



**Senate Public Health & Welfare Committee  
Follow-up public hearing on the past payment practices of the Office of  
Developmental Programs**

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Department of Public Welfare  
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Good morning Chairwoman Vance, Chairwoman Kitchen, Vice-Chairman Mensch, and members of the Senate Public Health and Welfare Committee. My name is Kevin Friel and I am pleased to come before this committee once again to discuss payment practices in the Office of Developmental Programs.

**Introduction**

The topic of the Prospective Payment System, or PPS, and the transition from the county-based payment system to PPS may seem arcane and technical, but as the members of this committee know, how this system works determines whether we can deliver vital services to individuals with intellectual disabilities – about 16,000 of whom are currently on a waiting list desperately hoping to be enrolled in the system and get the care they need. Getting PPS set up correctly, with proper enforcement mechanisms that enable the Office of Developmental Programs, or ODP, to provide strong and meaningful fiscal controls, translates directly into turning those hopes into a reality, because a dollar not spent appropriately is a dollar that could have helped to bring an individual with intellectual disabilities off the waiting list.

We also have a responsibility to the taxpayers of the Commonwealth of Pennsylvania. They rightly expect us to be responsible stewards of their tax dollars. As we outlined for you in our testimony last month, right now we have much to do to meet, and hopefully exceed, those expectations.

Earlier in this hearing, the committee heard from several providers of services to the intellectually disabled. I want to make very clear that we believe providers are important private sector partners with the Commonwealth in providing much needed services for persons with intellectual disabilities. Over the years, ODP has closed 12 institutions and transitioned approximately 4,000 individuals to the community. That's something to be proud of and would not have happened without the support of many good providers. Now they must also be important partners in our efforts to reform the system, a task that is essential to preserving and improving services for some of our most vulnerable citizens.

## **Review of Fiscal Challenges**

ODP currently finds itself in a severe fiscal condition, and it did not get there overnight. Secretary Alexander has made it his top priority to ensure that DPW is a financially responsible steward to the taxpayers and that those in need receive the right services, at the right time, and in the right setting. To do so first requires us to understand the current fiscal situation clearly. Through our thorough review of ODP's finances, which began several months ago and continues, we now have that understanding.

While ODP's Consolidated Waiver budget of \$1.64 billion appropriated by the Legislature for the current fiscal year is flat, we project that service utilization paid for by ODP will increase by \$58.5 million just for individuals already enrolled in ODP programs. We see that growth in service utilization by existing recipients continuing, not abating. This growth in costs comes before a single person is removed from the waiting list and placed into the Waiver program. In addition, we see considerable potential for cost overruns in ODP's budget for this year, which we estimate at another \$134 million, including \$104 million for revenue reconciliation, \$46 million of which is state funds, and \$30 million in planned cost containment initiatives that may not be fully implemented in this fiscal year.

Beyond the immediate fiscal year, we expect a continued explosion of costs if there are no reforms made. In part, this tremendous growth in costs is due to service utilization increases. In its trend analysis for DPW's State Fiscal Year 11-12 rate setting process, the actuarial consultant found:

- Residential eligible service units represent 60% of the ODP State Fiscal Year 2011-2012 budget and are projected to grow by 2.5% this year, as is the Ineligible portion of these services. These service units are the pre-determined amount of time that can be billed to the state by a provider for services such as home rehabilitation, in-home staffing, and family aides.
- Non-residential service units, which include such services as employment services, behavioral therapy, and speech and language therapy, are the second largest component of the ODP budget and are projected to grow at a rate of 6% this year.
- Fee Schedule services unit growth is projected to grow 30% this year in part because more units are being used under the fee schedule than were under the previous system.
- Supports coordination unit growth is projected to grow at 10% during this fiscal year. Supports coordinators are similar to case workers who help individuals with the process of identifying and receiving the treatment and services they need.

## **Steps We Have Taken**

As we indicated at last month's testimony, there are a number of steps that ODP and the Department of Public Welfare can and have taken to address some of these fiscal challenges.

*First*, we are working with stakeholders to develop and refine the long-term vision for ODP and how we can best work with providers, families and advocates to provide quality care for persons with intellectual disabilities.

*Second*, we continue to review providers' cost reports to ensure that waste, excess and abuse are stopped. Much of the waste and excess in the system has resulted from a lack of good fiscal governance. But there is also some fraud in the system, as there unfortunately is in any system. In those cases where fraud is alleged or detected, ODP will make appropriate referrals to the Inspector General and the Attorney General.

*Third*, we have engaged the services of Mercer Consulting to develop a rate system that would be standardized statewide for all providers and waiver services, as opposed to the individually negotiated rates between each county and provider. There are currently 17,000 individual rates in the system. The reality is this: Thus far, we have just transitioned from a county-based system with individual provider rates to a statewide system with individual provider rates. The transition to a small number of more uniform rates must continue not only to satisfy requirements imposed by the Centers for Medicare & Medicaid Services, or CMS, but to provide a more level playing field for providers and to ensure a more fair, equitable and predictable system.

In conjunction with Mercer, we have also engaged Alvarez & Marsal to perform a forensic financial review and assist ODP in obtaining a much higher level of awareness of our fiscal situation and in identifying a common-sense and cost-effective path to a sustainable future for our programs for persons with intellectual disabilities.

*Fourth*, because ODP has a responsibility to live within the State Fiscal Year 11-12 appropriation, we have applied a rate adjustment factor to individual provider rates to bring their expenditures in line with available appropriated funds. In the past, the rate adjustment factor has not been utilized by the Department to the extent that it could be to avoid requiring a supplemental appropriation. This year, we cannot delay the tough and necessary decisions to ensure this program is around for many years to come.

*Fifth*, we have changed the Department's policy with regard to medical and therapeutic vacancies. Medical and therapeutic vacancies are situations in which ODP pays providers for empty beds, even when these costs are not eligible for federal matching funds. Under certain, limited circumstances, and for short periods of time, this practice makes sense and the federal government, through CMS, will match these payments for a limited time frame. But ODP has been going well above what CMS will match.

As we explained in our testimony last month, policies that do not maximize the matching of state funds with federal funds are also a considerable part of the fiscal challenge we face. Over the past two years, the state has spent, on average, in excess of \$150 million that are not matched by the federal government. Medical and therapeutic vacancy policies are significant drivers in the expenditure of these state-only funds, costing ODP \$30 million in state-only costs just in the last fiscal year. ODP's recently announced policies, while still more generous than what CMS will match, will produce better programmatic and fiscal results for taxpayers. Moving forward, one of the things we are considering to make things easier for providers is to allow them to use an occupancy factor instead of this current structure.

These policy changes are important steps towards program integrity and fiscal sustainability. But they are not enough for the long term.

### **More Steps Are Necessary**

The current statewide Prospective Payment System was established without clear direction to ensure fair, efficient and effective business practices. The prior county-managed program provided fiscal controls that did not carry over to the state-run system. As a result, the state has paid for many things beyond what the federal government will match for reimbursement and an environment has developed that allows waste and excess to stymie some of the good being done by the system and presents many challenges in the program's finances.

As I mentioned earlier in this testimony, much of the waste and excess in the Prospective Payment System has resulted from a lack of good fiscal governance. We highlighted some of this excess for the committee last month. While some have expressed doubt about the prevalence of some of these excesses, I can assure the committee of one thing: I speak regularly with the families of persons with intellectual disabilities. They don't care whether the waste and excess we highlight are recent or dated. They don't care if it is one provider or fifty providers involved in that practice. They only care that ODP is working to end the waste and excess; that the waste and excess do not imperil the quality of care we are providing their loved ones; and that it does not prevent ODP from enrolling more of the 16,000 individuals on the waiting list. While our review of cost reports, submitted for purposes of setting rates, reveals instances of questionable expenditures of this nature, we can assure those families and this committee that we are working to correct these matters with these reforms.

These reforms, including a shift of more services from cost reporting to fee schedules, will modernize the Prospective Payment System and help to lower not only ODP's challenge of monitoring and reviewing cost reports, but also the burden imposed on providers in complying with the cost report procedures. In addition, ODP will continue to collaborate with our provider partners and other stakeholders to develop more innovative and flexible program changes that improve quality and identify responsible savings in the program. One recent example is the release of a Request for Information from the Department seeking input from our stakeholders to further expand an existing

sector of our program. In addition to continued meetings with a workgroup primarily focused on shaping the program's future, we have also held several meetings with families and providers to obtain their input on innovation and flexibility to realize these improvements.

**Likewise, we appreciate the testimony heard earlier today regarding single family homes. Certainly, in some cases such homes are necessary and appropriate to provide the best care, such as for individuals with behavioral problems too disruptive for a group home environment. But such situations can be very cost-prohibitive and are prone to excess if there are not clear rules for providers to follow. In addition, as the caregivers recognize the triggers for the behavioral issues or stabilize the behavior, these individuals can often be integrated into group homes. And yet, these individuals are rarely if ever re-evaluated once they are placed in a single family home even though denying them the opportunity for socialization can ultimately be detrimental to their quality of life.**

Later this year, after consultation with stakeholders, we will release new regulations to address these concerns. These regulations will be the first to be implemented for the system since it became centrally managed by the state government more than two years ago. In fact, the last major update to fiscal regulations in this program was 1983. With these new regulations, ODP will be better positioned to ensure quality programs with fiscal integrity and equitable treatment of providers. They will also assure taxpayers that their money is being spent wisely and carefully.

## **Conclusion**

For all of the challenges brought on by the transition from a county-based system to a state-based system, we believe there are also a number of opportunities offered by this transition. We reviewed these opportunities in detail with the committee last month, but I would like to highlight some of the most important ones:

- Persons with intellectual disabilities and their families now have greater flexibility for enrollment and in how and where they can receive services. For example, they can now move between counties in the state without worrying that they will lose their place in the system or see the services covered change.
- The consistency promised by a statewide system, and the ability of providers to work across multiple counties with one reimbursement system means that there are now more providers in more counties with more choices being offered to individuals in the system. This competition is healthy and greatly beneficial to those in need. And the consistency can also improve provider planning related to their revenue and cash flow.
- With one statewide system, ODP now has data that allows us to identify expectations for providers that will lead to more consistency in standards of

care, best business practices, and better state monitoring of providers. The state is also better enabled to begin leveling the playing field for rates.

We understand that anytime there are discussions of changes, providers, families and advocates want to know that those changes will be for the better. Secretary Alexander wants to assure them, and the members of this committee, that we will ensure the forthcoming changes will improve ODP's operations and fiscal controls. The reforms already underway, along with the reforms to come, will provide fair and reasonable rules for families and providers, ensure the program's integrity and ability to deliver quality, necessary services to those in need, and assure taxpayers that their money is being spent wisely and carefully. As we continue to develop these proposals, everyone will have a seat at the table because we are all committed to the same goal.

All of us want the same thing – to provide quality services for those in need through a sustainable, successful program with clear and fair rules of the road for families and providers to follow. This testimony is not intended as an indictment of providers. Just the opposite – they must be important partners in our efforts to keep the program sustainable. This testimony is a call for action towards reform, and we hope the providers will work with us to achieve it. With almost 16,000 persons with intellectual disabilities on the waiting list hoping to enroll into the system and get the services they need, the need for reform is urgent.

Thank you very much for hearing this testimony and we will be happy to take any questions you might have at this time.