



THE NEW YORK STATE PUBLIC EMPLOYEES FEDERATION TESTIMONY

Roundtable: To evaluate the State's response to COVID-19 at residential facilities for developmentally and intellectually disabled individuals

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Good afternoon Chairperson Mannion, members of the committee and distinguished guests. My name is Randi DiAntonio and I am the Vice President of the Public Employees Federation (PEF). Thank you for the opportunity to speak on behalf of our 50,000 members about the state's response to COVID-19 at residential facilities for developmentally and intellectually disabled individuals. Our union is made up of professional, scientific and technical experts who provide critical services to the residents and taxpayers of New York State. Serving as the state's frontline essential workers during the COVID-19 pandemic, our members have risked their lives and those of their families to maintain the continuity and quality of services to New York's most vulnerable citizens, most especially those with developmental and intellectual disabilities.

I. PUBLIC EMPLOYEES HAVE BEEN AND REMAIN THE BACKBONE OF THE STATE'S COVID-19 RESPONSE

Despite chronic shortages of personal protective equipment, inaccurate guidance on appropriate safety protocols, and the over-reliance on overtime and forced redeployments, PEF members have filled the breach to keep their clients and all New Yorkers as safe as possible during this crisis. It should be noted that our members who worked in congregate settings and directly with COVID patients have borne a disproportionate burden in serving the state's neediest citizens. Unlike many of the essential employees in private industry, my members have received no recognition or hazard pay for their selfless and dedicated service.

II. MAJOR ISSUES IDENTIFIED IN STATE'S COVID-19 RESPONSE

A. Inadequate Staffing and Overreliance on Overtime and Forced Redeployments:

(1) Inadequate Staffing: The state of New York has embarked on a long-term effort to reduce staffing at all of its agencies. OPWDD has seen some of the most dramatic reductions in staffing over time. This impacts the availability and continuity of services for New Yorkers with intellectual and developmental disabilities.

TABLE 1¹
NYS State Human Resource Allocation for New Yorkers
with Intellectual and Developmental Disabilities

| | Staffing 2011 | Staffing 2020 | Difference | Percent Decrease |
|--------------|--------------------------|--------------------------|-------------------|-----------------------------|
| OPWDD | 23,348 | 19,595 | -3,753 | -16% |

This reduction in staff is directly attributable to the imposition of “bare bones” budgeting at all of the state agencies that has been in place for years so the state can remain under the arbitrary 2% annual state spending cap. This budgeting approach left the state ill-prepared to maintain the continuity of quality and safe service delivery, especially for New Yorkers located in congregate settings. In the end, the systemic understaffing at OPWDD, combined with staff quarantines and infections, left the state ill-prepared to address its staffing needs. So, in lieu of developing a long-term, sustainable staffing plan that meets or exceeds basic standards to maintain quality care, the state has reduced staffing over time. This left the state, and OPWDD in particular, flat-footed in its attempt to meet the increased demands of addressing the spread of the virus among staff and clients. The 2021-2022 OPWDD budget projects the staffing level to be at 18,572 FTEs.

¹ “New York State Agency Use of Overtime,” <https://www.osc.state.ny.us/files/reports/special-topics/2021/pdf/overtime-2021.pdf>

(2) Use of Overtime to Address Shortages During COVID-19: The lack of staff, combined with the state hiring freeze and other logistical challenges posed by the pandemic, helped drive the overall cost of overtime across all state agencies to \$850 million in 2020.

TABLE 2²
Growth of Overtime to Address Systemic Staffing Shortages at OPWDD

| | 2011 | 2020 | Difference | Percentage |
|-----------------|----------------|-----------------|-------------------|-------------------|
| Number of Staff | 23,348 | 19,595 | 3,753 | -16% |
| OT Costs | \$95.1 Million | \$156.7 Million | \$61.6 Million | +65% |

OPWDD spent \$156.7 million in overtime costs, which made up 18.4% of the state’s total overtime expenses in 2020. OPWDD had the most overtime, with 4.7 million hours, accounting for nearly 25% of the 19.1 million overtime hours worked by state employees. On average, staff at OPWDD worked 235 hours of overtime in 2020.

TABLE 3
Impact of Overtime on OPWDD Staff During COVID-19

| Total OT Pay | Pay % Change 2019-20 | Total OT Hours Worked | Average OT Per Person Per Pay Period |
|---------------------|-----------------------------|------------------------------|---|
| \$156.7 million | 3.7% | 4,685,852 | 19.0 |

It is also important to note that these costs do not include payments by agencies for “agency” or contract nurses. These individuals are hired on an individual basis and are not members of the bargaining unit. Our members report that these nurses are

² New York State Agency Use of Overtime,” <https://www.osc.state.ny.us/files/reports/special-topics/2021/pdf/overtime-2021.pdf>

receiving higher pay, do not maintain regular caseloads and receive more favorable shifts than full-time staff.

(3) Forced Redeployments of Staff: Obviously, nurses, habilitation service specialists and other direct care staff were more highly impacted by overtime and forced redeployments than other staff. Habilitation service specialists were often redeployed to homes to address coverage gaps caused by short staffing. The lack of management communication with front line staff, inadequate testing requirements and inconsistent contact tracing protocols caused the virus to spread through group homes as staff unknowingly brought the virus from home to home as they were redeployed to cover shortages in their areas. This also likely contributed to community spread. This was a particularly big issue between November 2020 and April 2021. The staff that worked in group homes including direct care, habilitation specialists and nurses had an especially high rate of exposure and infection.

TABLE 4³
COVID-19 Infections of OPWDD Staff and Clients Nov. 2020-April 2021

| | | Staff | Clients |
|---------------|------------|--------------|----------------|
| November 2020 | Infections | 1,190 | 572 |
| | Deaths | 9 | 53 |
| April 2021 | Infections | 3068 | 1711 |
| | Deaths | 9* | 105 |

*Most up-to-date information provided (December 2020)

³ Correspondence from PEF to OPWDD
https://www.pef.org/wp-content/uploads/2020/03/PEF-to-OPWDD-Kastner-Revised-1_4_21.pdf
https://www.pef.org/wp-content/uploads/2020/03/PEF-to-OPWDD-4_22_20.pdf
<https://www.pef.org/wp-content/uploads/2020/04/Letter-to-OPWDD-Commissioner-Kastner-4-8-20.pdf>
<https://www.pef.org/media-center/covid-19/>

(4) Staffing and Program Availability at OPWDD: Over time, the inability of OPWDD to attract and retain staffing, especially nurses, has forced the “suspension of services” or closure of many homes and NYS Developmental Disability Service Offices (DDSO) across the state.⁴ This dramatic reduction in capacity has, in turn, affected the availability of services to residents with intellectual or developmental disabilities.

**TABLE 5
OPWDD Placement Availability**

| Year | Count of Total Programs | Total Capacity of All Programs | Total Census |
|-------------|--------------------------------|---------------------------------------|---------------------|
| 2012 | 2,107 | 12,002 | 10,498 |
| 2013 | 2,042 | 11,635 | 10,146 |
| 2014 | 1,947 | 10,979 | 9,641 |
| 2015 | 1,838 | 10,347 | 9,069 |
| 2016 | 1,759 | 9,723 | 8,582 |
| 2017 | 1,687 | 9,345 | 8,145 |
| 2018 | 1,646 | 9,125 | 7,907 |
| 2019 | 1,593 | 8,863 | 7,663 |

Reviewing the program availability and comparing those program offerings with the total number of requests for placement shows the inadequacy of the current system in meeting the needs of intellectually or developmentally disabled New Yorkers. However, this also points to the lack of general lack of planning by the state for its own staffing needs. OPWDD has told us they stopped keeping this data since 2019, but program suspensions/closures since then have continued to occur at an alarming rate.

TABLE 6:⁵

⁴ FOIL Request: #19-0175 furnished by Lydia Brassard, Public Records Officer, 2/26/21

⁵ FOIL Request: #20-02-013 furnished by Lydia Brassard, Public Records Officer, 2/26/21

Census of Residential Placement Requests at OPWDD

| Year Reported to OPWDD | Total Requests for Placement | Needed ASAP | 2 Years | 3-5 Years | 6 + Years |
|------------------------|------------------------------|-------------|---------|-----------|-----------|
| 2012 | 11,770 | 4,057 | 2,318 | 2,616 | 2,347 |
| 2013 | 11,966 | 4,207 | 2,786 | 2,660 | 2,395 |
| 2014 | 11,927 | 3,928 | 2,655 | 2,601 | 2,741 |
| 2015 | 11,547 | 3,712 | 2,579 | 2,518 | 2,738 |
| 2016 | 11,104 | 3,380 | 2,438 | 2,441 | 2,645 |
| 2017 | 11,014 | 3,768 | 2,361 | 2,377 | 2,559 |
| 2018 | 10,936 | 3,700 | 2,294 | 2,358 | 2,594 |

B. Poor Communication by Management and Lack of Coordination with Staff

At the height of the pandemic and after multiple attempts to address areas of concern directly with OPWDD at the Labor-Management table, PEF corresponded with OPWDD Commissioner Theodore Kaistner, Ph.D. on four separate occasions to request information on the spread of the virus within the agency’s facilities, to demand certain steps be taken to halt the spread of the virus (i.e., masking, social distancing, reducing density, etc.) and for increased coordination between agency management and the staff to combat the increasing spread of the virus in OPWDD operated facilities.⁶

Despite repeated requests, OPWDD did not conduct appropriate contact tracing or testing for the individuals we serve or agency employees. In fact, testing was voluntary for staff and individuals and contact tracing was hit or miss. This, coupled with the forced redeployment, obviously led to increase incidence of transmission.

⁶ https://www.pef.org/wp-content/uploads/2020/03/PEF-to-OPWDD-Kastner-Revised-1_4_21.pdf
https://www.pef.org/wp-content/uploads/2020/03/PEF-to-OPWDD-4_22_20.pdf
<https://www.pef.org/wp-content/uploads/2020/04/Letter-to-OPWDD-Commissioner-Kastner-4-8-20.pdf>
<https://www.pef.org/media-center/covid-19/>

C. Inadequate Personal Protective Equipment

The inability to access appropriate personal protective equipment has been well documented. Because the state was unwilling or unable to acquire appropriate PPE, staff were required to wear the same mask for five days. In order to protect our members, the union purchased its own PPE for distribution. It is also important to note that OPWDD is still not fit-testing staff for their M-95 masks.

We are thankful for the legislation enacted last year requiring agencies to develop and display agency-specific preparedness plans and operational protocols, including requirements around the procurement and storage of appropriate PPE (Chapter 168 of 2020 and Chapter 30 of 2021). This legislation, sponsored by Senator Gounardes and Assemblymember Abbate, requires agencies to develop specific plans that include (1) the appropriate designation of “essential” versus “non-essential” titles and positions; (2) specific protocols around telecommuting and remote work; (3) a description of how the employer will, to the extent possible, stagger work shifts of essential employees; (4) a description of the protocol the employer will implement in order to procure the appropriate PPE for essential employees; and (5) protocols in the event an employee is exposed to a known case of the communicable disease; protocols for contact tracing and emergency housing.

We are thankful for these statutory requirements and most of state agencies adopted plans that aligned with those developed by the union to keep both staff and clients safe in the event of a resurgence of COVID-19 or another public health emergency.

D. Inconsistent Application and Lack of Uniform Safety Standards and Protocols

One of the major challenges faced by staff and clients in congregate facilities was the inconsistent application and lack of uniform safety standards and protocols.

While it is understandable that adjustments were made on various safety protocols during the various phases of this pandemic, to this date, the state still does not have a single, uniform standard for the usage of masks and other protective equipment across state agencies and no uniform standard to deal with clients that refuse or cannot adhere to masking or other PPE requirements.

At OPWDD, clients may not be able or want to wear masks. While the state cannot mandate the use of masks and other PPE for this population, other safety precautions should be identified and implemented to keep both clients and staff safe and to protect the communities in which these individuals reside.

The state needs to evaluate and implement uniform standards for those who do not want to or cannot protect themselves or those who serve them.

III. CONCLUSION

As we have seen from the state's response to the COVID-19 pandemic, the public interest is best served by high-capacity state agencies that render needed services and which are staffed by talented, dedicated and professional public servants hired pursuant to the state's rigorous civil service system. It is clear that the State of New York needs to learn several lessons from this experience. New York needs to develop greater capacity to deliver needed services and to address potential disasters and emergencies in a timely, effective, efficient, and cost-effective manner.

A. “Hazard” or “Essential Duty” Pay: This year’s enacted state budget provides more than \$46 million for a cost-of-living increase for private sector employees who contract to provide services for OPWDD and other agencies and more than \$2 billion to provide unemployment insurance benefits for undocumented immigrants. But our “COVID heroes” were left behind. As has been clearly delineated in this testimony, the state relied on its “essential employees” to get the job done. Years of systemic under-staffing and under-resourcing at OPWDD and other state agencies resulted in an overreliance on front line workers to keep New York’s most vulnerable safe during this crisis. These employees were mandated to report to the front line and to put their lives and the lives of their families at risk to support the state’s response to this crisis.

The American Rescue Plan has delivered significant relief to New York and the funds can be used to reward our front-line heroes with “hazard” or “essential duty” pay. Many private employers and other state and local governments have already provided this important benefit to their frontline heroes. Governor Cuomo clearly stated on multiple occasions that he supported giving our heroes these resources if federal aid arrived. Well, the Biden administration and New York’s own Senator Chuck Schumer delivered those resources. Now, it is up to you to make sure our “heroes” don’t end up with “zeros.”

B. Staffing: Even after the enactment of a state budget that increased state spending by more than \$8 billion year-over-year, the state is still operating with 5,000 fewer full-time employees than at the start of this crisis. This is not acceptable. We implore

the state to begin the process of hiring to fill these vacancies, especially nurses and other direct care staff.

C. Increase Compensation: The pandemic has demonstrated that the state is simply not a competitive employer for professionals like nurses. The state continues to be a revolving door for these professionals, who are in high demand and maintain high professional mobility. The state needs to do more to attract and retain these critical staff. We implore the state Civil Service Department and the Division of the Budget to approve a salary grade increase for Nurse 1 from grade 14 to grade 18 and for Nurse 2 from grade 16 to grade 20, while continuing geographic differentials where necessary, so that OPWDD and other state agencies can compete in hiring and retaining the nurses needed to render care and reduce the need for mandatory overtime and forced redeployments in our facilities. There has not been an increase in the starting grade for nursing titles since August 1981.

I appreciate your time and the opportunity to address you today. Thank you.