

# **ID/A COALITION**

**THE INTELLECTUAL DISABILITIES AND AUTISM SERVICES COALITION OF PENNSYLVANIA**

January 19, 2012

Deputy Secretary Kevin M. Friel  
Office of Developmental Programs  
PA Department of Public Welfare  
502 Health & Welfare Building  
P.O. Box 2675  
Harrisburg, PA 17105-2675

Dear Kevin,

We have reviewed your letter addressed to the IDA Coalition dated December 12, 2011. We agree with you that fiscal accountability within the ID waiver program is essential in meeting the needs of people with intellectual disabilities enrolled in the ID waivers. However, we do not agree with ODP's central argument that increases in the number of units of service provided to existing waiver participants happen to ODP as a result of unseen forces. Instead, ODP is the agent required by CMS to be responsible for causing and creating this growth in the costs of serving existing waiver participants. ODP is in command – as required by Medicaid - and providers are serving as contractors who are legally required under their Medicaid enrollment agreements with DPW to follow orders by ODP to provide the increased services. We have concluded that in authorizing additional services, ODP has caused significant increases in costs to its own budget.

As you are well aware, ODP assumed that chief responsibility from the counties only recently. Prior to July 1, 2009, ODP's management of the ID waiver was declared by federal officials to be out of compliance with the federal rules – rules that require states to ensure that existing waiver participants receive all of the services for which need can be documented. CMS had objected to ODP's previous policy of empowering county MH/MR agencies to ration services to waiver participants to keep costs within budgeted amounts. Such policy was determined by federal officials at CMS to have violated federal waiver requirements. After more than two years of negotiations on the most recent renewal of the ID waiver, DPW signed a legally binding agreement with CMS which committed ODP to operate the ID waiver in a manner that ensures that existing waiver participants receive all of the services for which need is documented in the Individual Service Plans. ODP has had full responsibility for determining the amount of service, including the growth in service utilization in the ID waivers since July 1, 2009. Only ODP and its contracted Administrative Entities have the power and responsibility to enter into DPW's computer system, known as HCSIS, the services that ODP authorizes for any and all ID waiver participants.

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FOR ADDITIONAL INFORMATION, CONTACT ANY OF THE ORGANIZATIONS LISTED:

PA ASSOCIATION OF REHABILITATION FACILITIES (717.657.7608)  
PA WAITING LIST CAMPAIGN (877.372.WAIT)

PA ASSOCIATION OF RESOURCES FOR AUTISM AND INTELLECTUAL DISABILITIES (717.236.2374)  
UNITED CEREBRAL PALSY OF PA (717.975.0611)

DISABILITY RIGHTS NETWORK (1.800.692.7443)

PA COMMUNITY PROVIDERS ASSOCIATION (717.364.3280)

THE ARC OF PA (717.234.2621)

As part of its responsibility to decide on additional services that must be supplied to existing waiver participants, ODP also has the responsibility to pay for such services at fair and reasonable rates for as long as those services are authorized by ODP. Those rates are to be known by providers prior to providing such services so that providers can make decisions regarding whether they can provide the service. In accord with this principle, the current ODP application of a Rate Adjustment Factor in provider payments is clearly not a fair, equitable, or appropriate mechanism to pay for the increased costs created by ODP's authorizations of additional services for existing waiver participants.

Current attempts to justify the RAF and defend payment reductions made through the RAF are misleading. Those providers who will receive more revenue this year than last year are likely providing more services at the direction of ODP and its Administrative Entities. Many providers are incurring additional costs to provide the additional services authorized by ODP. In most cases, the additional costs are greater than the additional revenues cited by ODP.

More importantly, instead of the RAF policy increasing the sustainability of the ID waiver program now and into the future, the RAF is doing the opposite. By applying the negative RAF, ODP pays providers less than their ODP-approved costs while eliminating any margin or revenues earned by providers that are necessary for sustainability. The RAF is requiring many providers to freeze the wages of direct support professionals; increase the employee share of the cost of health insurance; and, layoff nurses, psychologists, and management personnel – all of whom are responsible for ensuring the quality of services provided to medically fragile or behaviorally challenged people with intellectual disabilities. Providers will find it difficult to continue to provide services in the face of increasing costs without cost-of-living increases in payment, margin or retained revenue and with cuts to rates.

We do not agree with ODP's calculation that the value of ODP's cuts in payment for ID waiver services this fiscal year totals \$77 million. The IDA Coalition continues to project that the reduction in provider payment this fiscal year compared to payment received for services rendered during the past fiscal year will total nearly \$150 million.

The following elements of ODP's payment reductions require additional consideration and reappraisal:

- 2.5% Rate Adjustment Factor: The 2.5% rate cut (RAF) imposed by ODP last year (FY2011) continues at the same level for the first four and a half months of this fiscal year (FY2012). This is not, however, the correct comparison. While the 2.5% RAF imposed last year (FY2011) reduced provider cash flow, the 2.5% RAF had no impact on final provider payment. Last year (FY2011), providers were paid a "revenue target" based on old rates paid to providers two years previously (FY2009). Without the stabilizing protection of revenue reconciliation this year, rates 2.5% below the reported provider costs will result in a 2.5% payment reduction when compared to last year's payment through revenue targets.

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- 2.5% & 6% Rate Adjustment Factors: At no time did the IDA Coalition compute the fiscal impact of ODP's payment reductions by adding the 6% RAF and the 2.5% RAF to equal an 8.5% reduction. The Coalition fully understands that a 2.5% reduction for 4.5 months results in a .9375% payment reduction during FY2012, while a 6% reduction for 7.5 months results in a 3.75% reduction, or a total reduction of 4.68% of the \$1.53 billion paid by ODP for services paid through cost-based rates. The Coalition's projection of an 8.3% overall reduction in payment is calculated by comparing the \$150 million total payment reduction to the \$1.8 billion appropriation for ID waiver services.
- Retained Revenue: The IDA Coalition has always understood that no provider was guaranteed any particular amount of retained revenue under ODP's revenue reconciliation policy. However, the former ODP Deputy Secretary's "Dear Colleague" letter dated January 23, 2009 clearly states that under revenue reconciliation, providers will be paid their revenue targets without regard to provider costs for existing services. This policy protected ODP's budget from provider unit cost increases while also establishing a floor for provider payment, thereby ensuring that the ID home and community-based system of services for people with intellectual disabilities would remain stable during the transition from county-based program funding to a state fee-for-service payment system. This ODP policy guaranteed that providers who were able to keep their reported, allowable, and approved costs below their revenue target payment would retain the difference between target revenue and cost. Moreover, to the extent that county MH/MR agencies approved and paid retained revenue to providers in FY2009, provider revenue targets for FY2011 included retained revenue under ODP's Prospective Payment System.
- Outlier Policy: ODP's outlier policy and CMS's approval of that policy is based on the assumption that similar services provided in similar labor markets should be paid at similar rates. Acknowledging regional differences in labor costs and differences between residential services ranging from a few hours/week of habilitation services for semi-independent waiver participants to round-the-clock nursing and habilitation services for medically fragile waiver participants, ODP developed an exceptions process. In a letter to the Coalition dated March 8, 2011, CMS advised that ODP is required to notify providers and the public of the specifics of the standard for granting exceptions to rate cuts based on outlier status. No such notification has ever been provided by ODP which is in violation of CMS guidance. The lack of notification effectively denies to providers their right under the waiver agreement with CMS to appeal downward rate adjustments under this policy. The Coalition urges ODP to comply with CMS' insistence on transparency with regard to the standard.

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- Rate Assignment for Providers Not Submitting Timely Cost Reports: The Coalition has strongly objected to ODP's rate assignment policy which is applied in situations where cost reports do not receive final approval from ODP. We recommend that ODP adopt a policy similar to the policies that DPW's Office of Medical Assistance Programs uses in its cost report-based rate development processes for hospitals and nursing homes which assists providers in their efforts to submit final cost reports. ODP's own data shows that almost all of the unapproved cost reports result not from an unwillingness to submit cost reports but rather from human error in the cost report review process. A policy that puts providers out of business because of clerical and communication errors in a bureaucratic process unnecessarily disrupts the lives of people with intellectual disabilities. Finally, paying providers at the lowest rate in the state for any service rather than at the rates paid by counties in FY2009 reflected in provider revenue targets for FY2011 results in significant, destabilizing payment cuts for providers and is inappropriately punitive especially during a complicated transition period.

The statement in your recent testimony submitted to the House Human Services Committee, and echoed in your letter dated December 12<sup>th</sup> to the IDA Coalition, that ODP has "paid out close to \$250 million in state and federal fund payments that are not tied to actual service provision" is inaccurate and damaging. These payments are not related to a need to ensure the "fiscal integrity" of the ID waiver program. The payments to which ODP is referring to amount to 7% of the total appropriation for the ID waiver program during FY2010 and FY2011. These "supplemental reconciliation payments" are at the heart of the revenue reconciliation payment process that was proposed and developed by ODP, and approved by CMS, as a mechanism to ensure the stability of the ID home and community based system of services for people with intellectual disabilities during the transition from county-based program funding to state-based fee-for-service payments. This payment system in effect locked in payment levels for existing services for each provider during the first two years of ODP's Prospective Payment System based on FY2008-2009 payments made by county MH/MR agencies. (Also note that ODP has not provided any cost-of-living adjustments (COLAs) during the past four years, despite significant increases in the costs of providing these services.) These payments directly relate to service provision because they are, in part, the difference between rates paid by counties in FY2009 and the reduced rates paid by ODP during FY2010 and FY2011 for the same services. When combined with payments for claims, these revenue reconciliation payments brought total payment to providers back up to FY2009 levels.

Over the past ten years, the IDA Coalition and its representatives on various DPW and ODP advisory bodies has argued strongly for the need for a minimal level of retained revenue, or margin, to assure the financial stability of the mostly non-profit organizations that are committed to the provision of quality services to people with intellectual disabilities. The 3-5% level of retained revenue or margin for which the Coalition has advocated compares quite favorably to the level of profit routinely sought by proprietary organizations, including managed care organizations, in the provision of home and community-based services.

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We invite any questions that you may have concerning our views and assessment, and we look forward to working with you on payment methodologies that will assure the stability and quality of Pennsylvania's system of community-based services for people with intellectual disabilities.

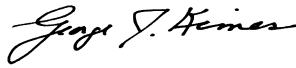
Sincerely yours,



Mark Murphy, Chief Executive Officer  
Disability Rights Network of PA



Shirley A. Walker, President and CEO  
Pennsylvania Advocacy and Resources for  
Autism and Intellectual Disabilities



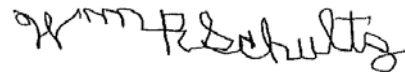
George J. Kimes, Executive Director  
Pennsylvania Community Providers Association



Eugene Bianco, President and CEO  
Pennsylvania Association of  
Rehabilitation Facilities



Maureen Cronin  
The Arc of Pennsylvania



William R. Schultz, Board President  
United Cerebral Palsy of Pennsylvania

cc: The Honorable Joseph Scarnati, President Pro-Tempore, Senate of Pennsylvania  
The Honorable Dominic Pileggi, Majority Leader, Senate of Pennsylvania  
The Honorable Jay Costa, Minority Leader, Senate of Pennsylvania  
The Honorable Jake Corman, Chairman, Senate Appropriations Committee  
The Honorable Vincent Hughes, Chairman, Senate Appropriations Committee  
The Honorable Edwin Erickson, Chairman, Senate Republican Policy Committee  
The Honorable Patricia Vance, Chairwoman, Senate Public Health & Welfare Committee  
The Honorable Shirley Kitchen, Chairwoman, Senate Public Health & Welfare Committee  
The Honorable Sam Smith, Speaker, Pennsylvania House of Representatives  
The Honorable Mike Turzai, Majority Leader, Pennsylvania House of Representatives  
The Honorable Frank Dermody, Minority Leader, Pennsylvania House of Representatives  
The Honorable William Adolph, Chairman, House Appropriations Committee  
The Honorable Joseph Markosek, Chairman, House Appropriations Committee  
The Honorable Gene DiGirolamo, Chairman, House Human Services Committee  
The Honorable Mark Cohen, Chairman, House Human Services Committee

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