



# Building a Stronger System for People with Developmental Disabilities

A Six-Month Progress Report From Commissioner Courtney Burke

October 2011

- Enhancing Workforce Quality
- Preventing Abuse
- Ensuring Safety
- Strengthening Investigations and Incident Reporting
- Partnering with Law Enforcement
- Improving Nonprofit Provider Performance
- Changing Culture: Collective Mindfulness
- Designing More Flexible and Sustainable Systems of Care



**Courtney Burke**, Commissioner  
Office for People With  
Developmental Disabilities



October 24, 2011

Dear Friends and Colleagues:

On April 11, 2011, the New York State Senate confirmed my nomination as commissioner of the New York State Office for People With Developmental Disabilities (OPWDD). In the six months since, OPWDD has undergone many changes, and I am pleased to release this first report chronicling our progress and next steps.

We have engaged individuals, families, employees, advocates, and others, and their guidance, criticisms on deficiencies, and suggestions for best practices have positively impacted virtually every aspect of our operations. Their participation has been essential and greatly appreciated. So much of our system is rooted in the advocacy of parents in decades past—and so is our future.

Some changes were obvious: strengthening our workforce through targeted recruitment and effective training; partnering with law enforcement to clean up our system and ensure that those who abuse individuals in our care are held accountable; and making information more transparent and available to the public. Others were less so, but equally important: standardizing expectations for our vast system of nonprofit providers; and creating a culture of consistent self-evaluation and anticipating future needs.

We are at a critical juncture. I believe it is incumbent on the agency to scrutinize itself. Creating good policies and practices is just part of the obligation—we must also make sure they work, and change direction when they do not. Over the next six months, we will dedicate ourselves to tracking initial reforms, making operations more transparent, and strengthening our entire system.

The 1115 People First Waiver is one significant change taking shape. Simply put, the waiver will give us the ability to meet our vision of providing new flexibility and options for people in our care. Like the community-based residential opportunities that grew out of the Willowbrook scandal in the 1970s, this waiver will empower individuals to decide what services and programs they need to live the life they choose, ending the “one-size-fits-all” approach.

I thank Governor Cuomo and his administration for their support and assistance, and the many members of the public, legislature, and media who have gone to great lengths to ensure that government keeps its commitment to our state's most vulnerable individuals. I look forward to our continued partnership with stakeholders to implement many additional improvements currently in the works, and sharing our progress in the months ahead.

Sincerely,

A handwritten signature in black ink, appearing to read 'Courtney Burke', written in a cursive style.

Courtney Burke  
Commissioner





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## I. Overview of OPWDD System

The New York State Office for People With Developmental Disabilities (OPWDD) is responsible for coordinating services for New Yorkers with developmental disabilities, including intellectual disabilities, cerebral palsy, Down syndrome, autism spectrum disorders, and other disabilities. It provides services directly and through a network of approximately 700 nonprofit service providing agencies, with about 80 percent of services provided by the private nonprofits and 20 percent provided by state-run services.

OPWDD's current organization includes 13 regionally-based Developmental Disabilities Services Offices (DDSOs), as well as the Institute for Basic Research in Developmental Disabilities (IBR). OPWDD was created in 1978 as the Office of Mental Retardation and Developmental Disabilities (OMRDD), an independent cabinet-level state agency, largely because of the need for an autonomous entity to implement the Willowbrook consent decree and the resulting closure and downsizing of institutions. In the decades that followed, it has become one of the state's largest agencies. Individuals supported by this agency and their family members forged a strong working partnership that shaped the way the system grew to support increasing numbers of individuals to live with greater independence in their communities. In 2010, the agency and its stakeholder partners marked an historic milestone for the people they support when New York State changed the agency's official name, eliminating the term "mental retardation" from its new title.

Presently, there are more than 126,000 people with developmental disabilities who receive supports and services, which include Medicaid funded long-term care services such as habilitation and clinical services, as well as residential supports and services, primarily provided in communities across the state. Largely because of intensive treatment needs, about 1,200 people continue to reside in institutional settings such as developmental centers, secure facilities, and residential schools for children jointly operated by OPWDD and the New York State Education Department.

In addition to these Medicaid services, OPWDD also provides New York State-funded Family Support Services, which are designed to assist families in providing care for their loved ones who live full-time in their family home, and employment supports, which include ongoing job coaching, job matching, and vocational training.





## II. Introduction to Six-Month Progress Report

In response to health and safety concerns affecting individuals with developmental disabilities, I was appointed commissioner of OPWDD by Governor Andrew Cuomo in March 2011, and was confirmed to this position by the New York State Senate in April 2011. Governor Cuomo directed me to evaluate the OPWDD service delivery system for its ability to provide quality supports in a safe environment to New York's 126,000 individuals with developmental disabilities.

### REFORM HIGHLIGHTS

- Raised the hiring and training standards for direct support professionals and redesigned the direct support job description and title.
- Instituted zero tolerance for cases of egregious physical and sexual abuse, which includes a disciplinary system that holds staff accountable for their actions.
- Established a centralized Incident Management Unit to follow-up on incidents of abuse and neglect and to conduct analysis of the data.
- Overhauled investigations, including certifying investigators, hiring a lead investigator, and centralizing the function to ensure an independent, unbiased process.
- Creating effective relations with law enforcement to ensure that crimes against people with developmental disabilities are properly reported.
- Began holding providers more accountable for their performance.
- Promoting positive relationships and open communication among individuals with developmental disabilities, OPWDD staff, and OPWDD leadership.
- Instituted efforts to create a positive culture focused on collective mindfulness.
- Began the process of a delivery system redesign to provide more flexibility for individuals and families, and encourage more integrated and person-centered services.

Upon my arrival, my leadership team and I immediately began an assessment to determine how to prevent abuse and implement measures to ensure the safety of individuals in the system. We performed a statewide review of care and oversight, and began targeting regulations, policies, and practices that did not uphold OPWDD's goal of providing the best and safest services possible. As a result of this review, we have instituted widespread reform initiatives.







### III. Workforce Reforms

Direct support professionals assist individuals with developmental disabilities with daily activities, including accessing community life. Soon after my appointment, I held a series of listening tours around the state, and one thing I heard time and again from individuals, family members, and others is that the direct support professionals who assist individuals with developmental disabilities are often among the most important people in their lives. To raise the bar and ensure that people served by OPWDD have access to trained, competent, and caring staff, this administration increased the qualifications required of state staff and is implementing a comprehensive plan that provides OPWDD's direct support professionals system-wide with the resources they need to be successful.

#### **Established Minimum Qualifications for Direct Support Professionals**

The hiring standards for all state direct support applicants were raised effective April 2011. New hires must have at least a high school diploma or its equivalent and undergo pre-employment psychological and fitness testing, mandatory drug testing, state and federal criminal background checks, and be vigorously vetted against the Statewide Central Registry of Child Abuse and Maltreatment and the Medicaid Excluded Provider Registry.



The direct support professionals who assist individuals with developmental disabilities are often among the most important people in their lives.

#### **Background and Reference Checks**

To supplement existing background checks, OPWDD now consistently verifies education, credentials, and past employment references for every job applicant. Also, while past practice was such that employees could be rehired after resigning or being terminated over abuse allegations, this has now been expressly forbidden. OPWDD is working with the New York State Department of Civil Service to ensure that employees who have been terminated or resigned because of abuse allegations are not included in the pool of potential candidates certified by Civil Service for direct care positions.



### **Added Requirements for OPWDD Employment**

- Background check on all previous state employment
- Employment references for a minimum of 7 years
- Drug test
- Psychological assessment
- Medical examination
- Agility test
- New York State Nurses Aide Registry background check
- New York State Sex Offender Registry background check

### **Attracting Talented Candidates for Direct Support Positions**

In order to reach a broader candidate pool, OPWDD developed a recruitment campaign focusing on positive relationships, respect, commitment, and ethical behaviors. The focus will be to recruit candidates with diverse backgrounds and experiences to work in state direct support positions with OPWDD. A major component of increasing the quality of the agency's state workforce comes from new and innovative partnerships with academic programs throughout the state. OPWDD is working with the state's Higher Education Opportunity Program (HEOP) to develop a plan in which college students in the program receive support and take the Civil Service exam during their junior year. Once implemented, OPWDD will use this partnership model to expand to other state and educational programs, such as the State University of New York's (SUNY) Education Opportunity Program (EOP), and New York State's Boards of Cooperative Educational Services (BOCES).

### **Competencies for All Direct Support Professional Staff and Supervisors**

The newly established New York State Developmental Disabilities Talent Development Consortium, comprised of OPWDD staff, stakeholders, and national experts, is charged with developing a uniform set of core competencies and training standards for all direct support professionals and their supervisors system-wide. This will enhance the quality of supports and services while ensuring consistent standards across the entire system. The consortium's work is expected to be completed by the end of 2011, with full implementation to follow.

#### **Core competencies include, among others:**

- Supporting the individual's unique capacities, personality, and potential
- Building and maintaining meaningful relationships
- Supporting the individual's vocational, educational, and career goal attainment
- Crisis prevention, intervention, and resolution skills
- Recognizing and reporting abuse immediately
- Cultural awareness and sensitivity
- Ethics

By raising hiring qualifications, recruiting a stronger workforce, and developing a set of uniform core competencies for all direct support professionals and supervisors, OPWDD has set a new standard of excellence. The new tools and procedures created will provide OPWDD employees across the system with the resources they need to be successful.



## IV. Health and Safety Reforms

In response to a series of reports highlighting OPWDD weaknesses in services oversight, OPWDD established a specialized unit in April 2011 to manage incidents on a statewide basis and involve law enforcement more directly in the prosecution of crimes. The agency now seeks the termination of any employee found guilty of egregious abuse or neglect, and will not settle for a lesser penalty in arbitration proceedings.

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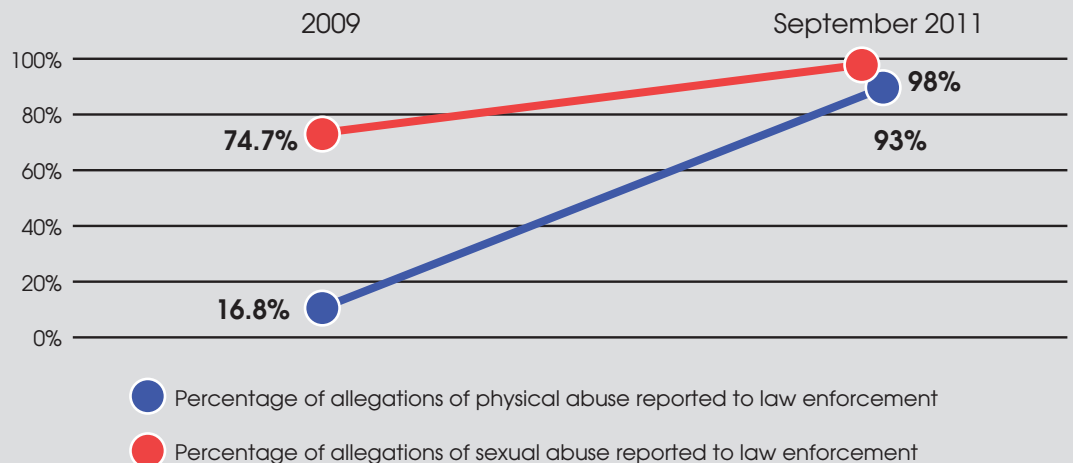
An incident of physical abuse is now over **five times more likely to be reported** to law enforcement than two years ago.

### Protocol for Reporting Possible Crimes

In March 2011, OPWDD issued a memo to all providers that they were required to immediately report all incidents of physical abuse and sexual abuse to law enforcement.

The percentage of allegations of physical abuse reported to law enforcement increased from 16.8 percent in 2009 to 93 percent in September 2011, meaning that an incident of physical abuse is over five times more likely to be reported to police now than two years ago. During this same period, the reporting of all allegations of sexual abuse increased from 74.7 percent to 98 percent.

Percentage of Abuse Allegations Reported to Law Enforcement



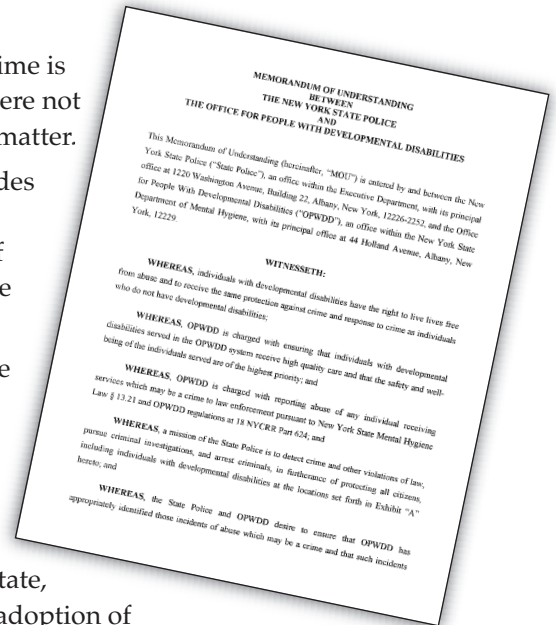


### Partnership with State Police on Abuse Reporting

In August, a joint agreement with the New York State Police was announced regarding a new protocol for reporting abuse to police whenever a possible crime is committed. In the past, incidences of physical abuse that constituted crimes were not consistently reported to police agencies and were often viewed as an internal matter.

The agreement between the State Police and OPWDD, for the first time, provides clarity and consistency in reporting potential crimes against individuals with developmental disabilities to law enforcement. It clearly identifies the types of incidents that warrant a criminal investigation. The agreement also ensures the training of State Police Academy recruits.

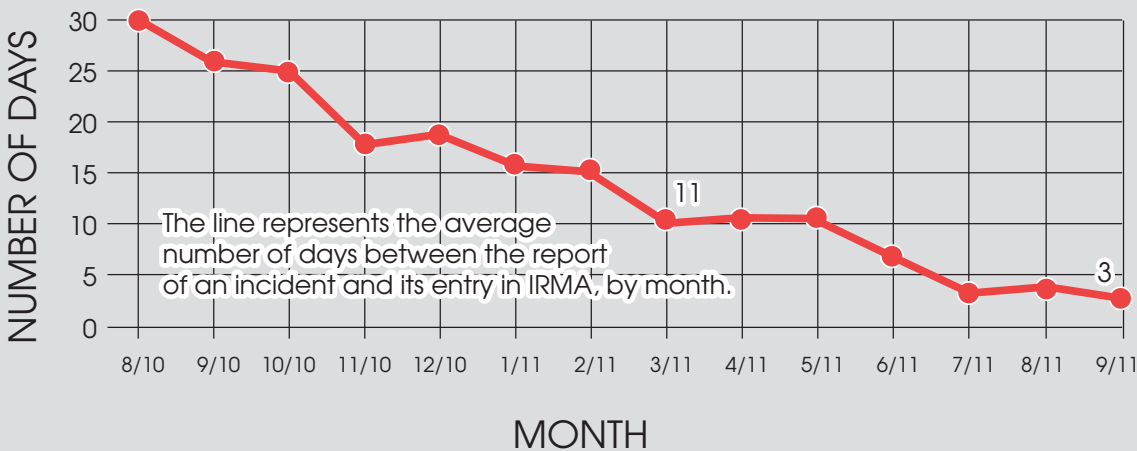
OPWDD will provide State Police Academy training to recruits and other State Police members on OPWDD services and the challenges of interviewing witnesses and investigating crimes committed against individuals with developmental disabilities. A member of the State Police Bureau of Criminal Investigation Special Victims Unit now serves as a liaison with OPWDD on police matters. OPWDD has also contacted other law enforcement entities to enlist their support to reach out to local law enforcement agencies across the state, inform them of the new protocol for reporting possible crimes, and aid in the adoption of localized protocols. To date, these agencies include the NYS District Attorneys Association, NYS Association of Chiefs of Police, New York City Police Department, NYS Inspector General, Office of the Medicaid Inspector General, Attorney General's Medicaid Fraud Control Unit, and the Albany County District Attorney.



### Centralized Incident Management Reporting

OPWDD's Incident Management Unit (IMU) was established in April 2011 to provide real time oversight of critical incident management across the state. The unit ensures appropriate protective measures are taken, including required notifications to law enforcement when appropriate. The IMU also works in conjunction with the agency's Office of Investigations and Internal Affairs and the Office of Employee Relations for a strong, coordinated response to any abuse allegation or serious incident that may occur.

The Incident Report and Management Application (IRMA) is a secure web-based statewide database for consistent incident reporting used by both the state and nonprofit providers in the OPWDD system. Each entry in IRMA includes an initial description of the incident and notes



**Time Taken to Enter Data into IRMA**



protections put in place for the individual. Information about the investigation, follow-up, and any corrective measures taken are also part of the record. Previously, IRMA was underutilized, and data entry into the system was inconsistent and often lacking detail. OPWDD issued a memorandum to all providers in May 2011 mandating IRMA training. From March 2011 to September 2011 the average amount of time it took a reported incident to be entered into the IRMA system decreased from over 10 days to 3 days: a dramatic decline of 70 percent over the course of just a few months.

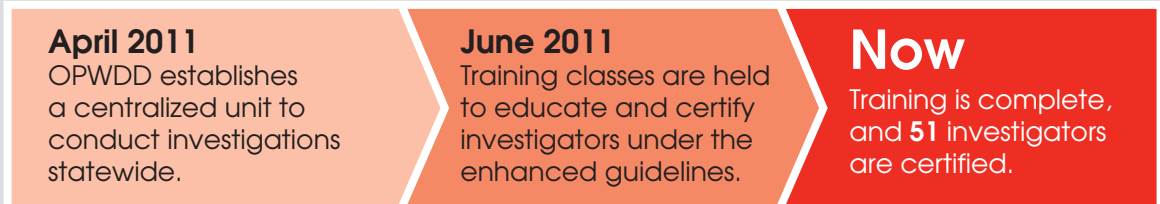
In October 2011, OPWDD issued an administrative memorandum, which will be followed up with a proposed regulation that mandates the use of IRMA for the reporting of all allegations of abuse. There are additional requirements that mandate the reporting (data entry) to occur within 24 hours (or next business day) of occurrence or discovery of serious reportable incidents and allegations of abuse. There are also requirements for monthly updates and incident closure.

**Strengthened Investigations**

OPWDD’s Centralized Investigation Unit (CIU) was established in April 2011 to ensure both the independence of investigations and standardization of their processes and outcomes in state operated programs. A director of investigation with a distinguished background in law enforcement was hired to lead the unit, and regional interim directors have been designated to facilitate “arms’ length” investigations.

A new training program for incident investigators was developed in June 2011, and new policies and procedures govern how investigations are conducted to ensure both their integrity and consistency. As of September 2011, a total of 51 investigators have been trained and certified; additional trained and certified investigators are being hired. New policies and procedures were devised for an investigative format that ensures consistent information gathering and report writing. OPWDD is also creating a data system that will thoroughly document investigative processes and outcomes.

**Centralized Investigations Transformation Timeline**



To facilitate independence, all investigations involving physical and sexual abuse that occur in state operated programs will be handled by the CIU. In addition, OPWDD recently issued regulations effective November 1, 2011 that enhance the requirements related to the independence of investigators for serious reportable incidents and allegations of abuse.

**Established New Fire Safety Plan**

Responding to concerns over the adequacy of fire evacuation plans and weaknesses in fire prevention efforts, OPWDD enlisted the services of the Office of Fire Prevention and Control (OFPC) through a June 2011 Memorandum of Understanding (MOU). Beginning in January 2012 at OPWDD’s state operated homes and in OPWDD’s nonprofit operated homes soon thereafter, OFPC will conduct fire and Life Safety code inspections. Under this important new agreement, OFPC will also develop a fire safety training curriculum, review evacuation plans, conduct fire drills and safety programs, and review vendor contracts regarding the testing and maintenance of fire safety equipment. OFPC will also act as a liaison for OPWDD with local fire departments and provide fire investigation assistance.



On October 7, 2011, OPWDD issued an administrative memorandum standardizing fire safety practices at all state and nonprofit homes. It codified prior recommendations on:

- Smoking policies.
- Unannounced observations of evacuations and fire drills.
- Instructions relating to fire department notification.
- More extensive instructional documents on fire evacuation plans.
- Minimum requirements on fire safety training and drill reporting.

Because these were not mandated previously, practices were inconsistent. They are now mandatory, and will take effect January 2012.

These actions—centralized investigations and incident management, a new protocol for reporting crimes, partnership with law enforcement, and new fire safety plan—form an aggressive response designed around fixing weaknesses identified through both routine reviews and in response to publicized issues. One thing that is certain is that OPWDD has learned from these experiences, and has brought this knowledge to bear in revolutionizing health and safety protections for individuals with developmental disabilities in New York State.



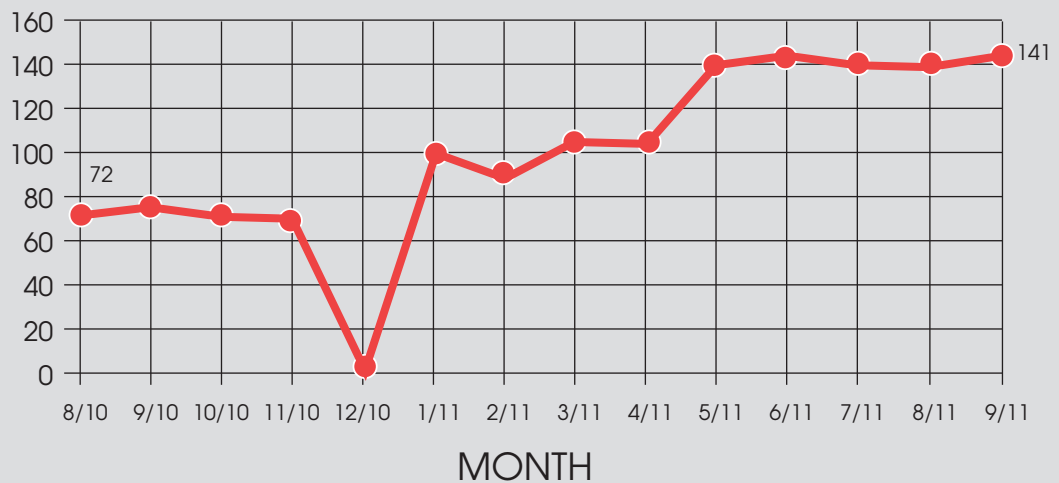
## V. Holding Employees Consistently Accountable

### Strengthening the Disciplinary Process

The disciplinary review process for the agency has been restructured, streamlined, and centralized through a new statewide disciplinary panel, which enhances consistency and simplifies administration. OPWDD has also enhanced employee supervision to provide greater awareness, training, and feedback for employees with performance issues. In substantiated cases of physical and sexual abuse, an employee is now suspended without pay, ending the previous practice of providing leave with pay. For the seven months prior to March 2011, 69 OPWDD employees on average were on suspension without pay on a monthly basis. From March-September 2011, the average rate rose to 130 employees suspended without pay, reflecting the increased use of unpaid leave as a disciplinary measure.

### Employee Suspensions Per Month

Due to Increased Use of Unpaid Leave as a Disciplinary Measure



### Utilizing Unpaid Leave When Seeking Termination

For the seven months prior to March 2011, the average monthly rate of employees suspended without pay was:

**69**

From March to September 2011, the average monthly rate of employees suspended without pay reached:

**130**

This represents an 88% increase in the use of unpaid leave in disciplinary cases.



### **Consistent Application of Penalties Ratified in CSEA Contract**

As a result of the collective bargaining agreement struck between Governor Cuomo and the Civil Service Employees Association (CSEA), New York State will establish a set framework of arbitration-defined penalties for serious types of abuse and neglect, and also for lesser infractions that may include mitigating circumstances that can provide for progressive discipline. This table of penalties will ensure that OPWDD will be able to discipline employees appropriately for instances of egregious abuse, thereby encouraging good employees to report abuse.

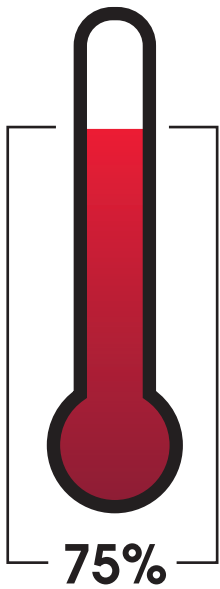
Strengthening the disciplinary process and establishing a consistent set of penalties will ensure that bad employees receive the appropriate level of discipline, and will enable employees to feel comfortable and confident in reporting abuse or neglect. OPWDD's zero tolerance for abuse and neglect guides this important reform and puts the people OPWDD supports first.





## VI. Building Better Relationships through Cultural Change and Transparency

### Taking OPWDD's Temperature



75% of homes have been visited at least once during one of the 1,100 unannounced visits conducted by OPWDD.

Since March 2011, OPWDD regional directors and deputy directors have conducted over 1,100 unannounced site visits to programs that serve individuals with developmental disabilities throughout the state. These visits were ordered to emphasize oversight and safety, and promote open communication among staff, individuals with developmental disabilities, and local leadership. The visits provided an opportunity to assess the physical condition of homes, service provision, and how well employees know how to report abuse. To date, over 75 percent of homes have been visited at least one time. To improve organizational change in the service system and support abuse prevention and the reporting of abuse when it does occur, a team, which includes direct support professionals, has been formed to comprehensively address culture change from all levels.

### Training on Positive Relationships

All 23,000 OPWDD employees attended a mandatory training in June to reinforce principles of individual respect, dignity, and professional ethics around supporting people with developmental disabilities. This training has also been made available to the nonprofit provider agencies regulated by OPWDD. Regulations effective November 1, 2011 will require annual training of all state and nonprofit provider staff in promoting positive relationships and in abuse reporting requirements.

### Positive Relationships Offer More Opportunity to Everyone (PROMOTE) Training

OPWDD has been developing a new staff training curriculum to address challenging behaviors of individuals with developmental disabilities by fostering positive and functional relationships, environments, communication, and respect to reduce the likelihood of challenging behaviors.

PROMOTE teaches staff the necessary skills to ensure the health and safety of both the individuals served and staff alike. The training will provide staff the necessary tools to increase an individual's self-confidence, connections to others, and opportunities for recreation and relaxation.

# 23,000

Every one of OPWDD's 23,000 employees attended a mandatory training to reinforce principles of individual respect, dignity, and professional ethics.

PROMOTE has undergone an extensive review and pilot process. Once completed, it will be made available to instructors, who will then train other instructors and staff. It is expected that PROMOTE training will be made available to all direct care professionals across the system beginning in the spring and summer of 2012.

### ***I Spoke Out Campaign***

The *I Spoke Out* campaign serves as a reminder to employees of OPWDD's policy on abuse and neglect, and the obligation of all employees to speak out when they witness or suspect abuse or neglect. The campaign was rolled out through a commissioner's web message, statewide newsletter, posters, and wallet cards. Since the campaign's inception, information on the need to report abuse and neglect and the avenues through which reporting is to occur have reached every employee at least three times. More than 5,000 posters with contact information have been distributed, as well as more than 10,000 cards with contact information for reporting that employees keep in their purse or wallet. The materials contain hotline numbers (including TTY) for both OPWDD and the Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD). OPWDD is committed to helping employees feel comfortable and confident in reporting abuse or neglect. Public service announcements are being devised to continue this campaign.



“It takes just one person speaking out against abuse and neglect to ensure that individuals with developmental disabilities live their lives with the dignity and safety every person deserves.”

—Commissioner Burke



### **Ensuring Every Employee's Voice is Heard**

Opening the lines of communication among all OPWDD employees is critical to making the reforms of the first six months work.

OPWDD conducted an anonymous employee trust and safety survey in June 2011 to research organizational culture change, and to get a sense if employees feel they have the supports and resources they need to foster abuse prevention and reporting. The survey focused on the knowledge of staff to understand abuse and reporting, and why the agency has a history of non-reporting.

The responses collected suggested that concerns over retribution, or being identified as an informer by coworkers were common reasons why a staff member may hesitate to report observed or suspected abuse. The survey findings affirmed the need for broad-based culture change and the urgency in which the agency must rebuild the trust of its employees to ensure that they feel protected. Employees had several suggestions on how to regain their trust, which have been guiding factors in recent reforms and in initiatives being launched over the next six months.



**Responses to:**  
“What change would demonstrate that OPWDD is sincere in empowering staff in ensuring the safety of individuals?”



### Empowering Individuals and Families

Empowerment for individuals and families is a critical part of OPWDD’s system reform strategy. This is necessary for people to make informed choices as individualized supports and services throughout the communities of New York State continue to grow. Individuals and their family members need easy access to resources and information, a network of advocacy supports, and reliable provider information. To that end, advances in transparency and interactivity are key and have been detailed throughout this progress report.



OPWDD now publicly discloses organizations receiving public funds that have had substantial issues maintaining quality services and /or fiscal viability. [www.opwdd.ny.gov](http://www.opwdd.ny.gov)

### Developing a Stronger Communications Platform

OPWDD has committed to making it easier for stakeholders to provide their input, as well as using new ways to distribute information to people with developmental disabilities, families, provider agencies, and OPWDD staff members. The agency’s commitment to obtaining feedback from stakeholders has most recently taken the form of listening sessions and public forums conducted around the state. Other new key communication efforts include:

**Social Media:** OPWDD is using its Facebook page to distribute press releases, and to share stories about individuals supported by OPWDD and the employees who have dedicated themselves to this service. The Facebook page went live in July and has received more than 100,000 unique visits in two months. OPWDD has also launched a YouTube channel, which is used to distribute training opportunities and timely information about relevant topics and initiatives.



OPWDD has opened up its lines of communication by creating new opportunities to leave comments or ask questions on any topic.

Email: [People.First@opwdd.ny.gov](mailto:People.First@opwdd.ny.gov)

Phone: 1-866-946-9733 or (TTY) 1-866-933-4889

**Newsletter:** OPWDD has re-launched an agency-wide newsletter for OPWDD employees, individuals, and stakeholders called *People First*, which shares information about administrative reforms and initiatives. The newsletter also contains statewide and local information and stories. Much of the content is driven by the workforce.

**Weekly Communication:** OPWDD has prioritized communication throughout the agency, and commissioner's weekly messages on important updates are sent to all stakeholders and the workforce.





## VII. Improving Provider Performance

OPWDD's network of nonprofit providers is critical to our ability to carry out services for individuals with developmental disabilities. Nearly 80 percent of developmental disability services statewide are provided through the nonprofit providers OPWDD regulates. OPWDD has an obligation to provide consistent oversight, as well as consistent accountability standards and other supports, to help our nonprofits succeed. We also have the responsibility to hold those nonprofits that fail to meet our expectations and compromise the health and safety of individuals in their care accountable.

Providers were notified in June 2011 that New York State Law allows OPWDD to take adverse actions against providers that have failed to comply with the law and OPWDD regulations. These actions could include the imposition of a fine up to \$15,000 per violation to revocation of their operating certificate. Oversight reforms included a revamping of the agency's Early Alert program, which audits nonprofit provider agencies' fiscal, governance, and compliance matters; identifies weaknesses; and requires the nonprofit agency to make corrective actions.

### **Restructured Early Alert Committee and Made Process Transparent**

In July, OPWDD substantially restructured its Early Alert committee (first formed in 1998). The committee members bring together a variety of responsibilities and viewpoints to strengthen statewide oversight of the service system by assessing providers for program, fiscal, or governance deficiencies.

The purpose of the committee is to monitor the operational status and performance of nonprofit developmental disabilities service providers. Initial recommendations, such as technical assistance, are made by the committee to help resolve the issue the nonprofit agency is facing. If circumstances do not improve or continue to deteriorate, the committee can make recommendations for significant adverse actions including: disallowing further development or expansion of services by the agency, levying fines, terminating fiscal agreements under which the agency provides services, or transferring the licensing auspice of one or more certified sites to a different provider agency.

Currently, there are 13 nonprofit providers on Early Alert status. Two additional nonprofit provider agencies have been removed from the Early Alert list for quickly remedying deficiencies OPWDD brought to their attention. In some other cases, nonprofit providers that have not shown improvement have had a reduction in the number of programs they provide, or have been notified that they will no longer be providers in the OPWDD system.



## **Leveraging Mental Hygiene Law for the First Time**

State Mental Hygiene Law allows for the imposition of fines to address failures to comply with the terms of an operating certificate or with the provisions of any applicable statute, rule, or regulation. Failures that could result in levied fines include:

- Improper incident management.
- Failure to protect program participant health and safety.
- Failures in the consistent provision of fire safety.
- Significant failures to maintain an appropriate physical environment.
- Failures in facility operations.
- The imposition of limitations on individual rights without clinical justification.

On September 16, 2011, OPWDD leveraged this section of Mental Hygiene Law for the first time, and began issuing fines. To date, four nonprofit providers have received fines ranging from \$1,000 to \$5,000.

## **COMPASS: Showcasing Exceptional Providers**

COMPASS is an OPWDD initiative that supports and recognizes provider agencies that have progressed beyond regulatory compliance and achieved excellence in service delivery. Agencies admitted to the COMPASS program achieve and promote quality through internal assessment rather than external review. Instead of concentrating efforts on “passing” a periodic re-certification inspection, the agency implements a continuous improvement effort to identify opportunities and solutions. To the state, this means a partnership in a shared vision of excellence that fosters quality improvement throughout the service system. Recognizing the value of the COMPASS program, OPWDD has intensified its efforts to encourage more agencies to work toward a COMPASS designation. There are currently four agencies progressing toward this goal, a potential 50 percent increase in the program. Current COMPASS agencies have been used by OPWDD to help with development and piloting of revised survey protocols that include indicators of quality services. We have also highlighted the COMPASS program on our website.

## **New Approval Process to Become an OPWDD Provider Agency**

OPWDD has developed a statewide standardized, objective process for approving new providers. In the past, each DDSO had its own process and consistent standards were lacking for reviewing potential new agencies. Once approved for funding, many new agencies needed a great deal of support to get started and OPWDD staff provided that support. But with fewer state staff available to assist new providers, it has become increasingly important to ensure that agencies approved to provide services have the program and business acumen to be successful from the start.

Under the new process implemented by OPWDD in October 2011, each interested agency is required to complete a detailed application that provides information on program, governance, and fiscal capabilities. The application is reviewed and scored by the DDSO and OPWDD's Division of Quality Management (DQM), based on standardized criteria. The applicant agency must receive a satisfactory score in three of the four sections, plus reach an overall threshold score to be considered for OPWDD funding opportunities. Interested agencies that do not receive a passing score are provided with a checklist of areas where improvement is needed and may resubmit an application when improvements are made. In addition, agencies that are strong programmatically but weak fiscally are encouraged to partner with established existing agencies. This new process of tightening standards for new agency approvals will ensure that only providers that are both programmatically and fiscally sound and whose missions are consistent with OPWDD's are considered for OPWDD funding.



## VIII. Next Six Months

Although tremendous progress has been made in the first six months of my tenure, there are more opportunities for improvement. Ensuring consistent implementation of initial reforms, tracking their success, and promoting better support techniques for those tasked with carrying out reforms are critical. Additionally, better management of overtime and shoring up fire safety in group homes are among OPWDD's top priorities for November 2011 to May 2012.

In addition, Clarence Sundram, special advisor to the governor on vulnerable persons, will soon be releasing a comprehensive report that evaluates and provides recommendations on state programs related to the protection, safety, and quality of care of vulnerable persons. His recommendations will review how all state agencies delivering human services operate and can improve care. OPWDD will work closely with Mr. Sundram on implementing change and developing broader reforms based on his report.

### **Continuing to Implement Health and Safety Reforms**

#### **Improve Supportive Behavior Management**

In order to promote a more supportive environment for the individuals served by OPWDD, the agency will be issuing new guidance and regulations to direct how employees manage challenging behaviors of individuals with developmental disabilities. This behavior management philosophy utilizes positive approaches such as providing access to preferred activities and items, or providing choice-making opportunities. Communication, anger management, behavioral self-management, relaxation, and social skills are common focus areas designed to help an individual develop appropriate and healthful behaviors.

#### **Following Every Individual's Care Plan**

Every individual in OPWDD's system has an individualized care plan that is reflective of their disabilities, abilities, physical, medical, and other needs. It is crucial that these plans be followed carefully, as one mistake can mean the difference between life and death. OPWDD is in the process of collecting data on past incidents and tragedies, such as drownings, to track how care plans have been followed. The agency's electronic reporting system (IRMA) will allow for the tracking of statistical trends. OPWDD will identify where failures have occurred and what specific types of trainings, discipline, and supervisions are necessary so all individual care plans are fully complied with.

#### **Enhancing Fire Safety**

OPWDD has implemented several positive changes since the tragedy of the Wells fire in 2009, which took the lives of four individuals in a state run group home. Key among these was the agreement with OFPC to provide oversight and external control of the agency's fire and Life Safety practices. However, much more progress must be made to ensure the safety of individuals in every state and nonprofit home.

Over the next six months, several initiatives will come to fruition, including consistency of practice among state and nonprofit providers, and continuing upgrades to the fire safety features of existing homes, such as fire alarm and sprinkler systems. In November/December 2011, we will convene a group of state and national experts in fire safety and construction to review existing homes. A uniform fire drill and evacuation report will be implemented in November 2011, as well as a fire event reporting format, which will enhance access to information and trends and help direct support to the appropriate locations. Both reports will be online applications for the first time.

Site inspections for code compliance at OPWDD certified residences by OFPC staff will also commence in January 2012. These inspections will begin at the same time OPWDD finalizes a comprehensive training plan, led by fire safety experts, for all OPWDD staff. This training will also be made available to the nonprofit providers.

### **Coordinating with Law Enforcement**

Similar to the agency's agreement with State Police, the Investigations Unit is working closely with local law enforcement agencies and district attorneys statewide to develop additional protocols for reporting potential incidents and an effective coordination plan for carrying out investigations. In addition to finalizing these plans, over the next six months OPWDD will develop familiarization and training programs for police officers, prosecutors, and OPWDD personnel.

A meeting with the New York State District Attorney's Association to discuss protocols and training opportunities is scheduled for November; similar discussions will occur at the February 2012 meeting of the New York State Association of Chiefs of Police.

Good policy cannot replace good judgment.



### **Safety Culture and Collective Mindfulness**

OPWDD is actively engaged in a variety of activities to create a sustainable culture of safety, dignity, and respect that is based on the agency's mission, vision, and values. This is a multi-year process based on the principle of collective mindfulness: recognizing the responsibility each of us has to support those around us, identify weaknesses, and work together on our common goal of enriching the lives of people with developmental disabilities.

While reform efforts over the last six months have moved OPWDD in the right direction, true and lasting systemic reform can only be achieved through a change in the agency culture. Good policy cannot replace good judgment. All levels of the organization will be engaged in providing input and developing ways to ensure the agency's commitment to enrich the lives of people with developmental disabilities is understood, and shared, by all. OPWDD will also engage its stakeholders in this ongoing effort.





### **Develop and Implement Consistent and Appropriate Individual Overtime Management**

When used in emergency situations such as the recent flooding in upstate New York, overtime is a valuable tool to safeguard people receiving OPWDD services. However, when staff work long hours or a continuous number of days without a break, it can put the health and safety of individuals at greater risk and contribute to abuse, neglect, and other forms of staff misconduct as employees become fatigued and strained.

To address this issue, we have called for a formal tracking process which monitors how often OPWDD's state employees work overtime, and the amount of consecutive days and the number of shifts they are working. Specifically, OPWDD is tracking three specific outcomes:

1. Staff working greater than 32 hours (four shifts) of overtime in any two-week pay period.
2. Staff working greater than 16 consecutive hours (two shifts) on any occasion.
3. Staff working greater than 7 consecutive days within any two-week pay period.

By reviewing each employee's overtime record, OPWDD can ensure that staff are being assigned a reasonable workload. Rather than giving extra hours to employees who volunteer for them, overtime opportunities will be distributed to the workforce equally and used as a last resort. Before offering overtime, the DDSOs will implement other strategies to ensure adequate staff coverage such as:

- Giving extra hours to part-time employees;
- Using per diem substitute workers; and
- Reassigning extra staff from other work locations.

Each DDSO is expected to better manage individual overtime and there will be regular assessment on OPWDD's efforts in achieving this outcome.

## **Effective Communications**

### **Health and Safety Alerts**

As part of OPWDD's culture change initiative on collective mindfulness, on November 1, we will launch health and safety alerts designed to keep individuals and employees throughout the system informed.

These regular notices will bring attention to general health and safety matters, and also keep stakeholders throughout the system informed of incidents and accidents. One of the greatest challenges of any work environment is that people too often grow comfortable in their daily routine and do not recognize when safety is compromised.

OPWDD's health and safety alerts will use real examples to inform people of dangers, and keep people informed of expectations, regulations and practices to follow, and available resources.

### **A Provider Performance Report Card for Individuals and Families**

An upcoming initiative to be launched in three phases is the establishment of online "report cards" for every one of the more than 700 nonprofit providers in OPWDD's system. For too long, information about services has been closed to the public, with individuals and families lacking critical information about service and programmatic deficiencies within nonprofit finances, governance, and compliance matters. Nonprofit providers providing great services were not differentiated from those failing to meet OPWDD's standards.

The information in these report cards will be publicly posted in three phases:



1. Initially demographic data will be posted about each agency, including the services and supports they currently provide. This is expected in November 2011.
2. The second phase will be the introduction of performance data in the areas of protections and quality of services, which is expected for January 2012.
3. The third phase will be information outlining the agency's fiscal stewardship.

These report cards are another step OPWDD is taking to enhance transparency and accountability. Individuals and family members must be able to access information about available supports and providers so that they can make informed choices. These report cards will help people navigate the system and raise the bar for all nonprofit providers within OPWDD's network.

### **Comprehensive Email System for OPWDD Employees**

As of April 2011, more than one-quarter of the agency's workforce (7,000+ employees) had not been provided an email account or basic Internet access. Communicating with these workers, who are often in homes that can be secluded from central operations, was virtually impossible. OPWDD has implemented a plan to provide every employee basic email and Internet access by December 1, 2011.

### **Annual Progress Report**

Starting in 2012, OPWDD will be releasing an annual report to ensure the agency continues to monitor its progress, deficiencies, future needs, and best practices. The report will track reforms already implemented and highlight key initiatives the agency will prioritize for the near future.

### **Ensuring Meaningful Use and Enforcement of Regulations**

Despite releasing potentially thousands of regulations over the decades, OPWDD currently has no established review plan in place to ensure that regulations are up-to-date and not contradictory. In concert with a planned redesign and overhaul of the OPWDD website, the agency will align all regulations to reflect reform initiatives and implement systematic regulatory review to ensure all regulations are current, effective, and meeting their initial intentions. In an effort to effectively communicate regulations with impacted parties, all regulations will be easily accessible and searchable on the agency's new website, pending a 2012 launch.

## **Tracking Progress**

### **Performance Metrics**

Performance metrics to track OPWDD's health and safety reforms have been identified and are being implemented through an increase in the scope and completeness of agency systems data. A particular achievement is the total redesign and upgrade of IRMA, a core component in the analysis of safety, quality, care, and support for both state and nonprofit providers. Similar efforts are already underway collecting data documenting reforms around workforce hiring and staff management (such as controlled use of overtime). In addition, a new investigations database is being designed to better monitor both process and outcomes of every reported case. These innovations will result in a newfound ability to crosswalk agency data systems. This is the only way to uniformly track and evaluate outcomes along the four agency mission domains of home, employment, health and safety, and personal relationships.

In this manner, OPWDD can monitor that resources are being directed appropriately to improve



quality and individual satisfaction. The final plank in this metrics framework is an annual collection of statewide consumer satisfaction data through the National Core Indicators project. For the past three years, OPWDD collected one of the largest samples nationwide, giving the agency the ability to make regional comparisons and generalize findings to different service categories and demographic groups. OPWDD is also one of the few states that trained and hired self-advocate interviewers to administer its consumer survey, representing a strong commitment to participatory action research.

### **Consistent Reform Implementation Statewide**

Many of OPWDD's reforms will be successful because of new, centralized oversight. However, others are dependent on a consistent application across all of the agency's regionally-based DDSOs.

For instance, in the past, each DDSO was provided the flexibility in determining its own hiring and disciplinary standards. The reforms implemented in the first six months of this administration ensure that some autonomy remains with DDSOs but that basic guidelines must be adhered to. OPWDD will be tracking all new state hiring standards, including mandatory drug and psychological testing, background and employment references, and other factors. Consistent training, expectations, and supports for every state and nonprofit provider employee in direct care will occur across DDSOs for the first time in the agency's history. Individuals in OPWDD's care should never be concerned that one DDSO's workforce is more or less qualified than a neighboring DDSO to meet the challenges of this profession.

Among the many reforms OPWDD will be tracking for consistent application include, but are not limited to:

- Reporting of incidents of abuse and neglect;
- Notifying State Police and legal authorities of potentially criminal incidents;
- Fire safety and evacuation plans at all state and nonprofit group homes;
- Consistent and effective communication of the agency's values, vision, goals, reforms, and expectations to the entire workforce;
- Termination of employees who commit egregious acts that compromise the safety of individuals in our care; and
- Consistent discipline for all employees.

### **Overseeing Hiring Reforms**

OPWDD staff are designing audit tests that will evaluate the implementation of workforce reforms, including revised hiring practices. These audits are expected to be complete and in practice by the end of 2011. Any deviation from standardized hiring practices will be identified immediately and corrective action taken with any hiring authority that has not consistently followed OPWDD's strengthened hiring practices.





## IX. Long-Term Vision and Values

OPWDD's current operations represent 30 years of progress, but progress that has been drawn out of a system designed at a time when people with developmental disabilities were segregated from the rest of society. This administration is committed to a long-term vision that:

- Measures quality of care based on an individual's personal outcomes.
- Empowers individuals and family members to make choices.
- Provides the most person-centered, integrated services possible.

Today, while personal health and safety remain paramount, they are no longer alone on the list of essential outcomes for individuals. We know that people with developmental disabilities belong in the community, contributing, achieving, and living with the respect and dignity that comes from maximum independence. At present, however, OPWDD's service system is a legacy system, one that invested heavily in bricks and mortar—real estate. While these developments helped support more people to live in the community and funded important services, efficiency in the system has become difficult to track.

### **Measure Quality Based on Individual Outcomes and Agency Performance**

Everyone's plans, hopes, and goals are unique, and personal outcome measures are a way to ensure that each individual served by OPWDD is receiving effective support that they want and need. In addition to OPWDD's own standards regarding health, safety, and quality, each person's definition of quality will be incorporated into their personal outcome measures to provide individuals with control and choice.

### **Individual and Family Empowerment**

Individuals and families must have the level of involvement they desire, and greater control over their services and planning. By allowing individuals to discover their natural gifts, encouraging informed choice and person-centered planning, and providing information and support to individuals and families, OPWDD will ensure that individuals and their families are empowered to make sound decisions about their lives.

### **Person-Centered and Integrated Services**

While individuals, families, and other advocates want more person-centered services integrated in the community, the system is organized in a way that does not necessarily allow the flexibility and innovation needed to address these individual hopes and dreams. The People First Waiver described below will allow greater responsiveness to the needs of individuals.

## 1115 People First Waiver

### A System Redesign

An 1115 waiver is available to states from the federal government for demonstration purposes (demonstrating how new programs, services, and means of operating can improve the overall system).

Having made tremendous progress in shifting the focus of service provision from institutions to community settings for the majority of people served, OPWDD's service delivery infrastructure—created to support institutional care—has reached the limits of its effectiveness at advancing community-based supports. Providing person-centered, community-based services to those who still remain in institutional settings has become increasingly constrained by the limits of an outdated administrative and fiscal model.

At the same time, both New York State and the nation are engaged in comprehensive reform of public health care and establishing new administrative structures for delivering federally supported services. These realities, along with the urgency of New York's current fiscal climate, have set the stage for a foundational change that will allow New York to once again move forward to achieve new standards of performance, efficiency, and accountability in how it supports individuals with developmental disabilities and their families. To this end, OPWDD, along with its many stakeholders, is crafting far reaching system reforms through the development of a new federal waiver for providing comprehensive services for people with developmental disabilities: New York's People First Waiver.



The People First Waiver is a timely, unique opportunity to advance to the “next generation” of person-driven service delivery.



### How It Works

OPWDD's new People First Waiver provides New York State a timely, unique opportunity to advance to the “next generation” of person-driven service delivery and funding efficiency. The People First Waiver will facilitate New York's move to coordinating comprehensive care that finally minimizes cross-system silos and delivers holistic, need-driven supports of all kinds, making them easily and equally accessible to individuals with developmental disabilities across the state.

At the same time, it will allow OPWDD to make programmatic improvements that the current system will not support: improvements that will ensure the system appropriately identifies each person's needs for services and targets resources toward their desired outcomes, rather than “one-size-fits-all” services. And finally, the new waiver will drive the cost curve down as it transitions today's outmoded and inefficient delivery system to a managed care model that incentivizes innovative, person-centered care, minimizes state delivered services, and supports OPWDD's development of new types of effective, but lower cost community-based services.



Over the past six months, the waiver design process engaged individuals with developmental disabilities, family members, service providers, staff and leaders from OPWDD and several other state agencies, as well as noted experts in developmental disabilities service delivery. There have been ongoing opportunities for public participation, beginning with my listening tour around the state and the People First Waiver public forums, and continuing with online surveys posted on the People First Waiver Web page and opportunities for the public to submit questions and comments to waiver design teams. Additionally, through November, six public presentations of the waiver will occur statewide to keep the public engaged and informed.

**Some highlights of planning recommendations so far:**

- Evaluate individuals based on their strengths, and develop person-centered plans that support informed choice.
- Use a team approach to care coordination to ensure that there is knowledge and expertise in all the identified areas of need for an individual, from OPWDD services to medical care.
- Allow more flexibility in where, when, and how services are delivered.
- Provide enhanced services that support individuals living in less restrictive residential settings and those who are looking for employment.
- Measure quality in a consistent way across all settings that ensures health and safety while focusing on personal outcomes for the individuals being supported.
- Pay for providers for improving outcomes for individuals.



## X. Conclusion

This report has outlined the implementation of OPWDD's system reform strategy and highlights the progress made over the last six months to reform one of the largest systems supporting people with developmental disabilities in the United States—and the world.

Establishing a robust framework for change is just the beginning. Under the direction of Governor Cuomo, we have helped contribute to the development of agreements with labor unions and other state agencies that may have otherwise taken years to establish. Additionally, our agency has undergone the beginning phases of a transformation, with improvements impacting nearly every aspect of OPWDD'S service system.

While much has been accomplished, much more remains to be done. OPWDD will continue to move forward to ensure that individuals with developmental disabilities and their families receive the high quality services and supports they need—and deserve.

Throughout this process, input from self-advocates, families, and other stakeholders will not only be welcome, but critical to designing a system that best meets the needs of individuals with developmental disabilities, their families, and their support networks.





## Key Areas of Progress

### Empowering Families

- **Alert individuals** and families receiving support at struggling nonprofits through revamped Early Alert system, tracking fiscal, governance, and compliance at all 700+ nonprofit provider agencies.
- Designing 1115 People First Waiver to provide individuals and families more control over the services and programs available, ending one-size-fits-all approach.

### Ensuring Safety

- Implemented **fire and Life Safety protocol** with Office of Fire Prevention and Control (OFPC) to provide external oversight for inspections, evacuation plans, etc., at all state and nonprofit group homes.
- Implemented agreement with **State Police** requiring that all incidents of a potentially criminal nature be immediately reported.

### Efficient and Consistent Investigations

- Centralized investigations to ensure consistent practices statewide.
- Hiring additional trained investigators.
- Required all incidents at state and nonprofit agencies to be electronically reported so OPWDD can track data and identify trends.

### Oversight of Nonprofit Network

- Imposed fines under state Mental Health Law, for the first time in history, on nonprofits compromising the safety of individuals in their care.
- Strengthened agency's COMPASS initiative, which highlights those nonprofits that go **above and beyond expectations** in delivering service for individuals with developmental disabilities.

### Stronger Communication

- Launched *I Spoke Out* campaign to **educate the workforce** on need to report abuse, and provided avenues through which to report.
- Started *People First* newsletter, Facebook page, and submit weekly commissioner's messages to entire system.
- Upgrading internal communications so every employee has email and basic Internet access to **ensure knowledge of reforms** and general expectations of workforce.

### Personnel and Discipline

- Mandated the termination of any employee guilty of abuse or neglect.
- Established baseline requirements for all new hires, including passage of drug and psychological testing, possession of a valid driver's license, etc.
- Establishing **consistent trainings and supports** for all direct care staff.
- Developed a comprehensive values-based workforce recruitment campaign targeted at attracted two- and four-year college graduates.
- OPWDD-proposed table of penalties for **consistent discipline** ratified in CSEA agreement.
- Prohibited the rehiring of any employee previously terminated from state employment.



## Next Steps

### Empowering Families

- **Support individuals who seek employment** and double the number of people with development disabilities employed by businesses statewide from 9,000 to 18,000 within five years.
- Expand role of boards of visitors statewide to ensure that advocates and stakeholders are actively involved in changes happening throughout the system; actively recruit new members to vacancies.
- Support and increase **individuals' choices of programs**, services, and available residential opportunities.

### Ensuring Safety

- Reconvene a national panel of safety experts and advocates for people with developmental disabilities to assess vulnerabilities and expectations for group home safety, and proactive next steps.
- Establish consistent behavior management practices across state and nonprofit operations, and **adopt less restrictive intervention**.

### Efficient and Consistent Investigations

- Measure performance of investigators and track incidents to identify trends in types of allegations.
- Partner with district attorneys to ensure that every potentially criminal allegation is reported and investigated by local criminal authorities.

### Oversight of Nonprofit Network

- Develop an **online agency "report card"** for all nonprofits providers, grading on programmatic, fiscal, safety, and governance measures.
- End "silos" among state agencies that certify and oversee nonprofit provider networks with quarterly discussions with the Department of Health, Office of Mental Health, and other human service agencies.

### Stronger Communication

- Begin a multi-year culture change initiative based on the concept of collective mindfulness which includes:
  - Regular reports to all employees on incidents, using them as educational opportunities to reassess care and policies.
- Release **annual progress reports on reform**, as well as reports on key factors of concern such as service and program changes.
- Align all regulations to reflect reform initiatives and perform systematic regulatory review to make sure all regulations are current and effectively communicated to impacted stakeholders throughout the system.

### Personnel and Discipline

- Track progress on new employees hired who pass OPWDD's rigorous hiring policies.
- Adopt a **workforce recruitment campaign** built on partnerships with academic programs at the college and high school level, including higher education opportunity programs, BOCES, and social work and similar departments at colleges and universities.
- Keep employees who report abuse and neglect **safe from threat** and retribution.
- Implement a system-wide workforce morale program, recognizing that the vast majority of employees in this very challenging field do exceptional work.





