



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) have joined together to offer comments and recommendations on the 2022-2023 Executive Budget proposal for the:

- Office for People With Developmental Disabilities (OPWDD),
- State Education Department (SED), and
- Department of Health (DOH).

We truly appreciate the many investments that the Governor has proposed across delivery systems and programs for children and adults with developmental disabilities and we look forward to working with the Hochul Administration and the Legislature to ensure that the final budget provides the investments in supports and services that children and adults with disabilities need to live healthy, fulfilling lives.

OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES

Our nonprofit providers, regulated and funded by the Office for People With Developmental Disabilities (OPWDD), deliver lifelong comprehensive, individualized services to support people with intellectual and developmental disabilities (I/DD) in all areas of their lives. In addition to delivering physical and behavioral health services, we assist with transportation, housing, medication administration, cooking, feeding, personal care, community living, employment and all the supports and services needed by the people enrolled in our programs.

Governor Hochul's Executive Budget is a critical step in the right direction toward making investments and providing adequate resources for the I/DD service delivery system, following more than a decade of cuts and neglect from New York State.

As members of New York Disability Advocates (NYDA), a statewide coalition of seven provider associations representing more than 300 not-for-profit providers that are responsible for providing vital services and supports to more than 130,000 New Yorkers with intellectual and developmental disabilities (I/DD), we offer the following comments on the Executive Budget Proposal for OPWDD.

INVESTING IN NEW YORK'S CARE ECONOMY

5.4% COLA FOR SFY 2023

Following a decade of provider agencies not receiving the statutorily required cost-of-living adjustment (COLA), the significant fiscal impacts of COVID-19 and inflation, agencies' costs have increased significantly necessitating that the full 5.4% COLA be included in the State's FY 2023 Budget. Sizable cost increases related to mandated fringe benefits, repairs and maintenance, utilities, food, supplies, transportation, insurance, and other increases over the past 10 years have resulted in significant financial pressure on agencies. Additionally, since they are solely funded by Medicaid, agencies are unable to increase reimbursement. This has also directly led to the inability to invest in workforce wages for direct care workers and other essential front-line staff, resulting in wage stagnation. We are grateful to the Executive for including the 5.4% COLA in her budget proposal.

RECOMMENDATION:

- **Accept the Health & Mental Hygiene Article VII Part DD authorizing the 5.4% COLA for Human Services Agencies**

WORKFORCE INVESTMENTS

Continued and sustained investment in DSPs' salaries is essential to recruit and retain staff and for the future viability of the field. The Executive Budget includes a proposal to provide up to **\$3,000 in bonus payments** to frontline health care and mental hygiene workers. This is a welcome proposal that will provide additional resources to help address the current workforce crisis and we recommend the following modifications:

RECOMMENDATION:

- **Amend the Health & Mental Hygiene Article VII Part D to include part-time employees who worked on average at least 15 hours and reduce the top tier from an average of 40+ hours to an average of 30+ hours to mirror the eFMAP requirement.**

Additionally, in keeping with the Governor's stated commitment to address the low wages for frontline healthcare and mental hygiene workers, it is crucial that Direct Support Professional salaries be considered in any SFY 2023 budget discussions about **increasing wages** in order to support a strong, stable and equitable healthcare and mental hygiene service delivery system. Despite recent significant one-time investments to the I/DD field over the past several months, statewide average wages for DSPs remain at or below the statewide Fast Food Minimum Wage. We must work collaboratively to address the workforce shortages that exist and to support future higher wages for our Direct Support Professionals.

RECOMMENDATION:

- **Include OPWDD Direct Support Professional and other front-line workers' salaries in SFY 2023 budget discussions about increasing wages to address the workforce shortage and provide salaries commensurate with the life preserving work they perform.**

ESTABLISH A PERSONAL INCOME TAX CREDIT FOR DIRECT CARE STAFF

The establishment of a refundable personal income tax credit is an additional way to address the significant workforce challenges of the I/DD and mental hygiene service delivery systems and to recognize the vital work that DSPs do to support individuals with disabilities. This would provide additional dollars for front line staff and provide a recruitment and retention incentive for these vital employees.

RECOMMENDATION:

- **Include S.7643/A.9200 in the final state budget, which would establish a refundable personal income tax credit for direct care staff employed by provider agencies.**

NURSES ACROSS NEW YORK

I/DD providers historically have had challenges in recruiting and retaining essential nursing staff. The proposed Nurses Across New York program will provide tuition loan forgiveness for nurses working in underserved communities, which would support recruitment and retention.

RECOMMENDATION:

- **Amend the Health & Mental Hygiene Article VII Part A to specify I/DD and Behavioral Health agencies are included as eligible places of employment for tuition loan forgiveness.**

CAPITAL FUNDING

The Executive Budget proposes authorizing additional funds for the **Statewide Health Care Transformation Program** and new funding for the **Nonprofit Infrastructure Capital Investment Program**, which were created to make targeted investments in capital projects that aim to improve the quality, efficiency, and accessibility of nonprofit human services organizations. These investments by the state are vital to spurring innovation and efficiencies in the service delivery system to improve outcomes for individuals with disabilities.

RECOMMENDATIONS:

- **Accept the inclusion of the Nonprofit Infrastructure Capital Investment Program (NICIP).**
- **Amend the Statewide Health Care Facilities Transformation Program (SHCFTP) to include community based I/DD providers that are authorized, approved and/or funded by OPWDD, as eligible participants.**

RECRUITMENT AND RETENTION

In addition to increasing pay and providing bonuses and other financial incentives, we support initiatives that would create a pipeline for workers to enter the I/DD field and support the following recruitment and retention strategies, most of which were in the Governor's proposal:

RECOMMENDATIONS:

- **Implementation of Statewide Recruitment Programs** – Expansion of the current BOCES and Community College Programs statewide to create a pipeline for the DSP care field.
- **Implementation of Credential and Career Ladder Programs**
 - Credential Program – Advance language in the SFY 2023 Budget to implement a statewide standardized DSP credential program.
 - Career Ladder – Advance language in the SFY 2023 Budget to establish a career ladder program, which will provide a pathway to an associate degree in the human services field for current DSPs.
- **State of New York Advocacy for New Federal Standard Occupational Classification** for Direct Support Professionals which would provide metrics for planning purpose.
- **Regulatory Reform Proposals in the areas of:**
 - Hiring, Training and Evaluation of Staff
 - Supportive Apartments
 - Medical/Nursing Documentation
 - Emergency Drill Streamlining

RESIDENTIAL SERVICES

Our programs provide a wide variety of residential options for New Yorkers with I/DD, but the need surpasses the capacity, and we need to strengthen residential programs to ensure that people receive the residential services they need, when they are needed. We must support people with the highest needs as well as those who can live more independently and should have options that support students aging out of residential schools and that allow older adults to age in place. We urge a person-centered approach to residential services and access to a continuum of options including utilizing technology to maximize independence and fully staffed, supportive options for people with higher needs. To strengthen the residential services system, we urge the following:

RECOMMENDATIONS:

- **Residential placements should be prioritized for:**
 - Individuals who are living at home with aging parents who are at risk of not being able to adequately care for their adult child with I/DD.
 - Individuals who are living at home who have needs that surpass their families' ability to care for them safely.
 - Young adults who are aging out of residential school placements who need supportive residential options, to free up residential school placements for new students.
- **Enhance the Children's Residential Program (CRP)/residential school rates** to allow New York State residential schools to provide the supports and services necessary to keep students with complex needs from being placed in out of state schools at 100% state expense without NYS oversight. NYS OPWDD sets the rates for NYS residential schools at a significantly lower rate than out of state schools charge, leaving in-state residential schools unable to offer the additional supports and staffing that out of state schools can offer at two to three times the cost

to NYS. Enhancing these residential school rates allows: New York Students to remain in state; the state to draw down the 50% federal Medicaid share; provide oversight and ensure quality supports; and provide residential services for two to four people for what it costs for one student at an out of state school. Enhancing the NYS residential school rates is truly a win-win for everyone.

- **Residential Registry/waiting list and vacancies** – Enact a requirement for OPWDD to provide families clear information about where they are on the State’s registry for residential placement. Enact statutory authority for OPWDD residential providers to accept any individual who: requires OPWDD supervised residential services; is suited to that providers’ residential opening/vacancy in their supervised residential programs; is enrolled or eligible to be enrolled in the OPWDD HCBS waiver; AND provide additional/new funding to fully support such placements.
- **Facilitate the ability to “Age in Place”** – Home modifications, additional expensive equipment and enhanced staffing can allow individuals to remain in their homes as they become older and their needs increase. Providers’ ability to make timely changes to accommodate the needs of aging residents should be facilitated. Additional expenditures in this area both increases individuals’ quality of life and saves state dollars on institutional care.

EMPLOYMENT FOR PEOPLE WITH I/DD

For the first time, we feel a real commitment to increase employment opportunities for people with disabilities in New York State. We applaud the Governor and Legislature for prioritizing employment support services which not only increase independence and self-sufficiency but literally make life worth living for the recipients of these services. We wholeheartedly support the Executive’s proposed \$2 million in grants to providers to increase employment opportunities for people with I/DD and offer the following recommendation:

RECOMMENDATION:

- **We suggest that grants be awarded to providers upon approval of proposals in a broad array of areas, allowing creativity and the ability to build on individual provider’s expertise in addressing the needs of job seekers and employers to ultimately increase successful employment outcomes for job seekers with I/DD.**

STATE EDUCATION DEPARTMENT



Our associations’ members operate schools providing special education services to preschool children ages 3-5 (known as 4410 schools) and school-age students, ages 5-21, (known as 853 schools) for their local school districts.

4410 and 853 schools are approved private special education schools, chartered by the Board of Regents, that serve students whose local school districts and BOCES are unable to educate because of the complexity of their disabilities. The children who

attend our members’ preschool and school-age programs are public school children, many of whom have been diagnosed with autism spectrum disorder, cerebral palsy or other developmental disabilities and are placed in our education programs only after a determination has been made by a local Committee on Special Education or Committee on Preschool Special Education that there is no other appropriate educational setting available in a local public school. Therefore, *there is no other educational option for these students*. New York State has a legal responsibility under the federal IDEA to provide a "free and appropriate public education" (FAPE) to all children regardless of disability. Our programs help the state meet this federal mandate and are a vital

component of the continuum of special education services, yet they have historically not received the fiscal or programmatic support to ensure that they will be able to continue to provide these critical services.

Our schools had suffered for many years without any increase in tuition, followed by a few years of very small increases and are still waiting on the reimbursement rate that was statutorily required to be provided by July 1, 2021. Since 2012, state aid to school districts has gone up by 47%, but during the same time period 853 programs have received just 30% and our preschool special education providers have received only a 14% increase in tuition! This inequity in funding has a significant negative impact on our preschool and school-age providers' ability to keep up with rising fixed costs and to hire and retain certified special education teachers and certified teacher assistants. Staff recruitment and retention is at crisis level for 853 and 4410 schools to the great detriment of the children they serve. While we greatly appreciate the historic investment of a 4% increase in the 2021-2022 school year and an 11% increase in the 2022-2023 school year that the Governor announced, the budget must include amendments so that these schools can actually receive and maintain these investments. Without these investments, 4410 and 853 schools will no longer be able to remain financially viable and there will be no option for a free and appropriate education for New York's most complex students.

THERE ARE THREE GUIDING PRINCIPLES AT THE HEART OF OUR ADVOCACY:

- **Children who attend 4410 and 853 schools are public school children and should receive funding equitable with public school children.**
- **All children with disabilities who attend 4410 and 853 schools must have access to a certified special education teacher, certified teacher assistants and all required clinical and related services staff, to ensure that their IEPs can be fully implemented.**
- **New York State must guarantee that every child with a disability, who needs a special education seat, has one available to meet their educational needs as required by federal Special Education Law under the Individuals with Disabilities Education Act.**

WE WHOLEHEARTEDLY SUPPORT THE 11% INCREASE PROPOSED BY THE GOVERNOR BUT WITHOUT MODIFICATIONS, THE DOLLARS WILL BE RECOUPED BY THE STATE

We wholeheartedly support the Governor's fiscal commitment to our schools and her proposal to increase tuition rates for 4410, 853 and Special Act Schools by 11% but immediate action needs to be taken so that all providers actually receive and are able to keep the 11% rate increase.

Due to the current broken tuition methodology, schools must exhaust virtually all funding each year, to keep the increase in the next year's tuition base. If tuition rates are increased, but the schools can't spend all the money due to under-enrollment or teacher vacancies, the unspent funds will be recouped and the increase will not be realized. In addition, our schools must spend 70% of their dollars on direct care and 30% on non-direct care activities. If the schools spend more funding on fixed costs, like rent, rather than on direct care costs, like teacher salaries, the overall funding will be reduced to maintain a 70/30 split between spending on direct and indirect expenses. As an example, if a school can't hire teachers and staff (direct care expense) due to extremely low salaries and must close a classroom, they will continue to pay the rent or mortgage (non-direct expense) on the unused space. This would lower the direct care spending without lowering the non-direct spending. These factors combined mean the 11% increase would be recouped and not included in future tuition rates. This creates a downward spiral of lower tuition rates and the inability to increase salaries and loss of more teachers, and other staff.

Additionally, approved growth is normally added after SED issues reconciled prospective rates.

While providers are waiting for prospective rates to be approved, they are paid interim rates based on their last reconciled rate. SED has proposed the implementation of "Interim-Plus Rates" which would add approved tuition growth to interim rates. Providers that have been waiting years for their prospective rates would receive timely and much needed approved growth. Schools that have been waiting years for current approved rates are

disqualified from receiving approved growth/increases. As a result, they would NOT receive the 11% increase in their 2022-2023 tuition and, based on the requirement to spend virtually all of the increase in the current school year, would be forced to spend money they don't have in order for that increase to be added to their future prospective tuition rate.

Therefore, it is necessary to eliminate rate reconciliation, for at least a five-year period, while the new methodology is created, hold providers harmless for spending outside of the cost screens for staff vacancies and under-enrollment of 5% or more and authorize interim-plus rates so that all schools can spend the 11% increase on their students and can keep the increase in tuition rates going forward.

RECOMMENDATIONS:

- **Support SED's proposal to discontinue Rate Reconciliation for five years while a new rate methodology is created.**
- **Hold providers harmless for any part of the cost screens for under enrollment of 5% and staff vacancies and adjust the 70/30 cost screen to more accurately reflect direct vs. indirect costs.**
- **Implement Interim-Plus Rates and include all applicable approved tuition reimbursement growth since each school's last official rate.**

FUTURE VIABILITY FOR OUR SCHOOLS – A VITAL PART OF THE SPECIAL EDUCATION CONTINUUM FOR STUDENTS WITH THE GREATEST NEEDS

As illustrated above, the current rate methodology needs revision. While the rate reconciliation, cost screens and lengthy waits for tuition waivers are more than difficult to manage, schools must wait until after April 15, and often well into the school year, to find out what their recommended annual increase will be, and then wait for the recommendation to be approved or modified. As referenced earlier in this paper, the current methodology has provided our schools with far less financial support than school districts while they educate New York's highest needs students. SED has requested funding to develop a new tuition rate methodology for our schools. While we wait for that new rate methodology to be implemented, annual tuition increases should be approved that would begin to support salaries that are competitive with local public school districts to reduce the unsustainable teacher and teacher assistant vacancy rates. In addition, last year's budget included the authorization for 853 schools to keep reserves of 1% per year, up to a maximum of 4%. A reserve fund to cover unexpected expenses and keep schools fiscally viable in uncertain times will help to ensure that our students will be able to continue to receive the support they need in uncertain times.

RECOMMENDATIONS:

- **Approve SED's request for \$1.25 million to develop a new tuition rate methodology with stakeholder input.**
- **Establish a 4410 reserve fund similar to other schools.**

TEACHER SHORTAGES

Teacher shortages in general, and special education in particular, make it even harder for our schools to recruit and retain the certified teachers our children have a right to.

RECOMMENDATION:

- **We ask that 4410 and 853 schools be included in the Governor's initiatives to increase the number of certified teachers including:**
 - **Expanding Alternative Teacher Certification,**
 - **Acceleration of the Teacher Certification Process,**
 - **Creation of the Empire State Teacher Residency Program, and**
 - **Implementation of a program to upskill paraprofessionals and teaching assistants to earn their certifications.**

ACCES-VR

Adult Career and Continuing Education Services and Vocational Rehabilitation (ACCES-VR) is a department at SED that provides funding for people with disabilities to obtain continuing education, job training and placement and support on the job. Job seekers with I/DD depend on ACCES-VR funding in conjunction with OPWDD funding, to become contributing, gainfully employed members of their communities. Much of the ACCES-VR funding comes from federal RSA dollars. However, Adult Extended Supported Employment uses state dollars to provide workers with disabilities long term support so they can keep their jobs, contribute through their work and income taxes, and decrease their reliance on public benefits. For decades, the state budget has allocated \$10 million to support an increasing number of workers with increasing needs resulting in an inability to provide services to all who need it and rates that don't cover providers costs. The time is now to increase funding for Adult Extended Services so that more people with disabilities can keep their jobs, live productive lives and contribute to their communities.

RECOMMENDATION:

- **Increase ACCES-VR Adult Extended Funding by \$10 million to provide needed long-term support for those who don't qualify for other state agency funding.**

DEPARTMENT OF HEALTH

MRT #26 CUT TO ARTICLE 16 CLINICS

The 2011 Medicaid Redesign Team (MRT) was established by Governor Andrew Cuomo to “bend” the Department of Health Medicaid cost curve. The Office for People With Developmental Disabilities’ (OPWDD) supports and services were not supposed to be included in the 2011 MRT discussion or cuts. However, MRT #26 cut Article 16 clinics’ overall payments for those with a higher number of visits per patient in comparison to their peers. Rather than the 2% across the board cut made to Article 28 clinics, hospitals and other healthcare providers, MRT #26 penalizes clinics that serve patients with more complex physical disabilities or mental health needs. Individuals with severe physical disabilities require more frequent and intensive therapy services, and by implementing a cut based on the average number of services provided per month, DOH is discriminating against individuals with the most complex disabilities.

Article 16 clinics, under the Mental Hygiene law, can only serve individuals designated by OPWDD. Many of these individuals used to receive their therapies from DOH Article 28 Clinics but, beginning in 2009, DOH required that Article 16 clinics be established and that all long-term therapies be moved from the Article 28 clinics, which serve everyone, to OPWDD Article 16 clinics, which can only serve OPWDD eligible individuals. DOH has long misunderstood individuals with developmental disabilities and their often complex physical and medical needs, requiring long term therapies to maintain health, safety and prevent death. As an example, individuals with cerebral palsy, Down syndrome or other disabilities may require long term speech therapy, not for articulation or speech, but to prevent swallowing issues, choking and aspiration. The frequency of the therapy is based on each individual’s diagnosis, is prescribed by their physician and reviewed every six months or more frequently, if necessary.

DOH’s rationale for MRT #26 is based on utilization control and Governor Andrew Cuomo’s 2015 veto #265 states that “I fully recognize that Article 16 clinics provide valuable services. However, restoring this reduction would undermine the Department of Health's ability to implement appropriate utilization controls on high-cost Medicaid services.” This is a specious argument because Article 16 clinics have always had utilization controls in place. Each Article 16 clinic is provided with a service authorization based on the population they serve. The service authorization is the total number of services the clinic may bill for in a given year. If an agency wants to provide and bill for services above the utilization assigned to their clinic, they must submit a CON to OPWDD. Additionally, DOH continues to insist that this is “not a cut but rather a rate adjustment to address high outlier billing” – if that were true, these Article 16 clinics would only have “rate adjustments” to the “high outlier

services” but instead, this is a cut to the clinic rate for all clinic services and for all individuals, including those with more significant disabilities and medical needs.

Utilization thresholds or controls have been in place for Medicaid recipients since 1990. However, individuals with developmental disabilities have always been exempt because of the recognition that individuals with developmental disabilities’ health and safety often requires more than the average number of long-term therapies and services. Additionally, the 2023 Executive Budget Health and Mental Hygiene Article VII/S.8007/A.9007 Part W repeals utilization thresholds that have been in place for other Medicaid recipients.

Therefore, it is long past time that MRT #26 of 2011 be repealed because it impedes access to critical healthcare services, discriminates against individuals with complex disabilities, is unnecessary, threatens the fiscal viability of clinics that serve people with the highest needs, and the current Executive Budget proposal repeals utilization thresholds for the general Medicaid population and should also repeal utilization thresholds for individuals with complex disabilities.

RECOMMENDATION:

- **Repeal MRT #26/ Part H of chapter 59 of the laws of 2011**

EARLY INTERVENTION

The Early Intervention (EI) program, authorized under Part C of the federal Individuals with Disabilities Education Act (IDEA), provides critical services for children with disabilities and developmental delays from birth to three years of age, and their families. Research has shown that EI services, provided in a comprehensive, coordinated and collaborative manner, as intended by law, are cost-effective and successful in improving long-term prognoses and minimizing the need for life-long services. *An investment in EI is clearly both fiscally and socially prudent.*

The financial needs of the Early Intervention service system have been neglected, discouraging providers and compromising the quality and availability of services for children and families. Over the past three decades, the New York State Department of Health (DOH) has made EI rate adjustments that have resulted in millions in savings for the program so that community-based providers are being paid less today than when the program began in 1994. Reimbursement is significantly out of date for the costs of salaries, benefits, and other fixed costs and NYS EICC data shows that between 2019 Q2 and 2021 Q2, there was a loss of 2,262 participating therapists, representing a 15% drop in a system that was already experiencing severe shortages. Early Intervention providers are leaving the field to earn significantly more in other settings despite the promise of real and lasting improvements for the infants and toddlers with disabilities who are served by the program. This pattern of inadequate compensation has led to a critical shortage of EI providers, which has resulted in delays in service delivery across the state. The pandemic has added financial and programmatic challenges, including the inability to perform in-person evaluations needed for entry into the program and the cost of personal protective equipment that have made it even more difficult to continue providing EI services. COVID-19 prevented thousands of children eligible for Early Intervention from access to these services producing temporary savings to the state but long-term issues for infants and toddlers with developmental delays and the service delivery system.

Increasing reimbursement rates is necessary to support recruitment and retention of high-quality professionals and to build ongoing quality improvement efforts so that children do not have to wait for the EI evaluations and services they have a right to receive. We were heartened that the Governor signed the Covered Lives Assessment bill into law to help fund the program, generating \$40 million in revenue by requiring state-regulated commercial insurance providers to pay a set fee for EI services.

The State now has the opportunity to use these Covered Lives Assessment funds to strengthen services for young children. At a time when the State is failing to meet its legal obligation to ensure access to timely evaluations and services for infants and toddlers with developmental delays and disabilities, when new revenue is available

through the Covered Lives assessment, and when the Governor has announced a much needed 11% increase to preschool and school age special education providers, we urge the Governor and Legislature to provide an 11% rate increase for all EI evaluators, service coordinators and service providers.

While an immediate increase in the reimbursement rate is necessary to maintain EI providers and ensure timely evaluations and services, a comprehensive assessment of the current rate methodology must be undertaken to ensure that the program will be able to provide services to infants and toddlers with developmental delays or disabilities in a timely manner. This study should examine new reimbursement methodologies to address ongoing financial concerns providers face as well as to address disparities in evaluations and service delivery based on race, income, geographic location and other factors as included in S.5676/A.6579. We urge the Governor and the Legislature to ensure the final budget requires a comprehensive assessment of the methodology used to calculate EI rates so that the program can sustainably and properly serve all infants and toddlers with developmental delays or disabilities.

RECOMMENDATIONS:

- **Provide an 11% increase to EI reimbursement rates.**
- **Include a requirement for a comprehensive assessment of the methodology used to determine payment for all EI evaluations, services and service coordination (S.5676/A.6579)**

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