

## 2015 New York State Report

After the exposure of New York’s questionable billing practices with respect to federal reimbursements of ICF/IID services, a scathing report from the House Committee on Oversight and Government Reform, and under continued pressure from the Centers for Medicare and Medicaid (CMS) to cut costs, New York continues to shutter its remaining developmental centers (DCs) and State-operated community-based ICF/IIDs, and it continues to eliminate all of the beds for adults at privately run ICF/IIDs within the State, with no apparent regard for whether this plan will adequately serve the New Yorkers with I/DD who have the most complex needs, including those with severe behavioral challenges or medical fragility.

Attached to the 2014 New York State report was a chart prepared by the NYS Office for People with Developmental Disabilities (“OPWDD”) headed “ICF Transition Plan,” showing New York’s plans for ICF closures.<sup>1</sup> That chart shows 150 remaining beds at State-operated developmental centers and 456 remaining beds at ICF/IIDs run by private nonprofit organizations. Since then, OPWDD has clarified that the 150 State-operated beds at two upstate

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<sup>1</sup> A copy is also attached here, as Exhibit A.

developmental centers will be used to “support people who are court-mandated to OPWDD and those with intensive short-term behavioral needs who require stabilization in a focused, intensive treatment setting prior to returning to a community setting.”<sup>2</sup> In addition, 456 remaining ICF/IID beds run by private agencies shown on the chart are for children enrolled in residential school programs. Thus, there will be no remaining adult ICF beds run by private agencies. From these numbers, it appears there is no way that New York can meet its obligation under the NYS Medicaid Plan and federal law to provide reasonably prompt placement in ICF/IIDs for those Medicaid recipients requiring and desiring that level of care.

As we explained last year, even when one takes into account the projected additional number of Supervised Individualized Residential Alternative (IRA) placements (in privately operated community group homes with 24/7 staffing), New York plans for a net decrease of 2,830 residential placements with 24/7 staffing. The projected additional 994 beds in Supportive IRAs, which offer supports *less than* 24/7 staffing to individuals living in their own homes or apartments, are of little if any relevance to those requiring constant supervision and assistance.

Subsequent to its initial plan for closing ICFs, on April 23, 2015<sup>3</sup> OPWDD put out an update stating that since 2013 it has moved 693 people out of ICFs. To meet its own goal for 2015, over 1,200 people must be moved out of ICFs run by private providers by the end of this year:

Residential Setting	Baseline Census (August 2013)	2015 Goals	Current Census (April 2, 2015)	Transitions Needed to Meet 2015 Goal
DCs	994	493	457	0
SO ICFs	659	504	503	0
VO ICFs	5,669	4,337	5,566	1,229

OPWDD (its motto is “Putting People First”) offers little information as to how it will do this or whether moving them in this way is in the people’s best interests.

Since our last report, New York closed the Oswald D. Heck Developmental Center, the seventeenth state center to be closed in recent years. The Brooklyn Developmental Center is slated to close by December 31, 2015, the Broome Developmental Center by March 31, 2016, and the Bernard M. Fineson Developmental Center in Queens by March 31, 2017.<sup>4</sup> The planned closure of the Brooklyn Developmental Center was the subject of an article in the New York Times entitled “For Special-Care Residents, New York State Policy Means Leaving Home.”<sup>5</sup> That article profiles Tony and Mary Ann Cosentino, and their 50-year old son, John, who has

<sup>2</sup> <http://www.opwdd.ny.gov/transformation-agreement/mfp/home>

<sup>3</sup> <http://www.opwdd.ny.gov/sites/default/files/documents/ICF-Transitions-News-Update-4-23-15.pdf>

<sup>4</sup> Capitol Confidential, “O.D. Heck Center is closed,” <http://blog.timesunion.com/capitol/archives/231629/o-d-heck-center-is-closed/>

<sup>5</sup> <http://www.nytimes.com/2015/02/01/nyregion/as-new-york-moves-people-with-developmental-disabilities-to-group-homes-some-families-struggle.html>. A copy of the article is attached as Exhibit B.

lived at the Brooklyn Developmental Center, near their home, since he was a teenager. As Mr. Cosentino was quoted as saying: “This is not a perfect place,” but he does not believe that the alternative will be safer.

Deficiencies at the Brooklyn Developmental Center in recent years, and OPWDD’s failure to remedy them, may well be linked to New York’s decision to close its developmental centers. Instead of bringing the Brooklyn Developmental Center into compliance with federal regulations and providing the level of care to which John Cosentino and its other residents – and individuals who would opt for “active treatment” in a developmental center if this was offered to them – New York has allowed known deficiencies at the Brooklyn Developmental Center to persist. It must be noted that the unit within OPWDD responsible for operating the Brooklyn Developmental Center has been on OPWDD’s “Early Alert” list since December 2, 2013 because of “significant issues in areas related to health and safety” found during its Medicaid survey that remained uncorrected on follow-up surveys. In addition, the NYS Justice Center visited the Brooklyn Developmental Center in 2013 and raised concerns in the areas of “physical environment, active treatment, client protections, and dietary services.” As explained on OPWDD’s website, “Early Alert is a process to proactively identify providers that may show signs of decreased quality, enabling OPWDD to take timely and definitive action.”<sup>6</sup> It is further stated that “Remedial actions may be required by the Early Alert committee based on a variety of factors, including the size of the agency, the extent of the problems identified and the agency’s past history as an OPWDD provider.” An agency can be removed from the Early Alert list only when it demonstrates that it is in full compliance and “provides evidence to show that issues that were of concern, have been corrected and a system has been put in place to prevent recurrence.” Shamefully, the deficiencies at the Brooklyn Developmental Center – although this facility is owned and operated by OPWDD itself – have not been rectified in over 18 months.

Unacceptable conditions at OPWDD-run facilities are not limited to developmental centers. The OPWDD unit responsible for Long Island joined the Early Alert list in May 2012 because of deficiencies at an IRA (a community-based group home); its second citation of deficiencies rising to Early Alert levels, in January 2013, involved two non-developmental center ICFs and “resulted in the need to call Immediate Jeopardy” at those sites. And in March 2015, the unit responsible for New York City was added to the Early Alert list because of deficiencies at six IRAs – these were in the areas of medical follow-up, medication administration, protective oversight, community inclusion, habilitative services, physical plant, staff training, and incident management. It is particularly telling, and ironic, that lack of compliance with respect to community inclusion is among the areas of noncompliance found at OPWDD’s own facilities,

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<sup>6</sup> [http://www.opwdd.ny.gov/opwdd\\_services\\_supports/service\\_providers/early\\_alert](http://www.opwdd.ny.gov/opwdd_services_supports/service_providers/early_alert). A list of the agencies currently on the Early Alert list is available at that link with copies of the letters notifying them of being placed on Early Alert.

given the rhetoric by OPWDD and Governor Andrew Cuomo pointing to community inclusion as the bedrock for their deinstitutionalization efforts.

Beyond the ICF closures, as of July 2013, OPWDD ceased new admissions to “sheltered workshops,” which as of October 2013 provided jobs for about 8,100 people with I/DD. As stated by OPWDD in its May 2014 “New York Plan to Increase Competitive Employment Opportunities for People with Developmental Disabilities,” efforts continue to “transition” people currently employed at workshops to “competitive employment, retirement of other community inclusion options.” That document states that “OPWDD estimates that 50% of workshop participants could successfully transition to competitive employment over six years.” Although those grandfathered at sheltered workshops may be allowed to remain there (assuming that the workshops can survive when half of their participants are pulled out), individuals who need and want sheltered workshop opportunities in the future will not have that option.. Opposition to the workshop closures continues by families, advocacy groups, and agencies that operate sheltered workshops (including ARC affiliates), joined by some local government officials, including a strong op-ed recently by the Chair of the NYS Senate Committee on Mental Health and Developmental Disabilities.<sup>7</sup>

According to an article in an upstate newspaper on May 29,<sup>8</sup> OPWDD is reported to be circulating a draft proposal to allow sheltered workshops to remain in operation if 25% of the employees are not developmentally disabled (a substantial increase over the current percent of non-disabled workers, and one that the workshops would have five years to attain). But so far, this is apparently only a draft and nothing is official.

Respectfully Submitted,

Michael Klurfeld

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<sup>7</sup> “Guest View: State plan to phase out sheltered workshops is ill advised,” by State Senator Rob Ortt, 3/30/2015, [www.niagara-gazette.com/opinion/guest-view-state-plan-to-ph...](http://www.niagara-gazette.com/opinion/guest-view-state-plan-to-ph...)

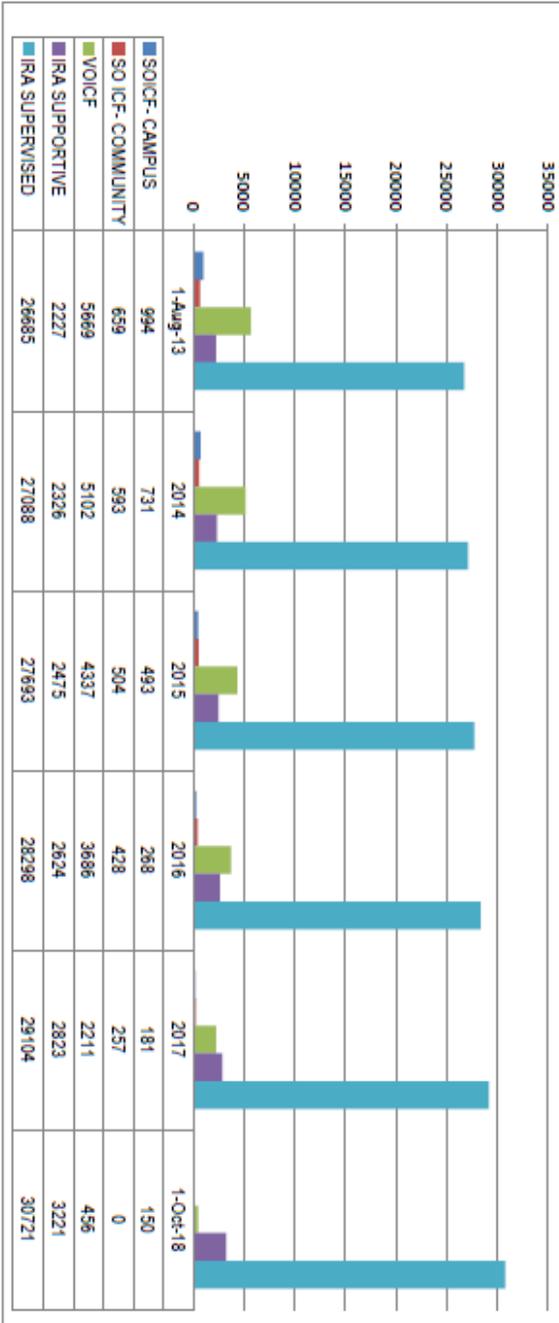
<sup>8</sup> <http://www.watertowndailytimes.com/news03/after-pressure-from-residents-clients-and-officials-state-reconsiders-closing-sheltered-workshops-20150529>

Exhibit A

ICF Transition Plan

Housing Options	August 1, 2013 <sup>1</sup>	2014	2015	2016	2017	October 1, 2018
<b>CERTIFIED HOUSING:</b>						
SOICF - CAMPUS	994	731	493	268	181	150
SO ICF - COMMUNITY	659	593	504	428	257	0
VOICF	5669	5102	4337	3686	2211	456
IRA SUPPORTIVE	2227	2326	2475	2624	2823	3221
IRA SUPERVISED	26685	27088	27693	28298	29104	30721

Draft Timeline for Certified Housing Census Changes



<sup>1</sup> This represents projections based on demographic data on the individuals who were living in ICF's at the time that the plan was developed in the spring/summer of 2013

January 29, 2014