



**Military Family Access to  
Developmental Disability Services in New York**

December 2016

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# Military Family Access to Developmental Disability Services in New York

## Executive Summary

Members of the United States armed services and their families make tremendous sacrifices while serving our nation, including frequently relocating to new communities. Moving every three years, as is common with military families, can put additional strains on families with members who have intellectual or developmental disabilities.

Obtaining eligibility for benefits and finding necessary services in a new state can be overwhelming, complicated and time consuming for families, and often results in a lengthy delay in service delivery during the time between leaving one community and becoming established in the next. New York State's intellectual and developmental disability service support system consistently ranks among the most comprehensive in the nation, yet more can be done to ensure that military families access services in a timely manner upon their arrival. The information contained in this report establishes that New York State's laws and regulations are consistent with the best approaches used nationwide to reduce disability service disruptions caused by relocations. The report also indicates that more must be done to ensure that critical information regarding how to qualify for and access services is available to military families before and after their arrival in the Empire State if we are to reduce or eliminate unnecessary service delays. The New York State Office for People With Developmental Disabilities (OPWDD) remains committed to working with military officials, service-members and their families to establish ongoing communications and systematically push accurate information to families in need of services before they arrive in New York State and to ensure that families have access to knowledgeable OPWDD liaisons upon their arrival.

Members of the United States armed services and their families make tremendous sacrifices while serving our nation, including frequently relocating to a new community. Moving every three years, as is common with military families, can put additional strains on families with members who have intellectual or developmental disabilities.



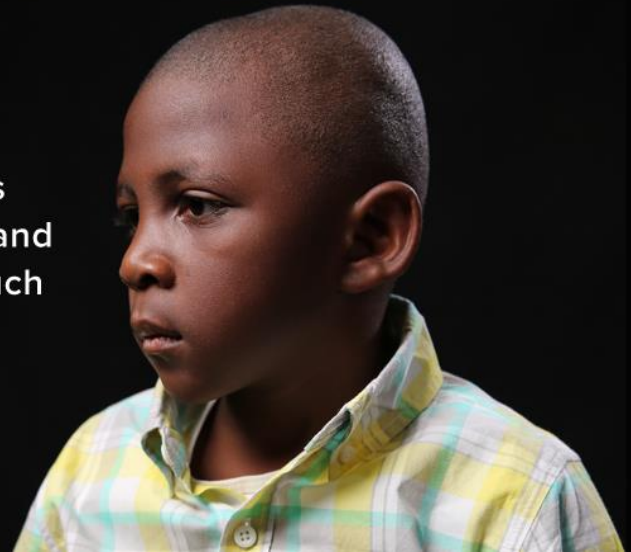
## Background

Chapter 91 of the Laws of 2015 directed OPWDD to consult with the Division of Military and Naval Affairs and the New York State Education Department (NYSED) to review existing laws and regulations applicable to military families in need of services and examine best practices from other states to determine what improvements could be made to increase access to New York State services. The law also required OPWDD to provide recommendations to the Legislature on what law or laws could be amended to better assist military families in the future. (Please see Appendix A on page 13.)

OPWDD supports over 130,000 New Yorkers with intellectual and developmental disabilities such as autism, cerebral palsy, Down syndrome, epilepsy and neurological impairments by providing services such as respite, day habilitation, assistance with daily activities, and career and employment services. In addition, school-age children frequently receive a myriad of supports through special education programs provided through local school districts and overseen by New York State Education Department (NYSED).

New York State is fortunate to be home to approximately 21,500 active duty military personnel and approximately 20,000 family members. Most live on or near the three major active duty military installations, which include: Fort Drum, near Watertown; Fort Hamilton in Brooklyn; and The United States Military Academy at West Point. Smaller installations of military personnel include the Naval Nuclear Power Training Unit at Ballston Spa, the Watervliet Arsenal, and the United States Merchant Marine Academy at Kings Point.

**OPWDD supports over 130,000 New Yorkers with intellectual and developmental disabilities such as autism, cerebral palsy, Down syndrome, epilepsy and neurological impairments by providing services such as respite, day habilitation, assistance with daily activities, and career and employment services.**



According to the United States Department of Defense, some military families with a child who has a developmental disability report the loss of services or significant service delays after transferring or moving to a new state. Differing state Medicaid eligibility requirements, waiting lists for some services in some states and differing special education policies can pose obstacles to families with special needs as they seek to reestablish their lives in a new community.

OPWDD's mission is to provide appropriate and timely supports for individuals with developmental disabilities so they can enjoy meaningful relationships with friends, family, and others; experience personal health and growth; live in the home of their choice; and be contributing members of their communities. None of these goals can be accomplished if obstacles keep families from obtaining the services they need. Military families make significant sacrifices to help keep our nation safe and they

should not be burdened with the additional stress of waiting to access services for loved ones when transferring to New York State or transitioning out of military service and returning home to civilian life.

## **Best Practices**

The United States Department of Defense and family advocates have identified four best practices utilized by states to alleviate access barriers experienced by military families who have been transferred to a new base or are retiring and transitioning back to civilian life. These practices, all of which are currently employed by New York State, include: participating in the Interstate Compact on Educational Opportunity for Military Children; participating in the Interstate Mental Health Compact; allowing active duty Service members to use their state of legal residence to register their family member with a developmental disability so they do not face a waitlist for service upon their return; and, exempting military families from any existing waitlist to access Medicaid waiver services.

## **Education Compact**

As mentioned above, one endorsed best practice is the adoption of the Interstate Compact on Educational Opportunity for Military Children, which was codified in New York State by Chapter 328 of the Laws of 2014. The legislation, which was introduced in the New York Legislature at the request of Governor Andrew M. Cuomo, provides for the uniform treatment of military children transferring between school districts in different states to ensure smooth transitions, particularly for students with developmental disabilities.

Because many children with developmental disabilities receive services primarily through their school districts, these recent changes to New York State's Education Law were intended to minimize any disruption in educational and disability services upon a military family's arrival in New York State. For example, New York Education Law Section 3305 emphasizes that schools must comply with the requirements of the Individuals with Disabilities Education Act (IDEA) by providing a student with a disability comparable services to those in the student's Individualized Education Program (IEP) that was put in place by the prior school system. In accordance with the IDEA, these comparable services must remain in place until the new school district conducts an evaluation and develops and implements a new IEP, if that is determined to be appropriate. The law also clarifies requirements regarding New York State schools maintaining any necessary reasonable accommodations to address the student's needs. (Please see Appendix B on page 14.)

NYSED is undertaking a review of their regulations to make sure they conform to the Compact on Educational Opportunity for Military Children. In addition, New York's Military Compact Council, established by Chapter 328 of 2014, is now operational and has begun their work of addressing issues and researching questions posed by military families who move to New York State, including those who have children in need of special education services. NYSED's Office of Special Education, which includes regional Special Education offices and Parent Centers, are other resources available to help military and all New York families through the special education process and to inform them of their rights.

## Mental Health Compact

In 1956, New York became one of the first states to enter into the Interstate Compact on Mental Health with the intent of establishing rules for the efficient transfer of medical records and cooperation between states to minimize any disruptions to mental health or disability services. The compact is currently recognized by 45 states and the District of Columbia with only Arizona, California, Mississippi, Nevada and Virginia opting to not participate. (Please see Appendix C on page 15 for details.)

While the Interstate Compact on Mental Health establishes a common set of rules to cover a variety of instances when individuals who receive mental health or disability services may cross state lines, Article X, regarding the provision of advanced notice to state disability agencies, may be the most meaningful for military families who transfer between Mental Health Compact member states. Article X requires each member state to appoint a “compact administrator” to coordinate compact activities and serve as a clearinghouse for information transfer between state disability agencies. For example, if a military family receives notice that they are transferring to New York, they can contact their current state’s compact administrator who will then forward the individual’s necessary records to New York’s administrator, who will forward necessary records to OPWDD’s Regional Office in the area where the family will next reside. The reverse is also true as families moving out of New York State to another compact-participating state can request that their Medicaid Services Coordinator (MSC<sup>1</sup>) forward relevant information to New York’s “compact administrator” who will then forward the information to the appropriate agency in the new state. Both OPWDD and the New York Office of Mental Health currently employ a “compact administrator” who is stationed in Albany. Current contact information for the nation’s administrators, including New York’s, can be found in Appendix D on page 20.

**OPWDD’s mission is to provide appropriate and timely supports for individuals with developmental disabilities so they can enjoy meaningful relationships with friends, family, and others; experience personal health and growth; live in the home of their choice; and be contributing members of their communities.**



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<sup>1</sup> MSC’s assist persons with developmental disabilities and their families in gaining access to services and supports.

## **Maintaining New York Residency**

Another recommendation to help military families receive timely services upon their return to New York from an out-of-state deployment, or upon exiting the military, is to allow the family to retain Medicaid eligibility in New York while out of state, eliminating the need to reapply. This situation is already authorized in New York.

Pursuant to Mental Hygiene Law Section 67.03, New York military families do maintain their legal residence in New York State while they are serving out-of-state. (Please see Appendix E on page 29 for the language.) For Medicaid purposes, however, a service member's state of residence (or that of their dependents under 21 years of age residing with them) is 1) the state in which the service member is living and intends to reside even without a fixed address; or 2) the state in which the service member has entered with a job commitment (see 42 CFR Section 435.403(i)(2)(ii)). The practical application of these differences in state and federal law is that the service member and dependents may maintain their eligibility for New York State services which they could immediately receive upon their return; and, in the meantime, the families would receive home and community based waiver services (funded by Medicaid) in the state to which the service member has been transferred, as long as they made an application for Medicaid services in that state.

## **Eliminate Waitlist for Military Family Members Seeking Waiver Services**

A third recommendation for states seeking to eliminate gaps in disability services when military families move to or return to New York is to adopt legislation or regulations exempting military family members from any state waitlist for waiver services. Such a rule is unnecessary at the present time as New York does not have a waitlist for home and community based waiver services. Federal approval would be required to establish such a waitlist.

## **Military Family Experience with New York Disability Services**

In September of 2016, OPWDD staff held the first of a series of meetings with representatives from Fort Drum's Exceptional Family Member Program (EFMP) and hosted a separate focus group discussion with military families who receive services from OPWDD-regulated, local nonprofit service provider partners. Fort Drum was selected as an initial focal point because approximately 75% of active duty service members in New York are stationed there.

Military families moving to Fort Drum face numerous challenges including finding a new home, a new school district<sup>2</sup> for their children, and other stressors typically associated with moving to an unfamiliar community. Seeking services for family members with intellectual and developmental disabilities can be especially daunting in a new state when eligibility rules and processes, and available services can differ significantly from the rules in a previous state. In addition, families new to a community often lack a social network of family members, friends and other long-time residents where information regarding service providers and service availability can often be obtained informally through word-of-mouth recommendations. The lack of local connections means that OPWDD must place a premium on being proactive and pushing information to potential service recipients rather than relying on qualified family members to actively seek information from OPWDD.

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<sup>2</sup> Fort Drum officials state that the children of parents assigned to the base attend twelve different area school districts.

## Family Experiences and Recommendations

While a comparison of available services across states shows that New York's robust service delivery system provides supports and services that often far exceed what is available in the service members' previous state, conversations with Fort Drum families indicate that few arriving military families understand the New York eligibility process or the available service options.

Previous research undertaken by OPWDD identified that some military families opted to remain in New York when the service member transferred to a new base in another state. Other service members sought to have transfer orders put on hold by showing that the services they were receiving for their family member in New York were not available at their proposed new assigned location. Both situations speak to the quality of services available to service member families in New York. Focus group members, however, indicated that accurate information about service eligibility and availability was not readily available before or after their arrival. This left many families to either rely on their TRICARE<sup>3</sup> insurance to fund services or go without services and supports that could have enriched their lives. The focus group members believed that if New York is to ensure that all eligible individuals receive the services to which they are entitled in a timely manner, OPWDD must establish better communications with Fort Drum officials and arriving military families.

**The Interstate Compact on Educational Opportunity for Military Children...which was introduced in the New York legislature at the request of Governor Andrew Cuomo, provides for the uniform treatment of military children transferring between school districts in different states to ensure smooth transitions, particularly for students with developmental disabilities.**



Military family members reported that they were confused about how to qualify for OPWDD eligibility, which can lead to service delays as they search for information and the paperwork required to document eligibility. In addition, many military families remain unaware of New York policies, such as enrolling children with disabilities in Medicaid, which triggers a variety of critical state- and federally-funded services to help support the family. During the discussion, OPWDD learned that family members who sought Medicaid coverage for their child with special needs were denied eligibility in other states because their income was too high, so they did not bother to apply in New York, which has different rules.

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<sup>3</sup> TRICARE is a health program for uniformed service members and their families as well as National Guard/Reserve members and their families, survivors, and former spouses.



One practice, called waiver of Parental Deeming, which was authorized by Section 1902(a)(10)(c)(i)(III) of the Social Security Act, allows individuals seeking OPWDD HCBS Waiver services who will continue to live with their parents to have Medicaid eligibility determined based on their own income and assets, rather than their parents' income and assets. Establishing Medicaid eligibility allows children to receive a broad array of taxpayer funded disability services and is practiced by relatively few states, including New York, Alabama, Alaska, California, Florida, Indiana, Kansas, Maine, Nevada, Ohio, Oregon, Washington and West Virginia. In addition, Arizona has no income limits. Another significant benefit available to Military Families in New York is the practice of authorizing provisional eligibility for OPWDD services for children under the age of eight. Provisional eligibility allows young children who are suspected of having a developmental disability to start receiving services even when a formal diagnosis has not yet been made or when developmental delays are present but the long term impact is not certain. This practice can be very helpful to families with young children who are concerned with perceived developmental delays but not sure where to begin searching for answers, especially when living in an unfamiliar city with a limited natural support network.

Military family members recommended that OPWDD work with Fort Drum officials to find ways to provide eligibility and service information to families before they arrive in New York, seek ways to help them complete the paperwork necessary for them to apply for OPWDD services and to determine their eligibility for Medicaid before their arrival, and to offer well-publicized "Front Door" informational sessions on the base. Family members also raised concerns with the limited number of clinicians, such as physical and speech therapists, who are available in the Watertown area to conduct clinical assessments which in turn are used to help determine eligibility for OPWDD. The lack of clinicians forces many families to travel as far away as Syracuse for appointments. To alleviate the problem, focus group families urged OPWDD to collaborate with other entities to determine the feasibility of forming and funding a program that would bring appropriate clinical personnel to Fort Drum on a regular basis to conduct clinical assessments, particularly for those children suspected of having some type of developmental disability.

## **The Fort Drum Exceptional Family Member Program**

Fort Drum's Exceptional Family Member Program (EFMP) is a mandatory enrollment program that works with other military and civilian agencies to provide comprehensive and coordinated community support, housing, educational, medical, and personnel services to families with special needs. EFMP staff members, who are counted on by families to provide guidance on disability services, were eager to meet with OPWDD to establish better communications and collaborate on ways to improve the quality of life for service members and their family members with special needs.

Providing information to Fort Drum families on a timely basis can be challenging. Fort Drum is home at any time to 15,000 service members and another estimated 17,000 military family members. In addition, the population is constantly changing as deployments and transfers result in approximately 5,000 new service members transitioning into and out of the Fort Drum/Watertown area annually, with the vast majority of transfers taking place during July and August. The rapid turnover of families means that the OPWDD and Fort Drum EFMP staff outreach efforts of today cannot be relied upon to reach families moving in tomorrow. In addition, federal budget constraints have resulted in recent cut backs on base-offered respite services with more reductions looming on the horizon which will increase the demand for such services from OPWDD's nonprofit provider partners.

In order to better serve individuals and families, OPWDD and Fort Drum EFMP staff have agreed to establish regular and ongoing communications and to seek ways of addressing concerns and ideas put forth by family members. Once systemic changes are implemented and refined, OPWDD will approach West Point and other military facilities which are home to fewer service members with

families in need of OPWDD services to see if the improved communication structure can be replicated.

Some of the collaborative efforts under discussion between representatives from OPWDD and Fort Drum include:

- Establishing an OPWDD liaison for military families and EMFP in all OPWDD regions that overlap the Fort Drum area.
- Creating a checklist of documents required to establish OPWDD eligibility that can be provided to families before they move to New York. This would enable families to obtain and bring appropriate paperwork to New York which can significantly speed up the eligibility determination process.
- Creating a user-friendly handout for soldiers new to Fort Drum summarizing how to start the process of getting services based on where they reside.
- Holding two OPWDD “Front Door” information sessions on the base in July and August and others on a regular or as needed basis for families and Fort Drum staff.
- Providing EMFP staff with information and materials about the OPWDD service delivery system so that it is available to families who reach out to EMFP staff for assistance.
- Regularly providing EMFP staff with updated lists of local providers and available services, as well as a roster of local Medicaid Service Coordinators.
- Providing data to Fort Drum staff who are creating a Fort Drum smart phone application to link service members and their families to OPWDD and New York State Office for Mental Health (OMH) services available in the community.
- Embedding new Fort Drum respite service staff within the OPWDD regional office for a period of time to learn first-hand about OPWDD services and protocols. Fort Drum Service Staff will shadow an OPWDD Regional Office employee to familiarize themselves with OPWDD procedures and protocols regarding Eligibility, Front Door, Self-Direction, and available community services. This information will enable the Fort Drum team to better serve families.
- The OPWDD Regional Offices covering the Sunmount and Central New York catchment areas will host EMPF staff to provide opportunities for Fort Drum personnel to become more attuned to service provision in the community.
- Providing appropriate OPWDD staff with the applicable security clearances and passes to enter the base, which will eliminate the need to secure a specific pass for each interaction on base.

**New York State hosts five active duty military installations and is home to approximately 21,500 active duty service members and 20,000 family members.**



## Recommendations for Legislation

In addition to reaching out to military families, Fort Drum officials, and undertaking a review of laws and practices in other states, OPWDD undertook a review of current legislation that seeks to address military family member needs and reviewed current New York laws and regulations for obstacles to improved service. The review determined that New York has been largely proactive in recent years by enacting the Interstate Compact on Educational Opportunity for Military Children and the Interstate Compact for Mental Health both of which are mentioned in this report.

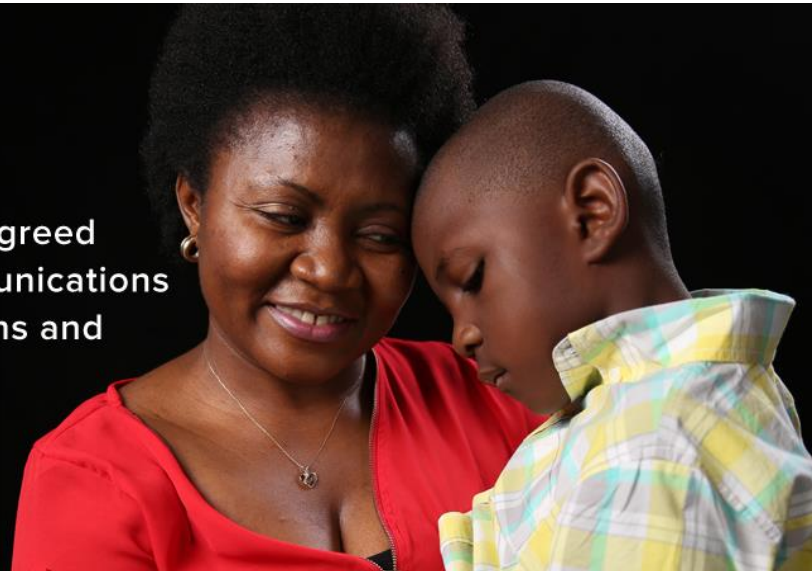
## Recent Legislation

In November of 2016, Governor Cuomo signed legislation codifying some of OPWDD's ongoing efforts to improve timely access to services for New York service members who return to New York after an out-of-state deployment. Chapter 488 of the Laws of 2016 (please see Appendix F on page 30 for details) reinforces current State policy allowing dependents of military service members who are transferred out-of-state to remain eligible for certain developmental disability services received under HCBS programs as long as they retain residency in New York State and otherwise remain eligible for these services. The new law, which takes effect on April 1, 2017, also authorizes dependents with a developmental disability to remain on any future waitlist for New York services if they are living out of state with their deployed family member should New York ever apply for and receive federal approval to establish such a waitlist.

## Future Legislation

At the present time, OPWDD believes that New York's current laws and regulations provide adequate tools and enough flexibility to appropriately meet the service needs of military families who have a member with a developmental disability. Please note that when Governor Cuomo signed Chapter 488 of 2016, he stated that implementation could be improved if the Legislature were to enact clarifying amendments (please see Appendix G on page 31 for Approval Memo 17). While more work needs to be done to establish better lines of communication among OPWDD, military officials, and military families, there appear to be no statutory or regulatory obstacles hindering progress in this area.

**In order to better serve individuals and families, OPWDD and Fort Drum have agreed to establish regular and ongoing communications and to seek ways of addressing concerns and ideas put forth by family members.**



## **Conclusion and Next Steps**

New York's laws and regulations provide OPWDD and school districts with the necessary tools to minimize service disruptions when members of the armed forces with a family member who qualifies for OPWDD or special education services moves to New York. Much more needs to be done, however, to proactively provide information to service members before and after they arrive in New York. This will enable them to benefit from service opportunities for which they qualify in a timely manner. OPWDD currently possesses the statutory, regulatory, and administrative flexibility required to establish better working relationships with military base officials, service members, and their families, and remains committed to doing so.

OPWDD will work to further establish and maintain working relationships with Fort Drum's Exceptional Family Member Program to better meet family needs. Lessons learned from working closely with Fort Drum families and staff will be then be used to help forge similar relationships with appropriate personnel assigned to New York's other military bases. In addition, OPWDD will collaborate with other entities to explore the feasibility and ways to fund costs associated with bringing various clinical specialists to Fort Drum on a regular basis to make it easier for military families to obtain the necessary clinical assessments that are used by OPWDD to make determinations of eligibility.

# Appendix A

## LAWS OF NEW YORK, 2015

### CHAPTER 91

AN ACT to direct the office for people with developmental disabilities to review and report on state laws and regulations applicable to military families with family members with developmental disabilities; and providing for the repeal of such provisions upon expiration thereof

Became a law July 25, 2015, with the approval of the Governor. Passed by a majority vote, three-fifths being present.

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Legislative intent: The legislature finds that it is critical that we support the military and their families. If a service member is required to transfer to New York, it is important to minimize any service disruptions caused by relocations. Being able to ensure that military families enjoy a continuity of services as it relates to individuals with developmental disabilities and are aware of the options available to them in New York ensures that these individuals receive the services they deserve.

§ 2. The office for people with developmental disabilities, in consultation with the division of military and naval affairs and the state education department, is hereby authorized and directed to review existing laws and regulations applicable to military families in need of agency services, including those currently residing in New York or who may move to New York. The review may also include an examination of best practices used in other states to assist military families who access developmental disability services. The purpose of the review shall be to provide recommendations on improving laws, regulations and practices to better assist such families.

§ 3. On or before November 11, 2016, the office for people with developmental disabilities shall deliver a copy of the findings to the Chairs of the Senate Committee on Mental Health and Developmental Disabilities and Assembly Committee on Mental Health as well as the respective Fiscal Chairs in each house.

§ 4. This act shall take effect immediately, and shall expire and be deemed repealed on November 11, 2016.

## Appendix B

### **Section 3305 of Article 66 of New York State Education Law (Chapter 238 of the Laws of 2014)**

§ 3305. Placement and attendance. 1. When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered and there is space available as determined by the local educational agency. Course placement includes but is not limited to honors, international baccalaureate, advanced placement, vocational, technical and career pathways courses. Where the local educational agency contracts with a board of cooperative educational services to deliver such courses, the local educational agency and the board of cooperative educational services shall arrange to enroll the student in the applicable board of cooperative educational services program where there is space available. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the courses.

2. The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation/placement in like programs in the sending state, provided that the programs and/or courses exist and there is space available, as determined by the local educational agency. Such programs include, but are not limited to, gifted and talented programs and English as a second language. Nothing in this subdivision shall preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

3. (a) In compliance with the federal requirements of the individuals with disabilities education act, 20 U.S.C.A. section 1400 et seq, the receiving state shall initially provide comparable services to a student with disabilities based on his or her current individualized education program; and (b) In compliance with the requirements of section 504 of the rehabilitation act, 29 U.S.C.A. section 794, and with title II of the Americans with disabilities act, 42 U.S.C.A. sections 12131-12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or title II plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

4. Local educational agency administrative officials shall have flexibility in waiving course or program prerequisites, or other preconditions for placement in courses or programs offered under the jurisdiction of the local educational agency.

5. A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local educational agency superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

## Appendix C

### New York Mental Hygiene Law § 67.07

§ 67.07 Interstate compact.

(a) The interstate compact on mental health is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

#### INTERSTATE COMPACT ON MENTAL HEALTH

The contracting states solemnly agree that:

##### Article I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

##### Article II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "Aftercare" shall mean care, treatment, and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

### **Article III**

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement, or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

### **Article IV**

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

### **Article V**

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee.



Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

#### **Article VI**

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

#### **Article VII**

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care, or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

#### **Article VIII**

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

#### **Article IX**

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or

whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

#### **Article X**

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who will receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

#### **Article XI**

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

#### **Article XII**

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

#### **Article XIII**

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII (b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

#### **Article XIV**

(a) This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of

any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(b) Pursuant to the compact, the governor may designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, may promulgate rules and regulations to carry out more effectively the terms of this compact. The compact administrator shall serve subject to the pleasure of the governor. The compact administrator shall cooperate with all departments, agencies, and officers of and in the government of the state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

(c) The compact administrator may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. In the event that supplementary agreements require or contemplate the use of any facility of this state or require or contemplate the provision of any service by this state, they shall not have force or effect until approved by the head of the department or agency under whose jurisdiction said facility is operated or whose department or agency will be charged with the rendering of service.

(d) The compact administrator, subject to the approval of the comptroller, may make or arrange for payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement.

(e) Duly authenticated copies of this act shall, upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general, and the secretary of state of the United States, and the council of state governments.

## Appendix D

### Interstate Mental Health Compact Coordinators Directory

August, 2016

#### Officers and Regional Coordinators/June 2016

Chair	Vice Chair	Secretary
Emunda A. Reed, NC	Michael Orzel, NY	Gretchen Hathaway, PA

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**Regional Coordinator: Gretchen Hathaway, Pennsylvania**

Connecticut  
Delaware  
Dist. of Columbia  
Maine  
Maryland  
Massachusetts

New Hampshire  
New Jersey  
New York  
Pennsylvania  
Rhode Island  
Vermont

#### Midwestern States:

**Regional Coordinator: Stacey Werth-Sweeney, Nebraska**

Illinois  
Indiana  
Iowa  
Kansas  
Michigan  
Minnesota  
Missouri

Nebraska  
North Dakota  
Ohio  
Oklahoma  
South Dakota  
Wisconsin

## **Southern States:**

**Regional Coordinator: Dona Carroll-Payton,, Kentucky**

Alabama  
Arkansas  
Florida  
Georgia  
Kentucky  
Louisiana  
Mississippi

North Carolina  
Puerto Rico  
South Carolina  
Tennessee  
Texas  
Virginia  
West Virginia

## **Western States:**

**Regional Coordinator: Dean Carlisle, Oregon**

Alaska  
Arizona  
California  
Colorado  
Hawaii  
Idaho

Montana  
New Mexico  
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## Appendix E

### **New York Mental Hygiene Law § 67.03**

#### § 67.03 Residents.

(a) For the purposes of this article any person who resides in the state continuously for one year, and any person under the age of sixteen or any person with a developmental disability whose parents or persons having legal custody of him have resided in the state continuously for one year, shall be considered a state resident. Residence so acquired continues until the resident has remained away from the state for one year.

(b) No person shall lose state residence through absence from the state while serving in or attached to the armed forces of the United States or the United States Merchant Marine and no member of the family of any such person shall lose state residence through absence from the state while living with or near such person during the period of service.

(c) The continuous residence required to become a resident does not include any period during which a person was residing on a military reservation, but periods of residence immediately before and after the period of residence on a military reservation, if equaling one year, shall satisfy the required period of continuous residence.

## Appendix F

### Chapter 488 of 2016

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The mental hygiene law is amended by adding a new section 67.09 to read as follows:

§ 67.09 Medicaid home and community based services eligibility for dependents of certain military service members.

A dependent of a member of the armed forces of the United States or the organized militia of the state, who is a legal resident of this state, having previously been determined to be eligible for developmental disability services provided by the federal Department of Health and Human Services, including waiver services provided under the home and community based services programs authorized under Section 1915(c) of the Social Security Act, shall retain eligibility for those developmental disability services as long as he or she remains a legal resident of the state, regardless of having left the state due to the servicemember's military assignment outside the state, and as long as he or she is otherwise eligible for such services. A dependent who resides out-of-state may be placed on the waiting list for developmental disabilities services if the dependent left the state due to the servicemember's military assignment outside the state.

§ 2. This act shall take effect on the first of April next succeeding the date on which it shall have become a law.

## Appendix G

### Approval Memorandum No. 17 for Chapter 488 of 2016

MEMORANDUM filed with Senate Bill Number 6915-B, entitled:

"AN ACT to amend the mental hygiene law, in relation to eligibility for dependents of military servicemembers for certain developmental disability services"

APPROVED

The Office for People With Developmental Disabilities (OPWDD) allows dependents to maintain eligibility for services when a service member is deployed and the family remains in New York State. Similarly, a dependent retains eligibility for services if he or she leaves the State to live with the service member during the deployment. This allows for greater continuity of services when the dependent returns.

I fully support this policy and providing continuity of services for the dependents of persons serving our country. I am signing this bill today on that basis. There are, however, several flaws in this bill that may undermine the real-world impact it has on service members and their families.

First, the bill only covers persons determined to be eligible for services by the federal Department of Health and Human Services. In New York State however, as in other states, OPWDD makes determinations about eligibility based on the generous standards set by New York State law. There is no federal standard upon which either the OPWDD or the federal government would make such an eligibility determination.

Second, the bill requires individuals who move out of state to be placed "on the waiting list for developmental disabilities services." However, OPWDD does not maintain such a list and there is no need for such a waiting list because all persons determined eligible for services in New York State are given services.

Third, the bill contains no definition of dependent, leaving unclear to whom the legislative proposal applies.

These flaws aside however, I do not disagree with the intention of this bill and do not find that it would have any significant operational effect on OPWDD. On that basis, I am signing this bill.

This bill is approved.

(signed) ANDREW M. CUOMO

# Appendix H

## **Acknowledgements**

The New York State Office for People With Developmental Disabilities would like to thank the Fort Drum Exceptional Family Member Program, the New York State Education Department, the New York State Division of Military and Naval Affairs, the Disabled Persons Action Organization, the Jefferson Rehabilitation Center, Fort Drum, and the military families who provided OPWDD with assistance and feedback during the creation of this report.