



Coalition Of Provider Associations



Critical Funding and Support Needed in 2018-2019 Budget to Help People with Developmental Disabilities

Office for People With Developmental Disabilities

- Provide an additional **\$18.25 million to accelerate the living wage** for Direct Support Professionals.
- **Assess, plan for & provide residential opportunities** to meet the needs of New Yorkers with I/DD.
- **Ensure Medicaid reimbursement for Telemedicine in OPWDD** day & residential services.
- **Provide a Medicaid trend** based on the BLS Medical CPI in **parity with state operated services**.

State Education Department

- **Provide \$14.7 million** for special education schools to **narrow the teacher compensation gap**.
- Provide special education schools **a comparable tuition increase with the state aid increase**.
- **Authorize Interim Plus rates** for 4410 and 853 special education schools.
- **Ensure inclusive educational opportunities** for preschool student with disabilities by **creating a UPK Set aside** and an **SCIS Emergency Fund** for 4410 special education preschools.

Department of Health

- **Provide a 4% Early Intervention (EI) rate increase** to address 25 years of flat/decreasing rates.
- Support a **“covered lives” assessment in lieu of commercial EI insurance** billing.
- **Invest in and provide financial stability for clinics** that serve people with developmental disabilities.
- Support full **Medicaid reimbursement for Article 28 dually eligible TBI patients**.



The Coalition of Provider Associations, or **COPA**, which consists of five associations – the Alliance of Long Island Agencies, Inc. (ALIA), Cerebral Palsy Associations of New York State (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 2018-2019 Executive Budget proposal for the:

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

OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES

CONTINUE TO INVEST IN A LIVING WAGE FOR CRITICAL WORKERS

Direct Support Professionals (DSPs) are the approximately 100,000 people (full time and part time) who deliver the services that individuals with developmental disabilities and their families depend on, 24 hours each day, seven days a week. These highly trained staff members perform mentally, emotionally and physically demanding work, requiring sophisticated judgment and decision making. In many cases, the health and wellbeing of the people they serve rests entirely on their shoulders. These are far more than minimum wage jobs. Yet years of grossly inadequate funding have led to wages that have lagged behind where they should be considering the importance of the work.



The Office for People With Developmental Disabilities (OPWDD) Aid to Localities budget includes \$44 million to continue to provide funding to implement the new minimum wage, but more importantly, \$145.8 million to continue the phase in of a living wage for our lowest paid staff. We are grateful to the Governor and Legislature for recognizing the need to address this issue and look forward to New York State’s continuing support as we take future steps to reach our living wage goal. Our recently updated survey of providers across the State shows that for 2017, vacancy rates have increased to 14.4% (an increase of 30% from 2016) and the turnover rate has increased to 26.7% (up 7.5% from 2016) causing providers to pay over 10 million hours of overtime last year, and approximately \$29 million in expenses to replace lost staff (when even possible).

As background, unlike hospitals and other healthcare providers, those who support individuals with I/DD are almost exclusively funded through Medicaid with no alternative source of funding to increase wages. We cannot raise our prices or otherwise substantially increase our revenue. If we can’t attract and retain qualified workers we are forced to accept less qualified applicants

and/or reduce the amount of support we provide for each person and/or cut services. Labor is by far the largest component of our budgets, with more than 80% of funding going directly to compensation for front-line staff who provide direct supports. Unlike other sectors where automation and use of technology may offer alternatives, the supports we provide require talented human beings.

Therefore, while we originally thought that we could phase in the living wage (\$17.72 downstate and \$15.54 for the rest of the State) over six years, we now urge the Governor and Legislature to support a shorter time frame for the plan, condensing the remaining increases into three additional payments this, and next budget year. COPA members depend on increased wages for low paid workers – especially those providing direct supports to individuals with I/DD. We have joined every association in the State representing individuals with I/DD and their families including DSPANYS (the Direct Support Professional Alliance of NYS), SANYS (the Self Advocates Association of NYS), and the parent group SWAN (the StateWide Advocacy Network), to form the #bFair2DirectCare Coalition. As previously stated, we commend both the Governor and Legislature for supporting the initial steps in this endeavor and look forward to continuing to work together to realize the goal of a new living wage for our dedicated professionals in the near future. Without an adequate supply of qualified staff, incidents which endanger the welfare of the people in our care will increase, those staff who stay will experience “burn-out” due to the burden of increasing overtime hours worked and staff, families and, most importantly, the people with I/DD who depend on us, will suffer. There is no safety net beyond not-for-profit providers. Of the more than 138,000 New Yorkers with I/DD supported by OPWDD, most are supported by the 100,000 direct support professionals and other staff in our nonprofit, community-based organizations.

In short, the staffing crisis is worsening at an alarming rate, and we urge you to continue your support for #bFair2DirectCare by adding \$18.25 million beginning 1-1-19 to move our low wage workers one step closer to a living wage.

Recommendation: Provide additional funds in this budget to accelerate the move to a living wage for Direct Support Professionals.

Cost: \$18.25 million (State share)

ASSESS, PLAN FOR AND PROVIDE NEEDED RESIDENTIAL OPPORTUNITIES

According to OPWDD’s 2016 report on the Residential Request List, among the thousands of people on the wait list: 46% live with caregivers over the age of 60; 53% have only one caregiver at home; and 48% need help with almost all of their daily living activities. At numerous public forums held by OPWDD throughout New York State, the most frequent concern expressed by families was the lack of sufficient residential options. The concerns continue to be expressed with greater urgency than ever before. Most families want to secure a residential placement for their loved one as part of an orderly planning process. However, placements often do not occur until there is a dire emergency. This is precisely when families and their loved ones are least able to cope with the emotional and physical strains of a residential upheaval and it creates needless risks to the health, safety and wellbeing of all individuals involved. Additional residential opportunities will be a significant step towards giving families of people with developmental disabilities the assurance that their loved ones will receive the critical supports and services they need when their families can no longer care for them.

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. Also, based on information from mid-year spending updates, while \$120 million had been approved in the last few budgets, it was not entirely spent. Therefore, we must note that it is critical that any barriers to spending the entire \$120 million allocated this fiscal year be removed.

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 DHCR.

The Residential Request List (RRL) and Certified Residential Opportunity (CRO) lists are a good attempt at gathering information on need and planning for future residential needs but unfortunately, families and professionals are often unfamiliar with the process for getting on the lists – there is a crucial need for training and information dissemination. We also commend OPWDD for the 459 new certified opportunities which have recently been released, reportedly based on current need. We are certain that there are many more individuals who currently have urgent needs for certified residential opportunities and who would have been on the list if they had access to/knowledge of the CRO system. Further, we ask that there be more transparency about the lists/numbers of people seeking residential supports, in general.

We understand that “backfills” are a significant source of certified housing opportunities. When the opportunity available matches the needs of the individual seeking this option, then backfilling works! When it doesn't, frustrating and possibly dangerous situations can result. Many in need of placement are medically frail or have significant behaviors which require enhanced staffing not available in the typical backfill opportunity. Many people with intellectual and developmental disabilities also have a mental health diagnosis, yet we have difficulties blending available funds for capital development projects or ongoing supports. When individuals and/or families choose not to accept a backfill opportunity, usually because it is inappropriate, they are often moved to the back of the list, increasing their wait time for needed residential services. Federal rules regarding Home and Community Based Settings Standards and size of the homes are additional complications but federal mandates to honor choice dictate that requests for not sharing bedrooms, living with compatible roommates, etc., should be granted. We need eligibility determinations to be streamlined and creative, cross-agency funding opportunities to be explored.

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. Many people are aging in residences developed many years ago that can no longer meet their needs without significant capital work or relocation for which OPWDD funding is at best limited or no longer available. We need to provide modifications and/or supports for those who want to age in their homes in a way that fits within individual goals and preferences. 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 assessing the need for housing opportunities accurately and transparently and funding the development of appropriate opportunities for those individuals who need them and when they need them. Based on the Governor's press release stating that the 459 certified residential opportunities provided this year cost \$58.9 million we have developed our request below considering state funding for 6 months.

Recommendation: Provide additional funds for the development of 459 more certified residential opportunities for people with acute needs currently living at home with families.

Cost: \$14.7 million

ENSURE MEDICAID REIMBURSEMENT FOR TELEHEALTH/TELEMEDICINE

In both his recent State of the State address and Executive Budget proposal, Governor Cuomo recognizes the critical need for telehealth services and stated that it can overcome substantial cost barriers to care. He proclaimed that "New York will take steps to modernize the delivery of telehealth services" and that current state law is "outdated" and restricts settings in which patients can access telehealth services." This critical initiative recognizes that telemedicine has the ability to significantly enhance the quality of care for people with developmental disabilities, provide significant Medicaid savings through reduced Emergency Room visits and hospitalizations and reduce stress for our workforce and the people in our care. In fact, two separate telemedicine pilot programs by COPA members concluded that 86% of ER visits could be avoided with telemedicine.

Telemedicine for individuals with I/DD is truly a win-win for everyone. Therefore, in order to provide telemedicine for individuals with developmental disabilities, which will provide significantly better care and Medicaid savings, it is critical that:

- OPWDD promulgate regulations, in a timely manner, authorizing Medicaid telemedicine reimbursement in OPWDD residential and day supports and services,
- OPWDD provide funding for I/DD not-for-profit agencies that don't have Article 16 or 28 clinics and access to the DOH Health Care Facility Transformation fund, to purchase telemedicine equipment, and
- DOH provide enhanced telemedicine rates for patients with I/DD in recognition of the additional time and costs incurred when treating patients with I/DD.

Recommendation: Authorize telemedicine in OPWDD residential and day settings with enhanced rates for patients with I/DD and funding for all providers to purchase telemedicine equipment.

Cost: No cost as telemedicine will provide significant Medicaid savings through avoided ER visits and hospital admissions.

PROVIDE A MEDICAID TREND BASED ON THE BUREAU OF LABOR STATISTICS MEDICAL CONSUMER PRICE INDEX

Prior to 2011, Medicaid funded OPWDD services received yearly increases to cover the rising costs of providing services, called “Medicaid Trends.” In 2010, a Medicaid Trend of 2.08% was given to both state operated and voluntary operated programs. Since that time, with the exception of a 0.2% Medicaid Trend given in 2017, voluntary OPWDD providers have been denied any Medicaid Trend to support agency operations. Again this year, the Executive Budget does not provide a Medicaid Trend for not-for-profits which provide over 80% of all services, yet since 2015, State operated OPWDD services (constituting less than 20%) are receiving a yearly Medicaid Trend based on the Medical Care Service Index (MCSI) component of the Bureau of Labor Statistics Consumer Price Index for all Urban Consumers (CPI-U). Average Medicaid increases in rates for OPWDD not-for-profit service providers have been limited to two 2% increases for certain categories of direct support staff in 2015 and two 3.25% increases for the same limited DSP and clinical staff in 2018.

Federal and State law 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 costs, administrative costs, costs of employee pension plans and normal standby costs (costs related to unoccupied beds). Prior to 2014, a provider’s shortfall in funding could be appealed, either based upon the reimbursement rate for a particular category, or effective July 1, 2011, based upon a vacancy methodology appeal. Since recent rate transformation (aka "rate rationalization") has been implemented, periodic rebasing is intended to allow OPWDD to make better budget projections, provide greater provider accountability and seeks to create a more efficient and equitable system. However, federal guidance suggests base year funding be trended forward in order to ensure compliance with Social Security Act §1902(a)(30)(A), which requires that "payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers" and to prevent underpayment, help ensure quality of care and the retention of an adequate pool of providers. COPA believes the failure of the State to include a Medicaid Trend factor in its Medicaid rates for voluntary providers may be a violation of this federal law. We request, therefore, that the 2020 budget include the same Medicaid Trend as is used for State operated OPWDD Medicaid funded services, in order to cover rising costs, particularly indirect and administrative costs, which have been ignored over the past 8 years. According to the US Bureau of Labor Statistics, since the 2010 Trend was given, Medical Care Service costs have increased by a cumulative 21.4%.

Recommendation: Include a Medicaid Trend for Voluntary programs based upon the BLS MCSI CPI-U, in parity with the Medicaid Trend State Operated programs are receiving from CMS in the 2020 budget.

Cost: \$71.3 million (State share for Fiscal Year 2020)

PROVIDE FISCAL AND REGULATORY RELIEF FROM UNFUNDED MANDATES & OTHER SYSTEM COSTS

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. Hospitals have perennially received funding for infrastructure needs, whereas our system has not. We have never had the IT framework, the data warehousing, electronic health records and reporting capabilities required to transform into a Medicaid managed care system. Building this infrastructure is expected without any additional investment and far fewer dollars than existed eight years ago. Expenses related to staff background checks, the OPWDD Front Door process, the Justice Center and outdated regulations and statues grew steadily at the same time that our funding had been drastically cut. The increase in unfunded mandates, costs and the lack of State investment must be evaluated as we look ahead to further “system transformation.”

One glaring example of an outdated statute that must be modernized is the New York State Mental Hygiene Law (MHL) section 1.03 definition of “Schools.” The Willowbrook State School is the most infamous of the New York State Schools. MHL Section 1.03 has been amended to call these institutions “Developmental Centers,” remove the word “retarded,” change OMRDD to OPWDD, and add additional supports and services. Conceptually, the term “School” has become interchangeable with “developmental center” but in statute, the word “Schools” can still be interpreted to mean all OPWDD supports and services. It is critically important to modernize MHL Section 1.03 to clearly define “Schools” as developmental centers and delineate them from community based services provided through the Medicaid Home and Community Based Services Waiver which are the opposite of “schools” or institutions. It is time to remove all confusion and stigma and modernize the statutory definition which will also provide fiscal and regulatory relief from contradictory rules and regulations.

Recommendation: Modernize and reform statutes and regulations to provide fiscal and regulatory relief including the Mental Hygiene Law Section 1.03 definition of “School” to address the current community based settings and remove the confusion and stigma of the current definition to:

"School" means the in-patient service of a developmental center under the jurisdiction of the office for people with developmental disabilities or a facility that has specifically been designated as a school by the commissioner.

Cost: No cost and will provide fiscal and regulatory relief

CREATE A STABILIZATION FUND TO PRESERVE PROVIDERS' FISCAL HEALTH

Since 2008, actual state supported spending provided to voluntary agency providers of supports and services for people with intellectual and developmental disabilities (IDD) have been reduced by \$116 million. DOB now estimates that FY18 state supported Aid To Localities spending will be \$88 million less than actual FY17 spending. Even with the \$151 million increase in state support for voluntary providers proposed by the Executive in the FY19 Executive Budget, state support for voluntary operated programs will have been reduced by \$53 million over the past seven years. At the same time, our system has also undergone a rate rationalization process that has removed any opportunity for surpluses that could offset increased costs for utilities, health insurance, etc., or sustain other underfunded services for people with the most significant needs. The current “no margin” environment, however, is forcing the closure of these programs that cannot sustain themselves, reducing access to services and penalizing providers that support higher cost individuals. Providers of supports and services for individuals with IDD 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 the status quo
- A staff recruitment and retention crisis that threatens the very existence of services
- Total system transformation
- Reduced funding.

While this system-wide restructuring has been on-going for several years, again this year, the Executive Budget provides little to support the OPWDD Transformation agenda. Successful transition to Managed Care requires investments in order to enhance the quality of the care individuals with I/DD receive. Examples include:

- Improving IT capabilities to more efficiently share data with other providers and partners
- Enhancing funding to move to electronic records
- Identifying opportunities for performance improvement and cost savings
- Enhancing quality improvement
- Relief for agencies that have been destabilized by rate rationalization, the transformation from MSC to Care Coordination Organizations and the requirements of moving toward Managed Care.

COPA believes a multi-year investment in the I/DD system is necessary in order to stabilize the I/DD system and prepare for the shift to a Managed Care environment. The Executive recently announced \$60 million in awards to assist behavioral health providers transform to a business model of Value-Based Payments (which rewards quality of care and better health outcomes rather than the volume of services they provide). COPA believes OPWDD voluntary providers require similar assistance and based upon the comparable size of the OPWDD service delivery system vis-a-vis the OMH service delivery system, we urge the Legislature to include an additional \$100 million for a multi-year OPWDD Stabilization Fund. This one-time funding can be supported with Extraordinary Settlement Funds.

Recommendation: Provide funds in this budget to support a multi-year Stabilization Fund
Cost: \$100 million spread over two years

SUPPORT THE CLARIFICATION OF TASKS AND FUNCTIONS WHICH DO NOT REQUIRE PROFESSIONAL LICENSURE FOR MENTAL HEALTH SERVICES

COPA strongly supports the Executive’s proposal to clarify the tasks and functions that may be performed and services provided by unlicensed staff working in entities that are regulated, operated, funded or approved by OPWDD and other state agencies. The proposal authorizes unlicensed individuals to assist a licensed professional as part of a multi-disciplinary team and grandfather all employees currently providing psychological, social work and mental health services within such entities to continue to provide such services, without requiring a license. The proposal further provides that any such services delivered after July 1, 2020 must be provided by a licensed professional. COPA acknowledges that historically, services provided in this manner, have adequately met the needs of people receiving OPWDD funded services.

Recommendation: Support the Executive's Budget language clarifying tasks and functions which do not require professional licensure for mental health services.

Cost: Failure to enact the proposed clarification language will result in \$324 million in additional costs for all providers of services

Our Kids are YOUR Kids

**INVEST in 4410 & 853 SPECIAL ED schools
...before it's too late!**

COPA members operate schools that provide special education services to preschool children ages 3-5 (known as 4410 schools) and school-age students, ages 5-21 years, (known as 853 schools) for their local school districts. 4410 and 853 schools are approved private special education schools, chartered by the Regents, that serve students whose local school districts and BOCES are unable to educate them because of the severity of their disabilities. The children who attend our 4410 and 853 schools are public school children, many of them diagnosed with autism spectrum disorder, cerebral palsy or other developmental disabilities, and are placed by their school district's Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) only after all public settings have been considered and determined inadequate to meet the needs of the student. The State's legal responsibility under the federal IDEA is to provide a "free and appropriate public education" (FAPE) for all children. For those children placed by their school district in approved special education schools and preschools, our programs meet that federal mandate. Our schools serve many of New York State's most vulnerable children, yet these schools have not been provided with the funding necessary to meet this challenge. While Education Aid to local school districts has increased at a rate of at least 3%-4% every year, the schools serving these students whose significant needs cannot be accommodated by their local school districts have been denied similar increases. As a result, our 853s and 4410s are increasingly unable to meet rising operating costs and are unable to pay our teachers, who must meet the same certification requirements as public school teachers, anywhere near what a local school district pays. Staff recruitment and retention is now a crisis for 853 and 4410 schools.

INCLUDE FUNDS TO ALLOW 853 and 4410 PROVIDERS TO NARROW THE BROAD TEACHER COMPENSATION DISPARITY

Our 853s and 4410s are unable to pay our teachers, who must meet the same certification requirements as public school teachers, anywhere near what a local school district pays. Staff recruitment and retention is now a crisis for 853 and 4410 schools. The average teacher turnover rate in 853 schools last year was 28% with some schools significantly higher. For 4410 schools, the average teacher turnover rate was 30%. With no tuition increases, beginning with the 2008-09 school year, the gap has grown so that it is virtually impossible for our schools to hire and retain qualified teachers. It has become just as impossible to hire certified teacher assistants, paraprofessional staff and therapists, but this request only addresses teacher recruitment and retention.

Based on information provided by the NY State Education Department's (SED's) Rate Setting Unit, we calculate that an additional \$14.7 million would be necessary to add to current classroom based rates to reduce the compensation gap to the pre-zero growth conditions. This amount would still result in a significant gap between what our special education schools can pay and what public schools pay but it would at least allow approved classroom-based providers to begin to address the growing teacher vacancy and turnover crisis.

We are pleased that beginning with the 2016-17 school year, Division of the Budget (DOB) and SED agreed to include the two \$2 million allocations intended to assist approved special education schools with recruitment and retention of teachers, directly into the prospective rate without going through the cumbersome contract process. While this funding has been helpful, the per-teacher distribution is minimal in comparison to the need.

Therefore, we ask that an additional \$14.7 million be provided in a similar manner. As stated above, while this influx of funds will assist in the recruitment and retention of teachers, it will not address the certified teacher assistant, paraprofessional and therapy staff shortages but we believe this is a reasonable first step in assuring that students placed in these schools by school districts will have qualified teachers available to provide the instruction mandated by the students' IEPs.

Recommendation: Provide \$14.7 million in new funding to allow 853 and 4410 providers to narrow the increasing gap between their teachers' compensation and that of the public schools so that they can continue to provide FAPE for New York's students with the most severe disabilities.

Cost: \$14.7 million

PROVIDE 4410 AND 853 SCHOOLS WITH A TUITION INCREASE COMPARABLE WITH GENERAL EDUCATION

As mentioned above, in 2009 SED imposed a freeze on tuition increases for preschool special education classes. This freeze had remained in effect for six years and has pushed many preschool providers to the brink of extinction. Two years ago, and again last year, the State Education Department requested 4% increases for these schools but only 2% was approved. SED's Rate Setting Unit acknowledges that it does not reimburse these programs for all their approved costs and expresses serious concerns about the resulting funding gap. In 2015, eight programs across the State closed, impacting 550 children and families. More have closed since but the information is no longer readily available.

School age 853 providers have faced a similar financial crisis due to the impact of a four year tuition freeze. The financial losses reported by 853 providers are also considerable. Although the fiscal impact on 853 providers has been softened somewhat in the past five years by annual financial adjustments, significant challenges remain. Similar to 4410s, 853 schools struggle to recruit and retain teachers, clinicians, teacher's aides and other staff who are hired by their local districts where their pay and benefits are significantly higher, the school year is 10 months rather than 12 and the children have fewer needs and behavioral issues. As a result, when they leave 853 schools for jobs in public schools, they can receive \$30,000 to \$40,000 salary increases, better benefits including pension and summers off. New York State must invest in 853 schools in order to continue to fulfill the federal requirement of a free and appropriate public education for children with the most significant disabilities until they are 21 years old.

Recommendation: Provide 4410 preschools and 853 school-age programs which serve kids that school districts and charter schools can't or won't serve, with a comparable increase because all children deserve the same consideration.

Cost: No cost in this budget

INSURE INCLUSIVE EDUCATIONAL OPPORTUNITIES FOR PRESCHOOL CHILDREN WITH DEVELOPMENTAL DISABILITIES

Require SED to Establish a UPK Priority Set Aside to Integrate 4410 Classes

We firmly support the education of children with and without disabilities in inclusive classrooms and recognize the benefits to both groups from learning with differently-abled peers. Nevertheless, our commitment to offer inclusive educational opportunities to preschool children with disabilities has been hampered by both funding methodologies which do not cover the full cost of typically developing children and structural issues that don't support an integrated model. We are pleased that the budget includes an additional \$15 million investment to expand prekindergarten for three and four year olds in high-need school districts with preference given to the few remaining districts without a prekindergarten program and will focus on including students in integrated or community-based settings. We realize, however, that the additional funding will only support a very small percentage of prekindergarten children and even fewer children with disabilities. Therefore, to truly facilitate integration, we urge that SED establish a priority set aside of UPK seats for 4410 providers to ensure that those who currently operate SCIS classes (or want to establish them) will have sufficient numbers of typically developing children to integrate their classes. This recommendation supports SED's goal of ensuring that preschool students with disabilities have access to high quality inclusive educational settings.

Recommendation: Set aside UPK seats for 4410 providers to ensure that those operating SCIS classes can achieve true integration

Cost: No new funding is required

Create a SCIS Emergency Fund

Aimed at solving the inadequate funding methodology currently in place, SED established a Special Class Integrated Setting (SCIS) Workgroup that included 4410 providers and school district representatives, as directed by Chapter 59 of the Laws of 2017, to develop a new tuition methodology for SCIS programs that would reimburse providers appropriately. The work group is scheduled to meet in early March, at which time SED will present the new tuition methodology. Based on the current time frame, however, the new methodology will not be in place for FY2018-2019. In an SED survey of 4410 providers operating SCIS programs, 79% identified inadequate reimbursement as the number one challenge, with reimbursement rates that do not cover the total cost for the program, in large part because there isn't a sufficient funding source to cover the cost of typical kids.

So that 4410 programs operating SCIS programs can survive while waiting for the new tuition rates, we request that SED establish an emergency fund which would offer providers a financial lifeline to sustain them until the new tuition methodology has been approved and implemented. SED has already received numerous notices of program closures of SCIS classes state-wide and there is increasing concern that New York State will be at risk of failing to meet federal benchmarks established for providing inclusive opportunities to preschool students with

disabilities. The deadline for 4410 programs to notify SED of their intent to close their SCIS programs by the end of June is March 31st and without any fiscal relief, they should anticipate receiving huge numbers of closure notices.

Recommendation: Create a SCIS emergency fund to provide a financial lifeline to sustain providers while they wait for the new SCIS funding methodology to be implemented.

Cost: \$3.7 million

ESTABLISH INTERIM PLUS RATES

In the last few years, the State Education Department's tuition rate processing time has significantly increased to the point where providers are waiting over two years in some cases, for their rates to be approved. While they are waiting, the current system denies them the ability to receive previously approved increases. In many cases, the reason they are waiting for approval is that a tuition waiver was requested due to insufficient funding to cover the cost of educating the children currently enrolled. While SED has experienced processing time delays due to: staff turnover combined with increasing tuition waiver requests (the ones previously mentioned); preschool special education provider audits; capital project applications; technical assistance requests from providers; staff resources committed to establishing the SCIS funding methodology; and creating a special education provider database (as provided in last year's enacted state budget), we should not allow these administrative issues to stand in the way of providing adequate funding to schools.

Because the current rate processing time results in many programs waiting a year, two years or more to receive approved funding increases, we request that Interim Plus rates be issued for 2018-2019. These rates would be calculated as Interim Rates (a carryforward of a prior certified rate) plus approved growth, Excessive Teacher Turnover Prevention funds, and Minimum Wage dollars. With regard to the latter, providers have not received one penny toward the two minimum wage increases they have already absorbed. This terribly unfair situation has led to the closure of schools and will lead to more if not corrected. The State has an obligation to reimburse these schools properly for educating our children and Interim Plus rates are an appropriate vehicle. It is absolutely necessary for our programs to receive these intended and essential increases while the Department works to improve its processing time and meet other expectations.

Recommendation: Approve Interim Plus Rates so 4410 and 853 providers can get the tuition increases that have been already approved over the past two years.

Cost: No additional cost

CAP COUNTY RESPONSIBILITY FOR THE EDUCATION COSTS OF 4410 PRESCHOOLS AT THE CURRENT SPENDING LEVEL

As has already been noted, while our 853 schools have been afforded modest growth over the past five years, our 4410s have received only three 2% increases, and many have only received one, due to the rate setting delays at SED. One of the reasons that DOB would not approve SED's requests to provide 4% or higher increases over the past two years is the funding methodology itself. The local counties pay 40.5% of the cost of preschool special education, with the State picking up the balance of the cost. With the counties' tax cap equivalent to CPI growth (.6 and .8% for the past two years), approving 4% increases on 4410 tuition rates would have constituted nearly the entire allowable spending growth. For this reason, and the fact that education costs should be the responsibility of the State rather than the counties in the first place, we request that counties' responsibility for 4410 preschool costs be capped at current the spending level.

Recommendation: Cap the county costs for 4410 preschool education at the current spending level.

Cost: No additional cost this budget year

CONVENE AN SED WORKGROUP TO EXAMINE SPECIAL EDUCATION WAIVERS

The Governor's budget would allow school districts, approved special education providers and BOCES to apply to SED for waivers from State imposed requirements as long as they are not in conflict with federal standards. We believe that an ability to waive any State requirement (such as class size, parents' right to choose evaluators, functional grouping of students in classrooms, timely implementation of IEPs and the Burden of Proof standards, among others) would have serious negative consequences for special education students. There are certain changes, however, that could be made while maintaining the integrity of special education services, including waivers to enhance student achievement and opportunities for placement in regular classes and programs consistent with federal law.

Recommendation: Require that SED convene a workgroup to evaluate specific proposals that will offer mandate relief while ensuring that high quality services are maintained for our children.

Cost: No additional cost

REQUIRE SED TO COLLECT AND PUBLISH TEACHER AND TEACHER ASSISTANT VACANCY AND TURNOVER RATE DATA

In recognition of the need to provide data to inform funding decisions, COPA members have been collecting and publishing data on teacher and teacher assistant turnover and vacancy rates for 3 years. Our data shows that for 853 schools, the average Teacher turnover rate last year was 28% with some schools significantly higher. The average Teacher Assistant turnover rate was 29%. For 4410 schools, the average Teacher turnover rate was 30% and the average Teacher Assistant turnover rate was 26%. We have also been collecting Teacher salary data and comparing our salaries, best we have been able, with school district salaries, highlighting the wide disparity between teachers in 4410 and 853 schools and those who are employed by school

districts across the state. While we know our data is reliable, we understand that for DOB to make a data driven decision to save our schools, there must be official data, e.g., collected and published by the New York State Education Department. This official data will be most helpful if it enables a true comparison of vacancy and turnover rates and differences in salary for new and seasoned teaching staff. For our schools to survive, it is imperative that SED collect data both on vacancy and turnover rates, and on hire-in and 5 year salaries for Teachers and Teacher Assistants in various school programs across the State so that the huge compensation gap which fuels an alarmingly increasing vacancy and turnover problem in 4410 and 853 schools can be addressed.

Recommendation: Require SED to collect and publish data on Teacher and Teacher Assistant vacancy and turnover rates, and salary comparison data for new hires and teaching staff who have been employed for 5 years.

Cost: No additional cost

EARLY INTERVENTION CHANGES LIVES

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, which are 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.**

PROVIDE A 4% INCREASE TO ADDRESS 25 YEARS OF STAGNANT RATES

Over the past 25 years, the New York State Department of Health (DOH) has made EI rate adjustments that have resulted in millions in savings for the program and community based providers are being paid less today than when the program began in 1994. The rate for home and community based individual visits, by far the most frequently delivered EI service, actually decreased in all areas of the state by an average of 6-8%. Therefore, with rates based on pre-1993 cost data, minimal across the board increases, and several re-calculations resulting in decreases in some rates since that time, the reimbursement is significantly out of date in terms of costs for salaries, benefits, and other fixed costs that have skyrocketed in the last 25 years.

While all other comparable service systems have received continuing increases in trend factors and cost of living adjustments over these past 25 years, the financial needs of the Early Intervention service system has been essentially ignored and neglected, discouraging providers and compromising the quality and availability of services for children and families. We believe that a 4% COLA is justified based on the overall impact of rate adjustments, the increased cost of services over the past 25 years and the significant administrative and billing responsibilities associated with the State Fiscal Agent.

Recommendation: Include a 4% increase for EI program reimbursement rates.

Cost: \$6.4 million

SUPPORT AN EARLY INTERVENTION "COVERED LIVES" ASSESSMENT

The Early Intervention program was established under the Public Health Law and the federal Individuals with Disabilities Education Act (IDEA) to enhance the development of infants and toddlers from birth to age three who have a significant developmental delay or disability, as well as enhance the capacity of families to meet their children's special needs. All Early Intervention (EI) services must be provided to eligible children at no cost to their families. The EI program is financed through a combination of state and county funds, Medicaid and commercial insurance. Although Public Health Law and IDEA mandate that public and private commercial insurance be maximized in financing EI services, reimbursement from third party payers, other than Medicaid, has been minimal, leaving the cost of this entitlement to be paid by state and municipal tax dollars. Recognizing that the current structure of financing EI costs is inadequate, COPA supports a different approach to funding. COPA supports the creation of a statewide Early Intervention services pool funded out of the current covered lives assessments from which municipalities and the State would be allocated funds to pay EI costs. For the first year, an amount of \$15 million would be paid into the pool. This amount is based on the approximate

percentage commercial insurers currently pay of total EI program costs (utilizing data from the 2012-13 program year) increased by the estimated amount paid by commercial insurers related to mandated coverage for autism spectrum disorder. Allowing for the direct allocation of funds to municipalities from the statewide pool will eliminate the unwieldy and inefficient step of requiring EI providers and municipalities (in the case where the insured is not eligible for Medicaid) to seek reimbursement of EI costs first from third party insurers, including time consuming appeals of insurance denials, and then, only upon denial or other disposition of the claim, from the State. In cases where the insured is eligible for Medicaid, municipalities will remain obligated to seek reimbursement from Medicaid first. Making funds readily available and streamlining the process, by which the funds are distributed to municipalities and the State, will provide vital relief to EI providers, New York State and municipalities while improving our ability to more effectively provide EI to children who need the services. It will also result in administrative savings for health insurers.

Recommendation: Shift current commercial insurance coverage from a claims-based model to a HCRA (Health Care Reform Act) pool funded program.

Cost: No additional cost, current claims-based funding will merely be shifted to the HCRA pool

PROVIDE FINANCIAL STABILITY FOR CLINICS THAT SERVE PEOPLE 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 room and acute care settings. Over time, voluntary 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 and Article 31 clinics. These clinics have evolved to become true specialty service providers, serving patients with the highest needs and often at a financial loss. With rate rationalization removing any surpluses to help providers to subsidize these clinics, the insufficient funding of disability services has been glaringly exposed. The annual 20% loss on operations of our Article 28 clinics no longer can be sustained and Boards statewide are facing tough decisions about the future of a variety of disability services.

To date, when Boards choose to close disability clinics, patients, in most instances, have no good option. In the absence of primary care, we see dental patients showing up in the ER or scheduling operatory time for procedures that easily could have been avoided. 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. This would lead us in exactly the opposite direction from the one New York State has been moving toward. In order to prevent New York State from incurring unnecessary Medicaid costs, we recommend the State invest in the specialty clinics supporting these patients and recognize them as an essential part of the service delivery network.

We ask that the extended time to communicate with and treat people with disabilities be recognized and that the cost of providing this care be recognized as a lower cost option since many of the services provided result in fewer ER visits and acute care stays. We urge that NYS recognize the value of these clinics by increasing the clinic payment differentials to our Article

28 and Article 16 clinics for patients who have billing codes designating them as having a developmental disability (code 95) or a traumatic brain injury (code 81). Similarly, we ask that Medicaid Managed Care plans be required to pay the full APG rate including the revised differential for patients in Medicaid managed care programs.

Recommendation: Increase the Article 28 APG add-on for patients assigned code 95 or code 81 to 30% in order to ensure the costs of providing services are covered.

Cost: Negligible due to savings from prevented/reduced ER visits and acute care utilization.

Recommendation: Ensure Article 16 rates are increased to cover the cost of providing services and remove Article 16 clinics from MRT utilization thresholds.

Cost: Negligible due to savings from prevented/reduced ER visits and acute care utilization

Recommendation: Require Medicaid Managed Care plans to pay the revised Article 28 APG plus add-on rate for all services provided to patients with code 95 and code 81.

Cost: No cost to the State

SUPPORT FULL MEDICAID REIMBURSEMENT FOR ARTICLE 28 DUALY ELIGIBLE TBI PATIENTS

COPA is pleased and strongly supports the Executive Budget proposal's inclusion of the authority for Article 28 Diagnostic & Treatment Centers (D&TCs) to receive their full Medicaid reimbursement, after the Medicare payment has been deducted, for individuals with a Traumatic Brain Injury (TBI) who are eligible for both Medicare and Medicaid.

For many years, individuals with a TBI and those with developmental disabilities (DD) were treated similarly with regard to Article 28 clinic services and reimbursement. Both have a Recipient Exception (RE) Code (code 95 for DD and 81 for TBI) and both: (1) receive an enhanced payment under Article 28 Medicaid APGs; (2) are included in the exemption for Medicaid therapy caps; and (3) get paid up to the Medicaid rate for nonparticipating Commercial Insurance. However, due to a 2012 statutory change and a 2013 federal Medicare settlement (the Jimmo Settlement), clinic services for TBI patients are no longer paid the balance up to the Medicaid rate after the Medicare payment. Because Medicare does not have a clinic rate and only pays a much lower physician practice rate, Article 28 clinics that serve TBI patients are losing 20-30% of what even Medicaid would reimburse on every TBI patient visit. This additional 20-30% reimbursement cut threatens the fiscal viability of Article 28 clinics that are often the only health care providers for individuals with disabilities and other Medicaid patients.

The Executive Budget proposal authorizes clinics to receive payments up to the Medicaid rate for all patients with TBI or DD and preserve both the fiscal viability of these clinics and access to healthcare services for these vulnerable New Yorkers.

Recommendation: Support the Executive Budget proposal for Article 28 D&TCs to receive their full Medicaid reimbursement, after the Medicare payment has been deducted, for dual eligible individuals with a Traumatic Brain Injury (TBI). This proposal actually produces savings from reduced acute care utilization.

Cost: No additional cost

MAINTAIN PRESCRIBER PREVAILS

COPA members provide medical care for well over 100,000 individuals with disabilities and their families. The Executive has proposed the elimination of a physician or prescriber's determination as to which medication is best for his or her patient, also known as prescriber prevails. This proposed elimination of the "Prescriber Prevails" medication management for all classes of medications, particularly seizure, epilepsy, and endocrine medications, in Medicaid fee-for-service, will result in costly, unintended consequences including delays in treatment (due to appeals), sub-optimal substitutions and increased acute care utilization by patients who had been previously stable on a medication regimen.

This proposal will directly impact one of the most vulnerable New York State populations, those with developmental disabilities who receive care in Diagnostic and Treatment Centers (Article 28) and Article 16 clinics. Individuals with developmental disabilities have a higher risk of seizure disorders and hospitalization if not controlled by the most appropriate seizure or epilepsy medication. Specialty providers who treat individuals with developmental disabilities are in short supply. The addition of a labor intensive appeals process to this already scarce resource is not a judicious use of medical practitioners' time. Our practitioners have demonstrated significant Medicaid cost savings to NYS Medicaid with reduced acute care utilization and minimal hospitalizations of the most medically complex and behaviorally challenged developmentally disabled populations in New York.

We strongly urge that Prescriber Prevails be maintained for all nine classes of drugs in Medicaid fee-for-service and include the same nine classes in Medicaid managed care.

Recommendation: Maintain Prescriber Prevails for all classes of drugs, including seizure and epilepsy drugs, in Medicaid fee-for-service and include the same nine classes in Medicaid managed care. This proposal produces savings from reduced acute care utilization.

Cost: Negligible due to savings from reduced acute care



Coalition Of Provider Associations

The Coalition of Provider Associations, or COPA, consists of five associations – the Alliance of Long Island Agencies, Inc. (ALIA), Cerebral Palsy Associations of New York State (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) – which joined forces to maintain and enhance supports and services for New Yorkers with intellectual and developmental disabilities and their families. COPA represents more than 250 not-for-profit agencies across the State supporting almost one hundred thousand New Yorkers with I/DD and their families and employing more than 120,000 dedicated professionals with combined annual operating budgets of nearly \$5.2 billion.

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2017

DIRECT CARE STAFF SHORTAGES VACANCY SURVEY RESULTS*

The survey results capture the 2017 experience on direct support professional turnover and vacancy rates for New York State providers. The 2017 survey, the fourth, is the most robust survey response to date, with 155 agencies responding who represent 80,344 employees and support the vast majority of New Yorkers with disabilities and their families. Unfortunately, the survey results highlight trends indicating the field is having a harder time recruiting and retaining staff with both the vacancy rate and turnover rate increasing significantly from our 2016 survey. We hope that support of the #bFair2DirectCare campaign will address these critical labor issues.



2017 VACANCY RATE

Respondents indicate that providers face a **2017 vacancy rate of 14.4% in direct support staff**, representing an **increase of 30%** since 2016.

2017 TURNOVER RATE

Annually, the 2017 direct support staff **turnover rate is 26.7%**, a **7.5% increase** in turnover from the 2016 rate.

2017 OVERTIME HOURS

Providers responding to the survey, due to high vacancy rates and the inability to recruit staff, will pay **over 10 million overtime hours in 2017**, an approximately **8% increase** over the last survey period.

TRAINING/NEW HIRES

1 in 4 employees leave on an annual basis; 1 in 10 leave after working less than 6 months. It's not only difficult to recruit and retain employees, the "churn" or turnover is expensive: provider respondents spend approximately **\$29 million annually** in added administrative expenses for new hires and an **estimated total of over \$87 million** in administrative expense for general turnover.

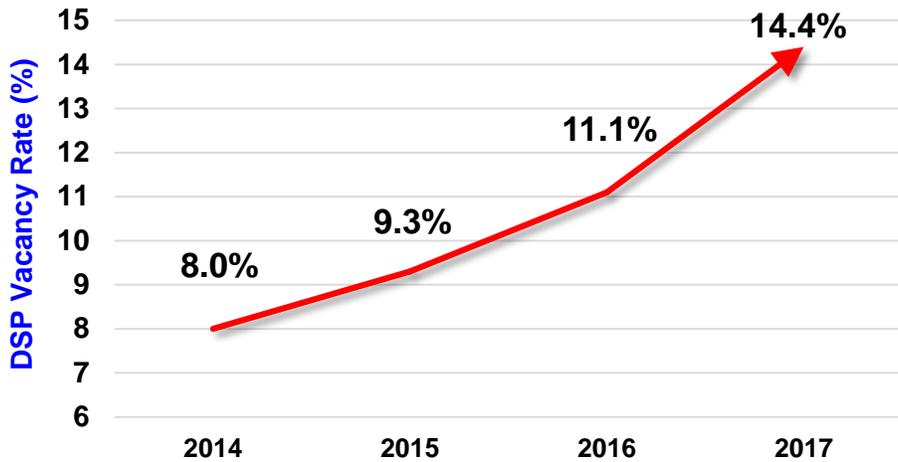
** Respondents indicate that workforce of professional direct care staff (DSPs) and other support staff is: 73% women; 44% black/African American; 9% Hispanic/Latin. All regions were relatively consistent with the percentage of women employed in these positions. Region 1 (NYC and LI) had the highest proportion of minority workers.*

Note: These survey results are based on provider data from the period 1/1/17 – 6/30/17; 2017 annualized figures are based on the first 6-months of 2017.

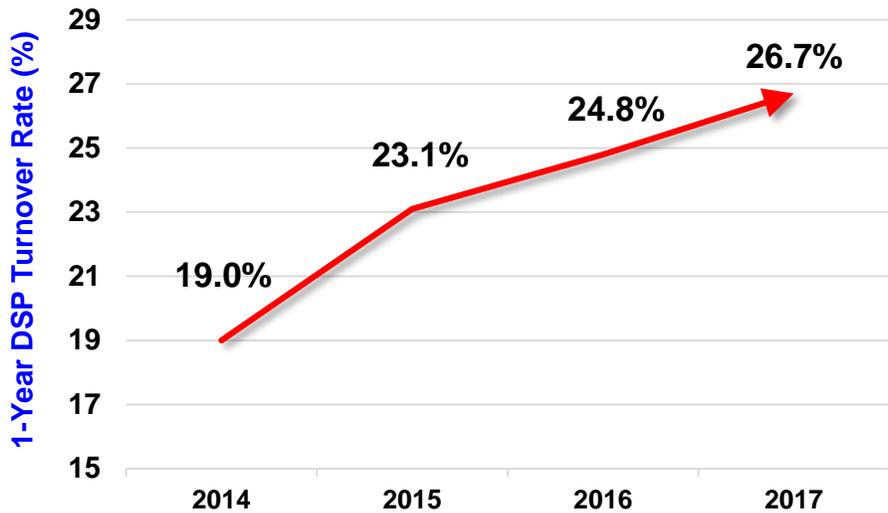


#bFair2DirectCare  
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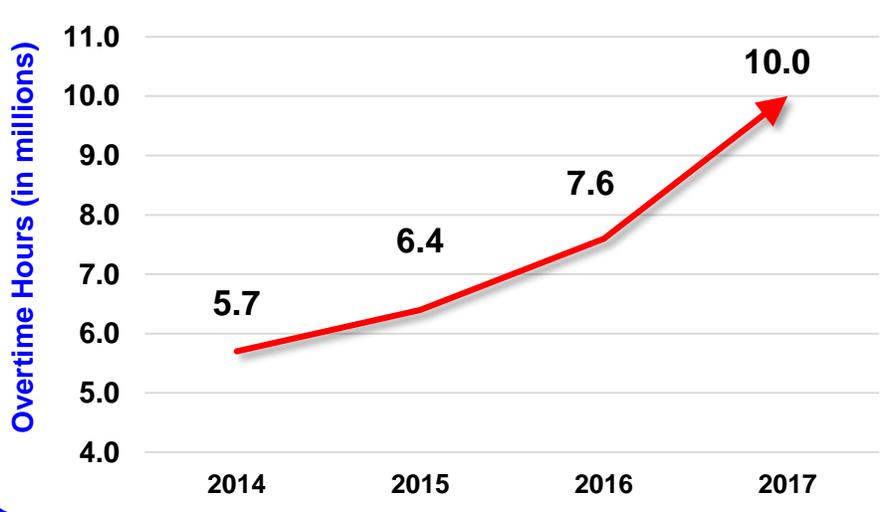
DSP Vacancy Rate Tops 14 Percent



1/4 of DSPs Leave Within 1 Year



Ten Million DSP Overtime Hours



Not-for-profit providers support hundreds of thousands of New Yorkers with disabilities every day on behalf of New York State. These organizations struggle to pay their direct support staff a living wage.

Low wages have created a crisis in attracting and retaining direct support staff, destabilizing the workforce and threatening services for New Yorkers with disabilities. Not-for-profit disability service providers depend on government funding for 90 percent or more of their revenue. The only way to increase wages for direct support staff is through government action.

Supporting people with complex needs is rewarding, yet difficult work requiring a high level of responsibility and skill. Years of government funding freezes and sparse increases mean direct support staff no longer earn a living wage. Once seen as employers of choice with opportunities for careers dedicated to helping others, not-for-profit disability service providers now can't compete with fast food restaurants and big box stores.

WORKFORCE CRISIS WORSENING

The staffing crisis continues to worsen, despite the recent 1/1/18 increase and the planned increase for 4/1/18.

The direct support staff vacancy rate throughout the developmental disabilities field has grown to 14.4% in 2017.

Staff vacancies forced provider organizations to pay more than 10 million of hours of overtime to direct support staff in 2017.

As a result, many direct support staff have gotten burned-out and left their jobs, resulting in providers **experiencing a direct support staff one-year turnover rate of nearly 27% in 2017.**

As many service providers face impending collapse due to mounting challenges associated with meeting state mandated minimum staffing levels, we have no choice but to accelerate the investment requested from NYS.



COMMITMENTS TO DATE

- In the 2017-18 NYS Budget, the Governor and lawmakers began to address the staffing and wage crisis. Effective 1/1/18, NYS committed \$55M to adjust salaries for direct support workers.
- NYS committed to a second \$55M investment in direct support workforce wages effective 4/1/18.

CONTINUING THE COMMITMENT TO STABILIZE THE WORKFORCE

To address the worsening recruitment and retention crisis, progress toward a living wage – originally envisioned over a six-year period, must be sped up three years. In order to achieve the living wage, starting wages must be brought to \$17.72/hr in NYC/Long Island/Westchester and \$15.54/hr. throughout the rest of the state.

Even with the State's commitment to date, the workforce crisis continues to worsen. That's why we are requesting to merge the final four installments into three payments, commencing January 1, 2019.

- 1/1/19 – \$18.25M (Phase 3 \$73M Annualized)
- 4/1/19 – \$73M (Phase 4)
- 1/1/20 – \$18.25M (Phase 5 \$73M Annualized)