



Coalition Of Provider Associations

Representing More Than 250 Provider Agencies in New York State

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Provider Association Meeting Minutes July 15, 2019

1. **Commissioner's Update and Welcome** – There was no formal update; the Commissioner noted many topics for discussion.
2. **Managed Care Update: Kate Marlay and Allison McCarthy** – Kate and Allison noted that they expect to publish the qualifications document for SIP-PLS next month. They emphasized that the plan must be able to serve and support people with disabilities. The Commissioner noted that there are protections in the DISCO statute that ensure current residents remain in their homes and pull out the residential rates from negotiations for a period of time. The Commissioner, noting that he had not been in his job for a long period of time, said he was unaware of providers suggesting that they were concerned about how rates might be affected under managed care. He suggested that, since the State had already invested in CCOs, there was a perception that the path to managed care was clear; however, this will be a very tough budget year and MCOs will take anywhere from 5-10% out of the funding which would only mean that it would come from provider payments. The Commissioner was informed that the disability community has been questioning the source of funds to pay for managed care ever since the concept was introduced! The field had estimated that \$400-\$700 million would be needed to pay for the MCOs and that any expected "efficiencies" in operations under managed care would not be anywhere near that amount. We have been asking the question about the funding from the beginning, and with "the train has left the station" comments from OPWDD for more than two years, we have been more focused on how to make it work. That funds not come from provider payments is of paramount importance. Further, the Commissioner and staff asked providers to suggest innovative payment ideas that would work under a managed care environment for them to propose to DOB/DOH. Finally, staff noted that any managed care proposals will include multiple plan options and that no change has been made in that regard.
3. **Auspice Change ADM: Kevin Valenchis** – OPWDD indicated there soon will be a draft memo outlining the auspice change process and updating the 2015 memo on the "higher of" determination process. The providers asked if OPWDD will provide funding to assist agencies seeking to collaborate/merge. The Commissioner stated that OPWDD should not be responsible for costs in connection with potential affiliations or mergers because

the market will take care of that if there are efficiencies to be realized by collaboration. Otherwise, the two organizations should take a loan if they don't have funding for up-front costs and move forward. The providers then questioned the assumption of savings noting the costs of legal counsel, extensive meetings and discussions with Boards of Directors, culture issues that challenge the ease of consolidation and there is not the level of net savings over the long term in the experience we have seen as two organizations combine. While they would be some back-office savings, think that 2/3 to 3/4 of an organizations' costs are at the point of service. When asked whether assistance in "Burger Commission" style that supported hospitals in the process of consolidating might work, the Commissioner indicated that hospitals specifically approve beds based on population through their CON process and while OPWDD has a CON process, they don't ensure services are available in all parts of the State.

4. **ADM 2019-02, Permissible Out-of-State Travel and Provision of HCBS Waiver Services: Jaci Best** – The providers asked that OPWDD revisit their out-of-state travel policy requiring that permission be obtained from OPWDD for vacations and what might otherwise be considered ordinary travel. There being no clear reason the State was enforcing this policy, they agreed to look to adjust the policy requiring permission from the DDRO for travel or extended stays out-of-state that were extraordinary, perhaps more than a week in duration. They will be back to providers at the next meeting.
5. **Day Hab Enrollment: Jaci Best** – Providers asked if the 10% over-enrollment policy for day hab programs had changed. Ms. Best found a 1999 memo indicating that providers could enroll by over 10% of their authorized units so long as they did not exceed their certified capacity at any site and did not exceed their approved billing amounts. Ms. Best asked that providers work with the DDROs if absenteeism is high and they need to enroll by more than 10%; further, Ms. Best will be working with staff in all the DDROs to ensure they are aware of the over-enrollment policy for day habilitation.
6. **ADM 19-01 – Videos in Certified Residence: Josh Olsen** – In response to a letter sent by COPA, OPWDD Counsel's office asked for further clarification regarding the position of providers with respect to video recording in IRA common areas. Provider representatives indicated that prohibiting cameras in common areas in homes if all residents and/or their guardians agree, is a limitation of individual rights and conflicts with the CMS guidelines. *OPWDD is in possession of the letter from COPA asking OPWDD to follow the CMS guidelines that regulate ICFs.* Roger Bearden tried to demonstrate that there are different levels of agreement depending on whether the members of the house could decide on their own or whether their representatives decide on their behalf; when asked whether the legal standing of the representative places those decisions on privacy at a lower level than those made by the individual themselves, Mr. Bearden responded that privacy is "complicated." They will look at their ADM and get back to the providers at the next meeting.
7. **NYS Fingerprinting Policy: Leslie Fuld/Meg Adams** – Providers asked that OPWDD look to coordinate its own fingerprinting rules and also work with other State agencies to

assist providers in simplifying the fingerprinting process, for both their staff working under multiple regulatory agencies and for shared staff across agencies. There is a statewide group working on this and Ms. Fuld will see if there are any changes that can occur in the short run; both statutory and regulatory alignment will be considered.

8. **CAS Assessment Review: John Barbuto** – Providers presented the study they commissioned through Milliman to review the error rates in the CAS and to seek a commitment from OPWDD to work to improve the data as well as communicate with families regarding the CAS findings and process. OPWDD indicated that the error rate in the providers' study was not only acceptable to them but was to be expected. Further, OPWDD said they are only receiving between 2-10 concerns per month about the CAS, and they are quickly addressing those concerns. Finally, OPWDD reported that they are visiting between 6-10 family groups per month to answer questions and improve communication on the CAS; participants have been very happy with these meetings. To date, 42,000 CAS assessments have been completed and there are 39,000 yet to be completed; however, there are now 26,000 reassessments that need to be done. Any sentinel events will be sent to OPWDD for reassessment input. Mr. Barbuto reported that the contracted assessors all have at least 1 year's work experience in the DD field and have bachelor's degrees. *He also said that they are working to determine the processes on how the reassessments will eventually be taken over by the CCOs, but since they haven't finalized those plans, they would report on that at a later meeting.* Finally, he discussed the larger view of when/how the CAS will be used for resource allocation. Emphasizing that we are years away from that occurring, he noted that they are working with Optimus and DOH to develop 7 bands, with 60 variables to be part of the algorithm that correlates with the hours that are needed to support people. Ultimately, they will work to correlate the bands to resource decisions; they also repeated that the data from the CAS as the process evolves will continually change the predictive nature of the CAS for resource allocation based on the expanding data points in their database. The timeline looks to July 2021 to begin integration of the CAS mixed in with the DDP to assign the acuity-based formula, with full implementation with the CAS only in the rate setting process starting July 2023.

In the end, the CAS study with Milliman and ongoing dialogue from COPA and the other statewide providers have confirmed our assertion that the initial CAS Assessments results will not be utilized for any acuity-based formula. They have responded to our joint call for more parent and constituent meetings to better communicate the process, be open for CAS corrections and changes and provide even over-the-shoulder oversight for CAS assessors.

9. **Telehealth Guidance Update: John Barbuto** – OPWDD indicated that their guidance on telehealth is still being worked on and that they expect to get a draft document out to the field for review in about a month. They agreed with providers that the Medicare/Medicaid eligible issue must be resolved, but they indicated it is a complex issue and no clear path to resolution on the duals issue was evident.

10. **Rate Transformation Update: Kevin Valenchis and Donna Cater** – DOH sent the 7/1/19 rate file to OPWDD for review on Friday, July 12; OPWDD will perform its review and make adjustments before sending to DOB. OPWDD and DOH may send draft rates to providers in 2-4 weeks so that any errors/systemic issues can be resolved before sending to DOB for its approval of the final rate package. DOH reminded providers that there is now a 2-level review at DOB and that the process for finalizing rates *will add more time to the review process*. OPWDD indicated they are still working on how to/if they can resolve the issue of ensuring minimum wage adjustments in respite fees; they also are looking for further information on how the APG crosswalk for Article 16 clinics has negatively impacted providers. Providers will get back to them with additional information.