The Arc New York

Chief Executive Officer Erik Geizer's Testimony

Joint Legislative Hearing of Senate Finance and Assembly Ways and Means Committees on FY 2022-23 State Budget

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Introduction

Chairwomen Krueger and Weinstein, Senator Brouk and Senator Mannion, Assemblyman Abinanti and Assemblywoman Gunther, and other members of the Senate and Assembly, thank you for the opportunity to provide feedback on the proposed Executive Budget and its impact on our field and the people we support.

I am Erik Geizer, Chief Executive Officer of The Arc New York. The Arc New York is a family-led organization that advocates and provides supports and services for New Yorkers with disabilities in our mission to "provide people with intellectual, developmental, and other disabilities the ordinary and extraordinary opportunities of life." With 36 operating Chapters across New York state, our organization supports more than 60,000 individuals and families and employs more than 30,000 people statewide.

The parents who created our organization were among the earliest advocates for quality services and opportunities for people with intellectual and developmental disabilities (I/DD). In the more than 70 years since our founding, we have witnessed – and at many times driven – massive transformation and progress in our field. Over those seven decades, New York has developed a robust system of exceptional, comprehensive individualized services and programs that aid independence, support families, and emphasize inclusion in communities.

New York has a legal and ethical obligation to provide essential services, quality care and integration for its citizens with I/DD. Our shared responsibility to the people we support is nonnegotiable. Fortunately, with the investments found within the FY23 Executive Budget, Governor Hochul has taken decisive action to preserve and enhance how we approach supports and services for people with I/DD. We hope the legislature will follow suit, stay the course, and be an ally as they have many times in the past.

The commitments Governor Hochul made in her Executive Budget to stabilize and strengthen our system of care cannot be understated. We have long advocated for recognition of our essential frontline staff, sustainable investment, and common-sense policy. For over a decade, that call has gone largely unheard, and the neglect of our vulnerable population has resulted in an escalating crisis that threatens the safety, opportunity, and future of supports and services for people with I/DD.

For the first time in many years we are invited to work alongside passionate policy makers in all levels of government, who have the genuine desire to address challenges facing New Yorkers with disabilities and forge a better quality of life. This marks a turning point for our field, and a long-awaited and well-deserved recognition as part of our essential healthcare system.

Workforce Crisis

To adequately frame our support for the Executive Budget and dire need for these historic investments, we must discuss the workforce crisis that providers face as they struggle to attract and retain staff. The staffing crisis is not new, but the pandemic has exacerbated the situation to the point that it threatens the health and safety of the people we support. Our Direct Support Professionals (DSPs) are the unsung heroes of direct care, particularly through the challenge faced during the COVID-19 pandemic. Without them, none of what we do would be possible. The majority of these dedicated frontline workers are women and people of color – historically disadvantaged groups for whom the state has committed to improve equity and opportunity.

Until this year, statewide reimbursement for DSP salaries in the voluntary sector has increased only minimally over the past decade, and still puts starting wages at or barely over minimum wage. The average statewide starting salary for a DSP is currently 3.45% lower than the $15 fast-food minimum wage. Many of our most skilled and experienced DSPs are being lost to higher-paying entry-level jobs. Their contributions and dedication are invaluable, and continuity of care is essential in promoting positive outcomes for the people we support.

Inclusion of support for the minimum wage increase, recruitment and retention bonuses, and 5.4% COLA in the Executive Budget is a collective relief for all providers. Without adequate funding, I/DD providers cannot offer competitive wages to recruit and retain the skilled direct support staff that provide the foundation of care for more than 140,000 New Yorkers with I/DD. Without these investments, this workforce emergency will continue to force service reductions, program closures, and loss of supports for people with I/DD throughout the state.

A survey conducted by New York Disability Advocates (NYDA) in October 2021 (attached hereto as Appendix A) found that nearly 70 percent of nonprofit agencies have seen an increase in staff vacancies since April 2021. Half of all providers reported they have been forced to close or reduce programming and 77% were unable to expand program offerings to meet need, due to staffing shortages.

OPWDD acknowledged the extremity of our current crisis by issuing emergency regulations permitting increases in certified group home capacity with approval of the Commissioner, due to staffing shortages. It is notable that these flexibilities also apply to state-operated providers, which have historically been able to pay salaries approximately 40% higher than those of voluntary providers like The Arc New York.

In addition to supporting the Executive Budget items mentioned above, we recommend the legislature take further action by including a $5,000 refundable personal income tax credit for DSPs employed or contracted by nonprofit provider agencies. We propose these tax credits be available to employees in 100, 200 or 300 code direct care positions, with an adjusted gross income of less than $50,000. For every $1,000 in salary over $50,000, the credit would be reduced by $100, with the tax credit phasing out at an income threshold of $100,000.[1] This would help further establish the DSP as a professional career, incentivize prospective candidates to explore the field, and differentiate between other similar career options.

Simply put, it is absolutely critical that the legislature include the proposed funding in this budget so we may begin to compensate our DPSs commensurate with their ability, experience, and performance, and commit to sustaining that investment into the future. If we do not, our programs will be reduced or eliminated due to lack of staffing and many years of progress toward community integration, choice, and deinstitutionalization will be lost.

Direct Support Professional Bonus Flexibility

The inclusion of additional retention and recruitment bonuses for DSPs in the proposed executive budget signifies an understanding of our workforce crisis by the governor. Coupled with the planned disbursement of American Rescue Plan Act (ARPA) funding through the DOH plan, this will have a sizeable impact to DSP frontline workers who have endured great hardship.

The Executive Budget outlines eligibility based on hours worked and the amounts eligible employees should receive over the course of two vesting periods, which are not yet defined. As it stands, employees working on average at least 20, but less than 30 hours per week will receive $500 per vesting period. Those working 30, but less than 40 hours per week will receive $1000 per vesting period, and employees working 40+ hours per week will receive $1,500 per vesting period. While this might be a straightforward approach to eligibility, it does not accurately reflect the reality of our operations.

Providing support for people with I/DD requires a broad composition of direct care employees. They range from the person working 40+ hours over the course of many months, to the person who might work two shifts over the

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[1] Based on Mannion, S7643, 2021-22, https://www.nysenate.gov/legislation/bills/2021/s7643

weekend, providing critical staffing relief. In the latter example, a DSP could work two eight-hour shifts consistently over the course of the vesting period and cover other shifts where needed, but would be ineligible for a bonus since they do meet the required minimum hours. In another example, a full-time DSP working 35 hours, could conceivably work 4 hours of overtime every week of the vesting period and be ineligible for the maximum bonus.

We propose modifying the eligibility requirements to more equitably reflect real-life scenarios by including part-time employees who work at least 15 hours on average and reducing the average hours for the top tier from 40+ hours to 35. We look forward to having these discussions with legislators and the governor over the course of the next several weeks.

In administering the non-discretionary bonus payments to employees, providers will incur mandated costs, such as applicable overtime and employer pension contributions. In order for such payments to be considered bonuses, they would need to be at the "sole discretion of the employer," as outlined in the U.S Department of Labor Wage and Hour Fact Sheet #56c[2]. The bonus payments outlined in the Executive Budget prescribe vesting periods and payment levels to eligible employees, which eliminate the sole discretionary prerequisite that would preclude such payments from being treated as wage increases. They would therefore be subject to overtime, as applicable, in workweeks where an employee works more than 40 hours.

Additionally, under the Employee Retirement Income Security Act (ERISA), employer pension plans with a defined contribution by the employer, which is based upon all wages paid to an eligible employee, must pay such pension contribution on behalf of employees who receive the bonus payments prescribed in the Executive Budget.

The bonus allocations will need to include funding to cover the additional mandated overtime and pension costs along with other existing mandated fringe costs, to ensure these much-needed and appreciated resources do not cause an unintended negative impact on providers.

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[2] https://www.dol.gov/agencies/whd/fact-sheets/56c-bonuses

Fiscal Sustainability

For over a decade, New York state did not make adequate investments in our system of care to keep up with inflation and sustain the programs and services citizens with I/DD rely on. In this time, inflation has risen approximately 25 percent, yet the I/DD field received only a 1.2% cost-of-living adjustment (COLA). A 1% COLA, which was included in the FY22 enacted budget and desperately needed during the workforce crisis, took eight months to be included in provider rates before finally being approved in December 2021. For these investments to make their intended impact, this process must be expedited.

The 5.4% cost-of-living adjustment (COLA) in the FY23 marks the first step towards long-term investment in and the sustainability of our care infrastructure. Not only does it support wages, but also allows the flexibility to invest in our aging infrastructure and address long-term fiscal challenges. Many of our Chapters have seen a decline in the remaining useful life of their fixed assets — such as buildings, equipment, and vehicles — as they have been unable to make necessary reinvestments.

To help stabilize and maximize wages from the COLA, we ardently support The Nonprofit Infrastructure Capital Investment Program (NICIP), which makes targeted investments in capital projects that improve the quality, efficiency, and accessibility of nonprofit human services organizations that provide direct services to New Yorkers. Targeted investments include renovations or expansions of existing space used for direct program services; modifications to provide for sustainable, efficient spaces that would result in overall energy and cost savings; accessibility renovations; and technology upgrades to improve electronic records, data analysis, and/or confidentiality. The FY23 Executive Budget includes a new appropriation of $50 million and a total reappropriation of approximately $42 million, increasing the total program

value to $170 million.[3] Many of our Chapters have utilized this program over the years, and it remains an important tool to surmount fiscal challenges.
In order for this influx of resources to make an immediate impact, it must be fast-tracked for inclusion in our rates. When the legislature and governor vote on and sign legislation that "shall take effect immediately," it is their intent and belief that it does. In reality, it does not. Ideally, there needs to be a mechanism in place to ensure that funding designed to meet critical needs reaches providers within the first quarter of the fiscal year.

Long-Term Fiscal Plan

The state is experiencing unprecedented financial stability through FY25 and beyond, as outlined in the Updated Financial Plan. We applaud the governor for strengthening the fiscal health of the state, especially in the turbulent and uncertain landscape of the COVID-19pandemic,which upended our economy and the lives of most New Yorkers. Much of this windfall is attributed to higher than expected tax receipts, however the state has also benefited from enhanced federal funding generated through home and community-based services waivers (HCBS Waivers).

The Federal government has provided a 6.2 percentage point increase to the Federal Medical Assistance Percentage (FMAP) rate since the start of the COVID-19 public health emergency in January 2020. New York's Updated Financial Plan assumes the continuation of eFMAP through June 30, 2022, and the enhanced FMAP is expected to provide state share savings of nearly $3 billion in FY 2022 and $995 million in FY 2023.[4] In FY23, the Office for People with Developmental Disabilities (OPWDD) will see a $2.2 billion All Funds appropriation increase over FY22.[5] Moving forward, forecast revisions leave

[3] FY23 NICIP Agency Appropriation Report, https://publications.budget.ny.gov/pubs/archive/fy23/ex/agencies/appropdata/NonprofitInfrastructureCapitalInvestmentProgram.pdf
[4] FY23 NYS Financial Plan, page 24, https://www.budget.ny.gov/pubs/archive/fy23/ex/fp/fy23fp-ex.pdf
[5] OPWDD Agency Appropriations Summary, Page 1 https://www.budget.ny.gov/pubs/archive/fy23/ex/agencies/appropdata/PeoplewithDevelopmentalDisabilitiesOfficefor.pdf

surpluses of $5.0 billion in FY 2022, $6.4 billion in FY 2023, $5.3 billion in FY 2024, and $5.5 billion in FY 2025.[6]

These additional savings and FMAP rate increases are tied to home and community-based services waivers (HCBS Waivers), which includes the supports and services provided through The Arc New York. We are heartened to see that the state is appropriating additional matching funds for its intended purpose and recipients, rather than finding ways to circumvent it. These increases are a result of the extended federal Public Health Emergency (PHE) and subsequent HCBS eFMAP. This funding is urgently needed to address our immediate and unprecedented workforce crisis, and must be sustained beyond FY23 to prevent a "fiscal cliff" following the end of the PHE and eFMAP.

As the state considers its long-term fiscal health, we ask the governor and legislators to develop a similar fiscal plan for the I/DD field. Considering that enhanced FMAP through HCBS brought historic federal funding and financial stability for years to come, applying the bulk of such continued funding to permanent wage increases for our DSPs would assure lasting stability of our workforce and our service system.

Statewide Health Care Facility Transformation Program

HMH Part K would establish and implement a new $1.6 billion Statewide Health Care Facility Transformation Program IV (Statewide IV) for the purpose of funding capital projects for eligible health care providers, building out ambulatory care infrastructure statewide, financing information technology and telehealth improvements, and implementing innovative nursing home models.

The bill includes adult care facilities, assisted living programs, and behavioral health facilities, but does not include home and community-based services provided to people with I/DD. While The Arc New York's Article 16 and 28 clinics would be eligible under the current bill, there are suitable similarities between the included facilities and those of voluntary I/DD providers to warrant their inclusion. We propose that

[6] FY23 Financial Plan, page 8, https://www.budget.ny.gov/pubs/archive/fy23/ex/fp/fy23fp-ex.pdf

community-based I/DD providers that are authorized, approved and/or funded by OPWDD be included as eligible applicants.

Access to Services: Telehealth and Teleservices

The COVID-19 crisis expanded use of telehealth services to meet the critical medical needs of people across the state. For the first time, many residents received care at a time when meeting in person with medical professionals was difficult or impossible. I/DD service providers have long advocated for telehealth as a flexible, efficient option to deliver quality care. We are pleased to see extensive support for telehealth and teleservices in the Executive Budget, and hopeful that more extensive use of remote service delivery models will result in both cost savings and improved flexibility and service quality.

The Health and Mental Hygiene Bill, part V, makes necessary changes to establish reimbursement parity for telehealth services by requiring health plans, including Medicaid, to reimburse providers for services delivered through telehealth on the same basis, and at the same rate, as services delivered in person. This common-sense proposal expands access to critical services for the people we support. In many parts of the state, particularly in rural areas, it is difficult to find providers who specialize in the type of care needed by many individuals. Allowing these providers to bill comparably for telehealth and in-person appointments in-person is transformational.

Employment Opportunities for People with Disabilities

The Executive Budget Revenue Bill, Part Q, would extend the workers with disabilities tax credit for an additional six years. The credit provides tax incentives to employers of qualified full-time employees with disabilities. The tax credit is currently available until January 1, 2023. This legislation would extend eligibility through tax years beginning before January 1, 2029.

The Arc New York fully supports and consistently advocates for programs and policies that expand employment opportunities for people with disabilities. We gladly champion tax incentives for employers who hire people with disabilities and nurture partnerships with local businesses.

The Public Protection and General Government Bill, part T amends Civil Service Law (CSL) section 55-B to allow employees in the 55-B program the opportunity to transfer into competitive class positions if they meet the necessary criteria. Section 55-b of the New York State Civil Service Law authorizes the New York State Civil Service Commission to designate up to 1,200 positions normally filled through competitive examination to be filled through the appointment of qualified persons with disabilities. Opening options for employees with disabilities to transfer into competitive class positions provides a clearer career ladder.

Additionally, we have proposed a pilot job carving program (A2381) for Civil Service jobs in New York state. This supported employment strategy creates new community-based job opportunities by analyzing the essential functions of existing jobs and breaking out specific duties that can be completed by an individual with disabilities to create new positions that can be fulfilled in their entirety with a more focused skill set.

Supporting Special Education

After decades of 853 and 4410 special education schools being severely underfunded, we are pleased to see and 11% COLA included in the FY23 Executive Budget, and encourage you to accept this important investment in the final Enacted Budget. Combined with the FY22 4% COLA, the proposed investment reflects a 15% increase over a two-year period, which will help stabilize this critical education system. We have waited long enough to be recognized as a critical education resource. We cannot let this opportunity pass us by.

Students and children with I/DD must be educated with free and appropriate supports and services in the least restrictive environment, which address their individual needs. However, these educational institutions have historically been inequitably underfunded. Due to this systemic underfunding, teacher salaries at 853 and 4410 schools are not comparable with in public school opportunities, resulting in significant challenges retaining these essential educators. In addition to this historic

COLA, we ask the legislature to consider a more permanent method for securing trend factors consistent with New York's public schools.

Moving Forward

In her State of the State, Governor Hochul said "New Yorkers owe an endless debt of gratitude to our healthcare workers for all they have given us. It is time we start to repay them in a meaningful way."

Over the past two years, we have collaborated to develop solutions to problems we never expected to face. We mobilized to support each other and our communities. We innovated and evolved. We sought opportunity in every challenge, and today, we have hope that New York has seized this opportunity. After one of the most trying periods in our history, we have been presented with a budget that promises to invest in and transform our system of supports and services for people with I/DD.

Our most vulnerable citizens require the state to honor the fundamental values of our constitution, and our ethical obligation to social justice for all New Yorkers. The services we deliver are a cornerstone of that commitment. We will continue to collaborate with government to identify solutions, fight for equity for our workforce, and sustain quality care, integration, and opportunity for New Yorkers with I/DD. To meet that goal, we must be unified in vision, and for once we appear to be on the same page and in the right direction. We ask for your partnership and commitment in achieving this goal by supporting the Executive Budget investments and continuing to be a strong voice for people with disabilities.

Appendix A
2021 NYDA Survey Results

2021 NYDA SURVEYS

NYDA provider organizations recently conducted their annual statewide workforce survey. The 2021 survey results reflect the period from January 1 through April 30 and capture data from 118 providers responsible for well over 60% of statewide disability services program funding. This year, a few new questions were added to capture the impact of COVID-19 and the workforce shortage on people who receive services and the staff who provide those services.

APRIL 2021 SURVEY RESULTS	
As of April 2021 – the average statewide DSP Staff Vacancy for NFP Providers	24.75%
Region 1 (NYC Metro) %	18.29%
Region 2 (Capital Region and Mid-Hudson) %	27.33%
Region 3 (Central New York) %	25.77%
Region 4 (Western New York) %	27.61%
Increases in Average Statewide Staff Vacancy Rate from pre-pandemic through January 1, 2021–April 1, 2021	74.3%
Agencies reporting senior staff had to cover shifts due to staffing shortages from January 1, 2021–April 1, 2021	69.2%
Agencies that had to close programs or reduce operations due to staffing shortages	47.9%
Agencies reporting programs not opened due to staff shortages	39.32%
Agencies reporting a decrease in job applicants	93.16%

OCTOBER 2021 SURVEY RESULTS	
% of NFP Agencies have seen an increase in staff vacancies since April 2021.	66.14%
% of Provider Agencies reported that they have had to close or modify programs over the past year due to financial hardship.	49%
% of Provider Agencies reported that over the past year, they have attempted to expand program offerings, but have been unable to do so because of staffing shortages.	77%
Vacant DSP positions at NFP agencies - Statewide	23,563
% of provider agencies report that they had DSP staff vacancies in excess of 20%	50%
% of Agencies Statewide reporting staff vacancy in excess of 40%	10.5%
% of agencies report a decrease in the number of job applications.	93.1%

NYDA WAGE SURVEY DATA

The average Starting Wage for DSPs Statewide is approximately 3.45% lower than the State's Fast-Food Minimum Wage.

AVERAGE/STARTING WAGE BY REGION

Region	Average Starting Wage	Industry Average Wage	Fast Food Minimum Wage	DSP Starting Wage Compared to FF Min Wage	DSP Job Vacancies
Long Island	$15.27	$16.20	$15.00	1.80%	3,896
New York City	$15.80	$16.67	$15.00	5.33%	4,066
Mid-Hudson	$14.37	$16.12	$15.00	-4.20%	3,992
Capital Region	$14.11	$14.79	$15.00	-5.93%	2,518
Mohawk Valley	$14.79	$15.71	$15.00	-1.40%	1,200
Central	$13.91	$14.57	$15.00	-7.27%	988
North Country	$14.30	$16.15	$15.00	-4.67%	1,072
Southern Tier	$13.98	$15.00	$15.00	-6.80%	719
Finger Lakes	$14.34	$15.17	$15.00	-4.40%	1,584
Western	$13.96	$14.75	$15.00	-6.93%	3,740

Note: Beginning 7/1/21 the Fast Food Minimum Wage in NYS is $15/hour statewide