additional vacancies in existing certified housing situations, but the rent subsidy caps are too low to reflect market values in many areas of the state. In addition, it often takes three months to a year for OPWDD to reimburse providers which are forced to cover the rent for that period of time. While some larger organizations have found ways to subsidize the program, this delay severely limits its success. We seek your support for funding the development of appropriate opportunities for individuals who need them and when they need them.

INDIVIDUALS WITH COMPLEX NEEDS

For those among us who have complex medical or behavioral needs, there has always been a shortage of services and supports available. This shortage has been exacerbated in recent years with the reimbursement methodology changes leading to the inability of nonprofit providers to absorb the unreimbursed costs of enhanced supports and staffing needed. As an example, special education students with complex needs, who should expect to transition into OPWDD adult services as they age out of special education services, are often left waiting at home with no supports or services or languish in residential school placements with no suitable residential alternative to meet their needs. We have seen time and again that the Medicaid formula, for OPWDD services, and in a more pronounced way through DOH programs that include the typical population, fails to support the level of supports and/or the flexibility necessary to design person-centered services for those with complex medical and behavioral needs. Some of those we support have had complex needs from birth, but there also is a large contingent that, due to aging, a traumatic incident, or other life-event, become part of the cohort requiring supports for their complex needs.

Planning and funding are required so that everyone, regardless of severity of disability, can participate as fully as possible in their communities and not wait at home, isolated, for us to step up to the challenge.

CLINICS SERVING INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

For almost forty years, New York State has counted on clinics supporting patients with significant disabilities to fill an essential gap in the service delivery system, one which otherwise would lead to expensive and unnecessary services delivered in emergency rooms and acute care settings. Over time, nonprofit agencies supporting people with disabilities have stepped up to ensure their access to health services across the State through an array of Article 28 & Article 16 clinics. These clinics have evolved to become true specialty service providers, serving patients with the highest needs and often at a financial loss. With OPWDD/DOH rate reform removing any surpluses in other programs, which had helped providers to subsidize these clinics, the insufficient funding of disability clinical services has been glaringly exposed. The annual 20% losses on clinic operations can no longer be sustained and Boards across New York State are facing tough decisions about the future of these clinics.

To date, when Boards choose to close clinics, patients, in most instances, have no good option. Generally, clinic visits are replaced with ER visits for untreated conditions that may not require, but almost always generate, MRI and other expensive diagnostic tests because the patient is unable to communicate and has no previous relationship with the ER physicians. In the absence of primary care, dental patients are forced to seek treatment in the ER or schedule operatory time for procedures that easily could have been avoided. This situation is leading us in exactly the opposite direction from the one New York State has been promoting. In order to prevent New York State from incurring unnecessary Medicaid costs, we recommend the State invest in these specialty clinics and recognize them as an essential part of the service delivery network. In addition, telemedicine, a cost-saving alternative to Emergency Room visits is not available to a large percentage of people with I/DD because they are dually eligible (Medicare/Medicaid) and telemedicine is not covered under Medicare. We are eager to partner with the State to promote a federal solution to this problem.

CONCLUSION

With your support, including an annual 3% investment in our programs for the next five years, we can manage the 2% cut coming in July and accomplish our mutual priority of maintaining and enhancing supports and services for New Yorkers with I/DD and their families. We can redesign the system, create efficiencies, provide necessary supports to people when and where they need them and continue to be known as one of the best states in the country for all people, including those with intellectual and developmental disabilities. We would like to thank the Legislature for its ongoing support, and we look forward to continuing to work with you on behalf of people with I/DD in New York State.