

# Testimony of Steven Kroll Executive Director, NYSARC, Inc.

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Before the Joint Legislative Hearing of the Senate Finance and  
Assembly Ways and Means Committees on the  
FY 2016-17 NYS Budget

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February 3, 2016





**TESTIMONY BEFORE THE NEW YORK STATE JOINT LEGISLATIVE HEARING OF THE SENATE AND ASSEMBLY WAYS AND MEANS COMMITTEES ON THE FY 2016-17 STATE BUDGET**

**I. EXECUTIVE SUMMARY**

- The field of developmental disabilities has come under enormous pressure over the past four years from budget cuts and a mountain of new and burdensome regulations.
- The foundation of care is direct support workers who have extremely challenging jobs which require extensive training and oversight. Yet the compensation they receive starts, on average, just above the current minimum wage.
- As a consequence, turnover and vacancy rates have begun to soar among Direct Support Professionals (DSPs) and other critical employees, such as preschool teaching aides/assistants.
- The Governor has proposed a minimum wage of \$15 per hour to be phased in over the next six years. Yet the proposed SFY 2016-17 budget includes no funding for developmental disability services to implement it. Unless funding is included, the enormous unfunded cost will bankrupt the entire field of developmental disabilities. NYSARC estimates that we will have to decrease our workforce by thousands to pay for the cost of the minimum wage increase, leaving thousands of people with either diminished services or no services.
- There is no comprehensive plan for addressing the mounting list of people in dire need of services, including many people who can no longer be cared for by aging caregivers.
- The developmental disabilities service system is faced with an enormous unfunded mandate of federal and state transformational goals, which include smaller, more person-centered services and programs. Funding cuts and unfunded wage hikes will move us in the opposite direction.
- Federally mandated rate rationalization has robbed the developmental disabilities services system of the flexibility to meet rising costs by deploying financial resources where they are needed most. It has also created incentives to operate less, not more, efficiently.

**II. SUMMARY OF RECOMMENDATIONS**

- Appropriate \$270 million to fully fund the first year increase in the minimum wage for the employees working for developmental disabilities not-for-profit agencies.
- Appropriate \$60 million to fund a 3 percent cost of living increase for low paid employees caring for people with developmental disabilities.

- Appropriate \$100 million state share (\$200 million total) to provide additional placements for people living at home in need of out of home residential care and implement a new fair and transparent process to determine need and connect/approve people with needed services.
- Adopt budget language prioritizing individuals for residential placement on a priority basis. The process must be transparent, clear, and uniform across the state. It must take into account the individual's needs. It must also take into account the ability of family caregivers to provide continued care and the length of time family caregivers have cared for their loved one. Additionally, it should allocate placements to "special populations" based on the same criteria applied to all other individuals.
- Require a 5% growth factor for 4410 preschool programs.
- Fix rate rationalization by (1) allowing for a rate of return; (2) not penalizing efficiency; (3) appropriating \$23 million for a SEMP (supported employment) contingency fund; and, (4) reimbursing providers for snow days, flu days, other unavoidable program closures and consumer absences, and other extraordinary and unavoidable expenses that are required and not paid for.
- Appropriate \$750 million to fund a Developmental Disability Quality and Access fund to help meet the goals of federally and state mandated transformation to smaller, more integrated, and person-centered settings and to achieve program efficiencies to generate savings to reinvest into services through enhanced IT functions, sharing of services, and managerial responsibilities. Billions in similar funds (i.e. HEAL Grants) have been appropriated to achieve efficiencies in the State's hospital system. The needs of the developmental disabilities system should be accorded similar recognition.

### III. WHAT'S IN THE BUDGET AND WHAT'S NOT IN THE BUDGET

#### Key items in the budget include:

- DEVELOPMENT: \$120 million (combined federal and state share) for new development for 6,000 opportunities.
- START: \$15 million for the Systematic, Therapeutic Assessment, Respite and Treatment (START) program to improve implementation of behavioral health supports.
- AFFORDABLE HOUSING: \$15 million for affordable housing for people with developmental disabilities.
- COLA: A two tenths of one percent (.2) trend factor that would allow a 3 cent per hour pay hike for developmental disability workers.
- EARLY INTERVENTION: Various reforms of Early Intervention are proposed.

## Key items not in the budget include:

- **MINIMUM WAGE FUNDING:** The budget includes no funds whatsoever to pay for the first year implementation of the new minimum wage increase. This constitutes an enormous unfunded mandate on providers who will be forced to absorb the cost, lay off employees, and consequently diminish the quality of care.
- **ADEQUATE DEVELOPMENT FUNDING:** Funding for new services is not sufficient to eliminate a growing waiting list. While the Legislature will shortly receive the results of the study of people waiting for services that they required, to date there is no waiting list. But NYSARC Chapters meet the families in crisis every day who have been left behind by the system.
- **ADEQUATE TREND FACTOR:** Any reasonable increase for developmental disabilities programs. The budget includes a mere .2 percent (2 tenths of one percent) as a trend factor which is woefully inadequate to deal with the demands of the entire system of care.
- **PRESCHOOL GROWTH FACTOR:** The budget includes no additional funding for preschool programs despite the fact that the system of preschool services is on the verge of collapse. Preschools that serve children with developmental disabilities started closing more rapidly in 2015 and the pace of closures will accelerate without intervention.
- **RATE RATIONALIZATION FIX:** The budget makes no attempt to fix the system of rate rationalization or to fund shortfalls in the SEMP (supported employment) program.
- **JUSTICE CENTER REFORM:** No proposed Justice Center reforms.
- **FUNDING FOR TRANSFORMATION:** The budget includes no funding to help accomplish this huge task.

## VI. CHALLENGES FACING THE DEVELOPMENTAL DISABILITY SYSTEM – A STARKLY NEGATIVE OUTLOOK

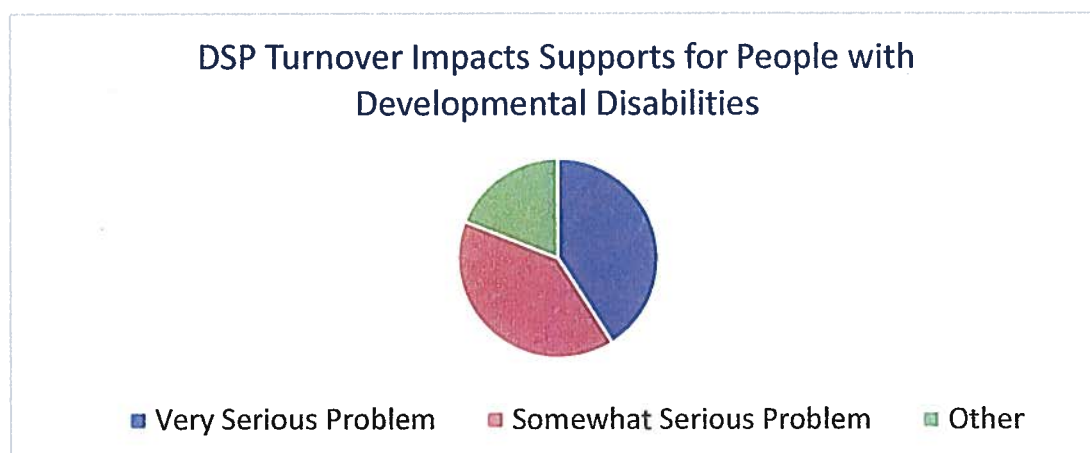
### 1. WORKFORCE RECRUITMENT AND RETENTION

#### Direct Support Professionals (DSPs)—The Backbone of the System: Overworked and Underpaid

- DSPs work long hours and provide support 24 hours a day, seven days a week.
- DSPs teach essential living skills, supervise daily activities, assist with personal hygiene, meal preparation, manage toileting and physical and behavioral health, support the delivery of needed medical services in both routine and crisis circumstances, and provide friendship and emotional support.
- DSPs undergo hours of intensive training in communications, medication administration, behavior management, fire safety, CPR, first-aid, and incident reporting. They must gain and maintain detailed knowledge of the specific needs of each person for whom they care.
- DSPs are responsible for providing services in a highly regulated environment that is closely scrutinized by State regulatory bodies and are held to the highest standards of accountability.

### Intense Demands and Low Pay Mean a High Burnout Rate for DSPs

- A recent survey by the University of Minnesota indicates that the average turnover rate for DSPs in NYS is 25 percent annually, among more than 130 community-based providers of services to people with developmental disabilities.
- In a recent provider association survey agencies reported needing more than 5,300 DSPs to fill positions created by a statewide vacancy rate of 8 percent.
- This shortage of DSPs resulted in more than 2.9 million overtime hours at the 131 responding agencies during 2014.
- Agencies surveyed report a one year turnover rate of 19 percent for DSPs, requiring an investment of \$5,000 in training and other costs for each new employee hired to fill those vacancies.



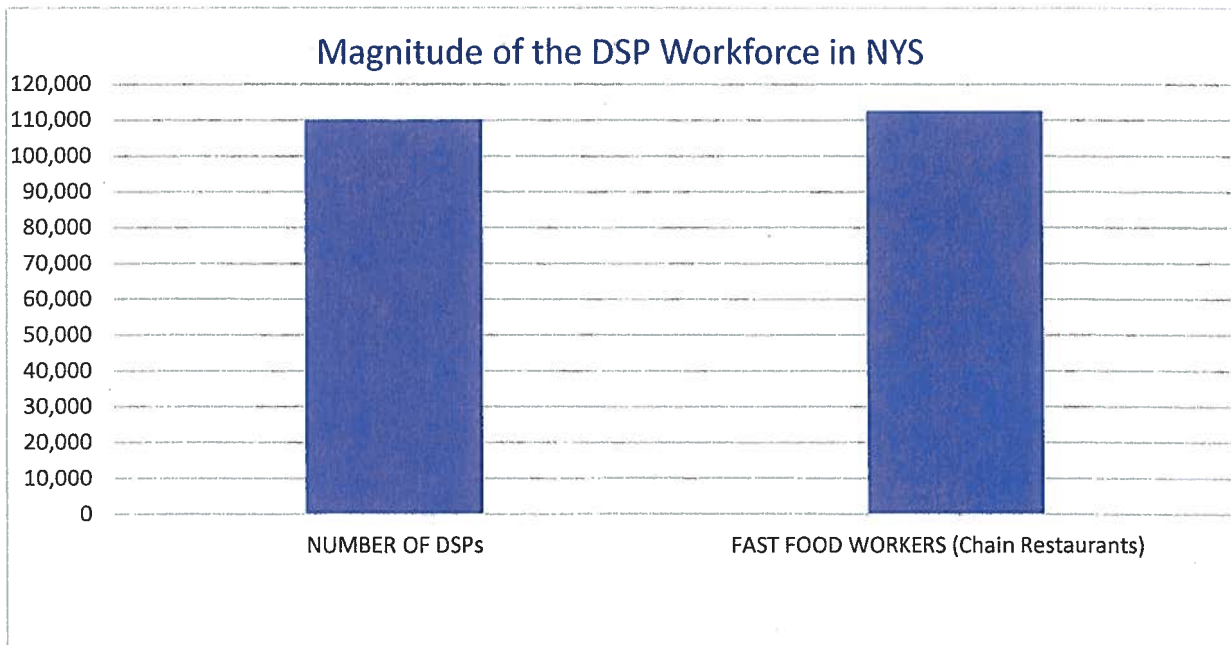
*More than 80% of agencies surveyed indicate that DSP staff turnover and poor retention is a serious problem.*

### Turnover and Vacancy Rates Promise to Deteriorate Further if Providers Cannot Compete with Fast Food Establishments for Labor

- The \$15 per hour minimum wage mandate for fast food workers can be funded by automating fast food franchises or by raising products prices.
- Developmental Disability providers cannot raise their rates. Only government can do that by providing additional funding. Almost all of our funding comes from the State. We have no other payers.
- The budget contains no additional funding for the increase in the minimum wage scheduled for FY 16-17.
- The first year cost of the minimum wage increase for developmental disabilities providers is about \$270 million. Without state funding this simply amounts to another cut which will negatively impact services.

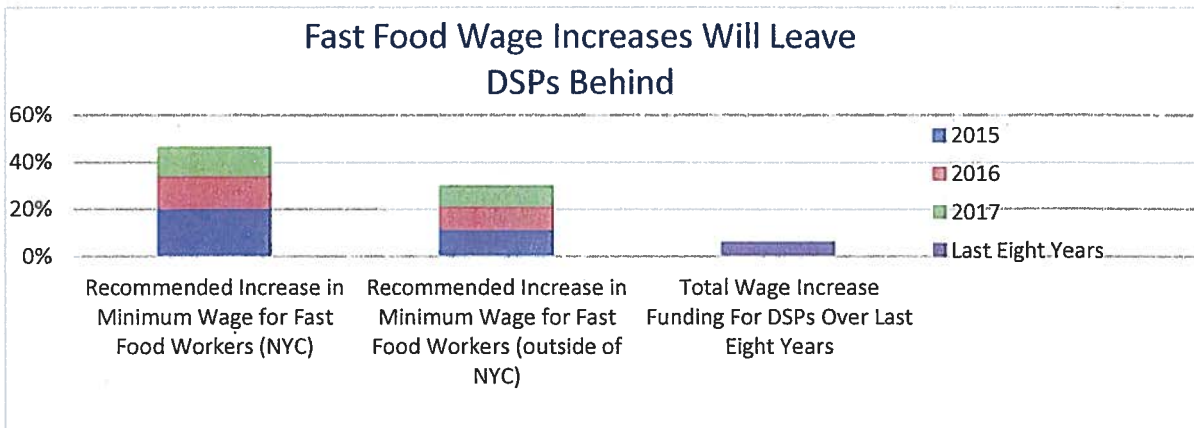
## The Real Impact of An Unfunded Minimum Wage Increase

- The Governor's minimum wage proposal would increase the minimum wage by \$1.75 per hour throughout the state in the coming fiscal year, except in NYC where it would increase by \$3 per hour.
- The minimum wage will jump again on 12/31/17 and will roll-up to a 30 percent increase in most of the state and 45 percent increase in NYC, compared to today.
- A 30 to 45 percent unfunded mandate on the wages of employees that make up 77 percent of our Chapters' total revenue will result in either massive layoffs or bankruptcy.
- NYSARC estimates that we will have to reduce our workforce by 4,600 direct care workers or 16 percent by 12/31/2017 and 7,400 direct care workers or 26 percent by 12/31/2017.
- We will no longer be able to provide a safe and community integrated life experience for the people we support.
- We will have two choices - - reduce the number of people we serve by thousands or reduce the quality of life of the people we support.
- It is important to note that a recent economic study shows that NYSARC's 28,500 employees have an economic impact of \$2.4 billion on the state economy each year, including the payment of \$328 million in state and local taxes for a total impact of \$2.7 billion.



*NYS Fast Food Wage Board Data was used to estimate that there are between 101,700 and 124,000 fast food workers at chain restaurants.*

- We must be on the same year-to-year implementation path as fast food workers, with commensurate funding increases for all DSPs, teacher aides/assistants, and other lower wage workers in the same year as the wage increase. Only this will provide competitive wages for recruitment and retention, prevent wage compression, preserve career ladders, and provide opportunities for advancement.
- The inevitable result of requiring minimum wage increases without funding will be the devastation of voluntary providers forcing the State to assume care at a higher cost.



*A .2% COLA for DSPs equates to approximately 3 cents per hour.*

## 2. WAIT LIST

### Not enough Services: Anxiety and Uncertainty for the State's Families

- The number of adult children living at home who can no longer be cared for by aging family caregivers has reached crisis proportions. Many of these adult children have severe disabilities including behavioral challenges.
- It is not clear how many individuals living at home need services now. There has been enormous confusion regarding what the state is doing about this crisis. A report on the residential waiting list required by last year's budget is due to be submitted on February 15.
- While the sum of \$120 million was appropriated in FY 15-16 for development of new developmental disability services, families are still fighting to get services approved in a system that will not allow expansion of capacity and is essentially appears set-up to only help people after a tragic event occurs or is imminent.
- This year a similar unspecified sum of \$120 million (combined state and federal share) has again been requested.
- Despite the need for additional resources, there is no clear, transparent, and uniform statewide process for allocating the scarce residential placements which become available.
- We need adequate funding, development of new residential opportunities, and a fair and compassionate eligibility and placement system.



### **3. THE FAILURE OF RATE RATIONALIZATION**

- Rate rationalization – implemented by the NYS State Department of Health - has created an inflexible financial system which has eliminated the ability of individual programs to earn a return (also known as generating an operating surplus) in order to offset losses in other programs. This sets the stage for future rate cuts that guarantee a steady financial erosion of the entire system of care.
- The pace of rate rationalization has proceeded at an unsustainable speed making it impossible to rationally consider the impact on the entire system of services. Providers have received many rate changes, including rates that are more than six months retroactive, which makes it difficult, if not impossible, to plan ahead and develop a budget.
- The entire system of services has been subjected to retroactive rule making which has created chaos, led to significant financial losses and disrupted entire programs, including Medicaid transportation, supported employment, and reimbursement for unavoidable absences and program closures.
  - The Supported Employment Program, in particular, is critical to meet the State’s goals of achieving least restrictive employment for people with developmental disabilities, yet it no longer funds transportation to get to work and the sudden change to hourly billing from monthly billing has slashed provider reimbursement by approximately 40 percent. A request to continue the “SEMP Contingency” has gone unanswered from the Office of People With Developmental Disabilities.
  - Basing future rates on a prior cost experience fails to account for unanticipated spikes in cost due to snow days, flu epidemics, and other unavailable absences without sufficient allowance for vacancies. The vacancy factor for day programs is non-existent.
  - Pleas for help with extraordinary and devastating expenses, such as people whose complex needs cost many times the rates paid or Chapters whose transportation costs must cover vast rural territories, go unanswered. In these two circumstances, two NYSARC Chapters face imminent financial failure.

### **4. PRESCHOOL**

- Chapter 4410 preschool programs provide critical services to children with disabilities ages 3-5 and their families. Programs have received one 2 percent increase over the last seven years and are subject to an annual State Education Department reconciliation process that further reduces funding each year.
- We project that without growth factors and necessary changes in the tuition methodology, nine of NYSARC’s remaining 19 comprehensive 4410 preschool programs will be faced with imminent closure.
- No additional funding for preschool programs is contained in the Governor’s budget request.



## **5. EMPLOYMENT TRANSFORMATION**

- The State and providers have worked out a plan to allow former workshop facilities to remain open as integrated businesses.
  - If approved by CMS, this will eliminate the concerns of many families that their loved ones will be displaced from settings which have given them meaningful employment, a longstanding circle of friends, and a paycheck.
  - However, the plan has not yet been submitted to the Centers for Medicare & Medicaid Services (CMS) for approval. NYSARC is working with the NYS Congressional Delegation to encourage final approval by CMS when it receives the plan.
6. **JUSTICE CENTER** – The Justice Center has buried providers generally and DSPs, in particular, in voluminous paperwork and reporting responsibilities which have no payoff in enhanced protection for the people they serve. Further, DSPs are sometimes subject to an indiscriminate and punitive system and sanctions out of all proportion to most allegations and infractions. This subtracts from the hands-on care which is key to the safety and well-being of people with developmental disabilities. NYSARC has prepared a legislative proposal to reform the Justice Center to focus on catching criminals, not persecuting hardworking professionals.

## **VII. THE TRANSFORMATION PANEL – POTENTIAL FOR A MISSED OPPORTUNITY**

- Last year’s budget established a transformational panel of experts, including providers and state officials, to make recommendations on how to proceed with the transformation of the State’s system of developmental disability services in accordance with goals, including person-centered planning, flexibility, and efficiency.
- However, the draft recommendations of the Panel released for public comment, while aspirational, are vague with no concrete ideas or approaches to address with the challenges facing the field.
- Among NYSARC’s comments on the Panel’s recommendations are the following:
  - Recommendations are too vague to specifically address the needs of families when aging caregivers need residential placement for their loved ones and how and when a reliable needs assessment methodology would be available, which is transparent and fair for purpose of making residential placements.
  - In response to the recommendation urging “fair compensation for DSPs”, NYSARC asks “will OPWDD (and the Panel) support funding for a \$15 minimum wage for DD workers?” or “advocate for provider rate increases equal to the cost of increasing wages?”
  - Recommendations failed to address exactly how supports could be adjusted to reflect a person’s actual need which is an impediment to “placing more needs intensive people since providers cannot accept the risk of a poor match.”

- While providers are willing to move people from Intermediate Care Facilities (ICFs) to Individualized Residential Alternatives (IRAs), OPWDD has not considered the “provider resources necessary to make this a reality.” And “it also must be noted that in some instances...the ICF is already the most integrated setting appropriate.”
- Recommendations should require all state agencies to set employment targets for people with developmental disabilities if the State’s “Employment First” goals are to be met.
- Recommendations call for sufficient funding for Self-Direction but do not specifically address the “lengthy periods” required to have self-direction budgets reviewed and approved to enable funds to flow in the first place.
- NYSARC expressed concern that rate rationalization would be an impediment to increasing respite options for families.
- The Panel members continue to work with Commissioner Delaney and OPWDD staff to improve the Panel’s recommendations, and establish an implementation plan. NYSARC is hopeful that as much of the implementation plan as possible can be integrated directly into the Panel’s recommendations to gain families the assurances that they need.