



## **End of 2016 Legislative Session Summary**

The Legislature wrapped up business for the year on Saturday, June 18 at nearly 5:30 am. NYSARC initiated a number of important bills dealing with rate rationalization, residential placement for people living at home, and other matters. We expect to continue to work on these issues in the off session and take them up again when the next legislative session begins in January 2017.

Other important bills in the field of developmental disabilities pertained to issues including reporting incidents of abuse and neglect reporting; recruitment and retention of direct support staff; preschool evaluations; and, the OPWDD Transformation Panel.

The final status and the outlook for key bills are summarized below.

- 1. S.7668-A by Ortt/A.10501 by Gunther; Passed Senate/Held in Assembly Mental Health Committee: This bill, initiated by NYSARC, requires the Commissioner of New York State Department of Health and the Office for People With Developmental Disabilities to prepare recommendations to resolve problems caused by rate rationalization.**

### **Background**

Rate rationalization is a state/federal attempt to move New York's developmental disabilities system to a cost based reimbursement methodology in the wake of the controversy over the \$5,000 per day institutional rate. However, the approach ignores complex funding realities which have developed over decades. For example, savings from efficient operations are essentially confiscated by the State rather than being reinvested, as they have been for years, in chronically underfunded programs and costs. The placement of a budget neutrality cap on the field of developmental disabilities ignores rising costs due to the increasing needs of aging program participants and from an unending stream of costly new mandates.

### **Legislation**

The financial stress created by rate rationalization in the developmental disabilities system exacerbates or even creates many issues which receive considerable attention from advocates. But rate rationalization itself has never been formally brought to the Legislature. This legislation is the first attempt to involve the Legislature formally in rate rationalization. It would give the Legislature some degree of oversight by requiring DOH and OPWDD to provide it with recommendations to fix problems associated with rate rationalization. For example, the legislation would require the implementation of a rate appeal process and assurance that funding methodologies would reimburse all actual costs. The legislation itself is an extension of an issue NYSARC worked on with Senator

Cathy Young, Chair of the Senate Finance Committee, during this year's budget deliberations.

### Outlook

While the Senate bill passed that House, late introduction of the Assembly bill did not allow sufficient time to resolve technical issues relating to the bill. Both houses expressed strong support for the issue and the bill is well positioned for next year when NYSARC expects that it will be reintroduced. However, NYSARC expects to take a multifaceted approach to rate rationalization which utilizes political strategies that go beyond legislation.

- S.6767-B by Hannon/A.9483 by Gunther (The Fair Act); Senate 3<sup>rd</sup> Reading/Held in Assembly Mental Health Committee: This bill, initiated by NYSARC, gives family caregivers the right to request a "caregiver assessment" from OPWDD and, depending on the outcome, an out of home residential placement.**

### Background

The acute shortage of out of home residential placements for people who live at home has reached crisis proportions. These individuals have not been given the priority for placement which they deserve based on the age, disability, functional level, and circumstances of their family caregivers. It appears that family caregivers must be deceased before a placement is granted to their family member with developmental disabilities.

### Legislation

The Fair Act underscores the need to give weight to the circumstances of family caregivers when making out of home residential placement decisions. An initial version of the Fair Act was significantly revised partly in response to concerns registered by various parent organizations. The current version of the bill gives family caregivers the right to request a "caregiver assessment" from the Commissioner of OPWDD. If the Commissioner determines that the circumstances of the caregiver constitute an "emergency," the individual with developmental disabilities is eligible for an immediate out of home placement or other services requested by the caregiver. OPWDD must explain its decision and the caregiver has a right to appeal.

Currently, the face of those individuals impacted by this crisis is lost in a maze of bureaucratic messaging. This bill lays out a transparent process for holding the State accountable for the impact of its policies on distinct individuals and their families.

### Outlook

The bill was amended on the Senate floor but did not pass that house. The Assembly bill was not amended. The Governor's Office and OPWDD registered concerns and draft amendments were shared with them but agreement was not forthcoming and the legislative session expired. NYSARC believes that support from parent groups will coalesce around the bill prior to the next legislative session.

- 3. S.6840 by Ortt/A. 9309 by Weprin (Housing Opportunities to Empower Excellence and Equity/ (HOPE): The bill was held in the Senate and Assembly Mental Health Committees. The HOPE bill, initiated by NYSARC, establishes a trust fund to provide people living at home with out of home residential placements. The funding is provided through monies received by New York State through settlements with various banks. Those settlements have thus far totaled well over \$5 billion.**

### Background

The acute shortage of out of home residential placements for people living at home has reached crisis proportions largely due to insufficient resources. New York State has experienced a huge windfall of monies from various bank settlements, a small portion of which could substantially resolve this crisis.

### Legislation

The HOPE trust would provide access to rental housing for persons with developmental disabilities as well new construction and renovation. The fund would be administered by OPWDD in consultation with DOH. OPWDD and DOH would provide a mechanism to identify and prioritize need by region and would work with other agencies and interested persons in planning to meet identified needs.

An annual plan for the use of the HOPE Trust Fund would be developed and approved by the HOPE Trust Fund Board, which would be comprised of the Commissioner of OPWDD (chair), and 12 members of the public appointed by the Governor. The bill underscores the State's obligation to recognize the critical needs of people with developmental disabilities, especially when the State receives a huge financial windfall.

### Outlook

NYSARC is hopeful that the bill will be introduced in the next legislative session but imminent passage is unlikely given the fact that the Governor and Legislature appear to have established other priorities for the bank settlement monies.

4. **S.7619 by Ortt/A.10447 by Gunther. Passed Senate; Held in Assembly Mental Health Committee: This bill, initiated by NYSARC, provides a 90 day implementation window after a final regulation is issued.**

#### Background

OPWDD has established a pattern of finalizing regulations on the date that they also become effective, leaving no time for implementation. For example, final regulations requiring the SEMP program to bill in 15 minute increments were published the day those regulations took effect. This very significant change required changes in billing and accounting systems, which took months. However, providers had to implement changes immediately if they were to continue billing and avoid audit risk by the Office of the Medicaid Inspector General. This unfairly presented providers with an impossible task.

#### Legislation

Provides a 90 day implementation period after regulations are final and before the date on which they become effective.

#### Outlook

The legislation was introduced in the Assembly as Assembly Committees were closing down, leaving insufficient time to resolve certain technical issues. However, substantive support for the bill in both houses was strong and NYSARC expects the measure to be reintroduced in the next legislative session.

5. **S.7677-A by Ortt/A.10409 by Gunther. Passed Senate; Passed Assembly: This bill, initiated by COPA (Coalition of Provider Agencies consisting of CP of NYS, DDAWNYS, The IAC and the Alliance of Long Island Agencies) requires the Commissioner of OPWDD to submit a report concerning factors causing increasing turnover and vacancy rates and identifying funding necessary to deal with this problem. NYSARC, while not a COPA member, issued a memo in support.**

#### Background

During the past legislative session, the Governor proposed and the Legislature enacted legislation to bring the minimum wage in New York State up to \$15 per hour by 2021. While the new minimum wage applies to employees supporting people with developmental disabilities, funding for wages remains insufficient to recruit and retain quality employees and control increasing turnover and vacancy rates. The intent is that this bill will provide information to help justify adequate wage increases.

### Legislation

This bill would require the Commissioner of OPWDD to “develop and issue a report enumerating the causes of the high and increasing turnover and vacancy rates of Direct Support Professionals” and assess “all factors which are causing the vacancy and turnover rates of providers ... to rise.” Further the report shall identify fiscal resources necessary “to attract and retain a quality workforce in sufficient number to assure the health and safety of individuals with developmental disabilities.” The study is to be completed “on or before November 1, 2016” and be delivered to the Senate, Assembly, and the Governor along with any recommendations.

### Outlook

The bill is currently awaiting delivery to the Governor. There is currently no information to indicate whether or not he will sign or veto the measure.

6. **S.6010 by Lanza/A.8307 by Weprin/Held on Senate Floor; Held in Assembly Mental Health Committee: Requires that mandated reporters phone 911 and the county district attorney for any reportable incident they witnessed.**

### Background

The bill was introduced at the close of the last legislative session (2015) and taken up again during the current session. It is a continuing effort to address the very emotional issue of abuse and neglect of people with developmental disabilities. It also represents the view by some individuals that the Justice Center is not adequately dealing with incidents that come to its attention. Therefore, these individuals believe these incidents should be brought immediately to the attention of local law enforcement officials.

### Legislation

The bill requires reporting of all allegations of reportable incidents to a 911 operator and the county district attorney. A willful failure to make such a report would result in a class E felony. Furthermore the bill would require that all mandated reporters receive training in the new requirement and that all “state and private websites, training manuals, informational brochures or pamphlets directing reporting” and any other materials directing reporting of crimes or emergencies be updated to reflect the requirements of the bill.

Faced with a felony charge for not reporting, mandated reporters would have an enormous incentive to categorize any incident as reportable and phone 911 and the county district attorney. This new requirement would be in addition to existing

requirements for staff to report incidents to both OPWDD and the Justice Center and to law enforcement if staff believes a crime has been committed.

In 2015 alone, the Justice Center received more than 90,000 incident reports. Many of these incidents turn out to be neither serious nor substantiated. Yet, it is not uncommon for a single reportable incident to generate reporting from 10 or 15 different mandated reporters. Under this bill, such instances are likely to multiply considerably given the felony penalty for any failure to report. Neither emergency services nor district attorney's offices are staffed to handle this huge influx of additional, and duplicative, reports. In the field of developmental disabilities alone, there are more than 100,000 mandated reporters who could easily swamp 911 operators. Those operators have the responsibility for handling phone calls concerning very serious events impacting the general public. Likewise, this new law would constitute another major distraction to staff who have the enormous responsibility of caring for people with often significant disabilities. And finally, overwhelming emergency services with calls from local providers could cause emergency responders to relegate people with developmental disabilities to a low priority, increasing the chances that a real emergency won't get the attention it deserves.

#### Outlook

NYSARC and all of the other major developmental disabilities associations strongly opposed this bill. However, this is a sensitive issue and it is likely that this bill, or others like it, will be introduced next legislative session and possibly for years to come.

- S.8121 by Lanza/A. 10704 by Weprin; held in Senate Rules Committee and the Assembly Social Services Committee: The bill requires mandated reporters to report "suspicious and unexplained injuries" to a 911 operator and the county district attorney.**

#### Background

This bill was an attempt by the sponsors to moderate more extreme legislation (See 6 above regarding S.6010 by Lanza/A.8307 by Weprin) in response to concerns registered by providers and advocates.

#### Legislation

The bill would require reporting of "suspicious and unexplained injuries" to a 911 operator and the county district attorney. Like the earlier bill, it would have imposed a class E felony for willful failure to report. As in #6 above, if this bill became law, it would undermine and overwhelm the existing 911 emergency call system.

### Outlook

Same as in #6 above.

- 8. S.6851 by LaValle/A.9422 by Glick/Passed Senate; Passed Assembly: The bill allows preschool to utilize certified school psychologists to conduct mandatory preschool evaluations.**

### Background

Recently, the State Education Department determined that required preschool evaluations are being performed by certified school psychologists even though that is not permitted under law. The alternative is to use licensed Ph.D. level psychologists. However, an acute shortage of these clinicians makes that option impractical.

Federal law requires timely psychological evaluations of preschool students with disabilities. State law also requires that approved evaluators, selected by the parent, conduct such evaluations. In order to comply with both federal and state law, this legislation would temporarily allow certified school psychologists to conduct these evaluations pending further investigation of this issue.

### Legislation

The legislation sunsets on June 30, 2018, at which time the issue it deals with will resurface unless a new law is enacted.

### Outlook

The Governor appears likely to sign the bill when it is sent to him.

- 9. S.7644 by Ortt/A.10052 by Gunther/Passed Senate; Passed Assembly: The bill requires OPWDD to post key milestones relating to its transformation goals on its website.**

### Background

There has been considerable concern in recent years over OPWDD's transparency relating to its transformation goals. Those goals are aimed at complying with the Olmstead decision by moving people to least restrictive community based settings. This bill is an attempt to provide greater transparency.

### Legislation

This bill requires OPWDD to include updates on its website concerning its progress implementing its transformation goals. This requirement takes effect on January 1, 2017. The updates must include the following: (a) progress made by the office in developing plans for and implementing the recommendations; (b) any identified statutory or regulatory obstacles to implementation; and (c) any other information the office deems necessary and appropriate to keep stakeholders and the public informed of the implementation plan.

### Outlook

It is not known at this point whether the Governor will or will not sign this bill. The bill sunsets automatically on April 1, 2018.

**10. S.4983 by Ortt/No Assembly companion/Held in Senate Judiciary Committee: The bill updates Article 17A to reflect current concerns about guardianship and the rights of people who have guardians.**

### Background

Last session, OPWDD introduced a departmental bill overhauling (S4983 by Ortt) Article 17A of the SCPA in response to concerns that the existing statute authorized guardianship for individuals without sufficient attention to their constitutional rights and the due process necessary to protect them. The bill continued to be considered this year. The legislation was the result of the collective work of a group formed by the Governor's Olmstead Counsel and included representatives from NYSARC, Disability Rights New York, NYCLU, and others. NYSARC, however, still has concerns about the legislation in its current form.

### Legislation

The legislation requires annual reports from guardians to enhance their accountability; revises outdated terminology referring to people with developmental disabilities; takes steps to enhance due process protections for people with developmental disabilities; and, includes provisions to maximize individuals' abilities to make their own decisions.

### Outlook

The bill was a one house bill and, like last year, failed to make any progress in the Senate. It is unclear what the prognosis for the passage of a two house will be next year. That depends on reconciling divergent viewpoints among interested parties. It is





important to note that key legislative staff has indicated that NYSARC will be listened to closely on this issue.