Florida ARF Recommendations to DeSantis-Nunez Transition Advisory Committee on Health and Wellness

The mission of the Florida Association of Rehabilitation Facilities, Inc. (Florida ARF) is to promote the interests of individuals with disabilities by acting as a public policy change agent, and to promote and serve the interests of community human service provider organizations. Within this capacity, Florida ARF serves as a voice for community agencies and the individuals they serve.

The President & CEO of Florida ARF serves on the Nunez-DeSantis Advisory Committee on Health and Well-Being. In response to this privilege, our membership submits the following recommendations to the new Administration as suggestions and improvements to the service system that serves individuals with intellectual disabilities:

 # 1. Address the Direct Care Hiring Crisis. As offered during Session 2, the State needs to address the iBudget Waiver Direct Care Workforce Hiring Crisis. Just consider, since 2003 Florida's minimum wage has increased from $5.15 to $8.46 per hour as of January 2019, representing a 64% increase in wages since Florida last adopted a uniform rate study for Medicaid Waiver (iBudget) services. The 2003 rate system was based on direct care wages funded at the 25th percentile compared to national averages for wages. Since July 2003, these same rates have undergone multiple cuts and are on-average 11% lower than they were in 2003 - while inflationary costs have increased 31.1%. Compared to today's dollars, the iBudget rates for key services are on average 42.1% lower than they should be. According to a 2015 Braddock industry study, Florida's expenditures on its most vulnerable individuals are low compared to other states - Florida ranks 50 of 51 for spending on I/DD Services per $1,000 of aggregate statewide personal income yet we are the third most populous state in the nation.

- Because staffing costs represent about 70% of provider agency operating expenses, iBudget waiver providers are now facing hiring crises based on the outdated, inadequate rates. Providers are experiencing hiring crises because they simply cannot pay competitive wages. Just consider, the average wage paid for direct care staff in Florida is $9.50 per hour compared to retail and fast food stores that start employees at $10 – S11.00 per hour, and in some areas of the State the starting wages are $12-14.00 per hour.

- Direct care staff turnover rates are at 40+% on average because of low wages and minimal benefits.

- In addition to minimum wage increases, insurance costs such as employee health care, unemployment compensation, workers' compensation, and property have increased significantly. Also, as discussed in the session on lowering costs, multiple unfunded mandates have been added in the form of billing requirements, background screening costs, new licensure standards, staff training and experience requirements, and additional privacy and community integration standards are mandated by federal rule.

- Remaining on the current path will continue the deterioration of a network that has seen about a 30% drop in the number of providers since FY 07-08 and a 36% reduction in agencies that provide multiple (two or more) services.

- To resolve the direct care staff hiring crisis, Florida ARF requests that the DeSantis-Nunez Administration support a rate increase for three iBudget waiver services (Residential Habilitation, Adult Day Training, and Personal Supports) so provider agencies can pay competitive wages to their direct care staff. This investment in Florida's ID service system will only require $15.8 million in General Revenue funds and will draw down an additional $23.7 million in federal Medicaid match. The request equates to a modest 5% rate increase but will go a long way in helping providers keep their doors open and will help stabilize the hiring crisis.

#2. Adopt a "Substantial Compliance" Concept for iBudget Medicaid Waiver Services. Florida ARF and its member agencies support proper medical record-keeping and documentation to ensure that appropriate and necessary Medicaid services are provided. We also support a common-sense approach that protects the interests of the State, the individuals served, and the Medicaid provider community. To achieve this, we recommend the new Administration implement the following:

- Require AHCA and APD to come together to develop practical and uniform standards for regulation of iBudget Waiver providers. These standards must allow for reasonable correction of errors by the provider as specified in Section 120.695 F.S.

- Require that the two agencies focus on bringing all provider agencies into "substantial compliance" as is currently done in the facilities regulation arm of AHCA's health care quality assurance division.

- Mandate the Agencies develop a single approach to regulation of iBugdet waiver providers. This means the standards expected by the Agencies (written and in practice) will be the same.

- Require the Agencies develop standards that distinguish between technical, inadvertent and non-essential requirements which should call for a "corrective action plan" and those that threaten the life, health, or safety of waiver recipients or result in economic damage to the State. We support the policy that life, health, or safety problems may call for sanctions up to, including termination.

- End the notion that technical non-compliance results in an overpayment which justifies the recoupment of all funds even though AHCA and APD received the essential benefit which they contracted for and the provider is in "substantial compliance" with applicable Handbooks.

- Seek amendment of Florida Statutes, Subsection 409.913(1)(e) to require more uniform and reliable regulation and provide for relief from disproportionate penalties when providers do not meet administrative requirements of the Agency. (See below for suggested statutory changes.)

  409.913 Oversight of the integrity of the Medicaid program. --- The agency shall operate a program to oversee the activities of Florida Medicaid recipients and providers and their representatives, to ensure that fraudulent and abusive behavior and neglect of recipients occur to the minimum extent possible, and to recover overpayments and impose sanctions as appropriate . . . .

  (1) For purposes of this section, the term:' (a) – (d) (e) "Overpayment" includes any amount that is not authorized to be paid by the Medicaid program whether paid as a result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse, or mistake. <u>However, when used in the context of home and community-based waiver providers, "overpayment" does not mean or imply that the Agency has the authority to reclaim all funds paid for a particular good or service when a non-</u>

essential requirement of that good or service is not supplied by the provider in accordance with Medicaid rules or Handbook requirements. In these cases, the Agency shall follow the guidance set forth in §120.695, Florida Statutes, unless the Agency determines that there is probable cause to believe that fraud or abuse is involved in the claims being investigated.

409.913 (7) When presenting a claim for payment under the Medicaid program, a provider has an affirmative duty . . . to present a claim that is true and accurate and that is for goods and services that:

(e) Are provided in substantial compliance accord with applicable provisions of all Medicaid rules, regulations, handbooks, and policies in accordance with federal, state, and local law.

409.913 (15) The agency shall seek a remedy provided by law, including, but not limited to, any remedy provided in subsections (13) and (16) and s. 812.035, if: . . .

(e) The provider is not in substantial compliance with provisions of Medicaid provider publications that have been adopted by reference as rules in the Florida Administrative Code; with provisions of state or federal laws, rules, or regulations; with provisions of the provider agreement between the agency and the provider; or with certifications found on claim forms or on transmittal forms for electronically submitted claims that are submitted by the provider or authorized representative, as such provisions apply to the Medicaid program.

A White Paper on this topic is attached.

#3. Conduct a Comprehensive Review of Regulatory Requirements to Eliminate Documentation Requirements That Are Overly Burdensome and Do Not Have a Clear Relationship to Client Health, Safety, and Quality of care. As offered during Session 1, our membership is supportive of high quality of care for all Medicaid services and programs. However, Florida's iBudget Medicaid Waiver program has become excessively regulated, has extensive and overly burdensome documentation requirements, and is strained by the addition of many unfunded mandates, all of which significantly increase the cost of care. Current policy handbooks contain 100s of pages of documentation requirements. We ask that the Agency for Persons with Disabilities and the Agency for Health Care Administration form a Regulatory Relief workgroup with the end goal being to develop streamlined guidelines and meaningful quality measures such as the National Core Indicators (www.nationalcoreindicators.org/indicators).

#4. Task Involved Agencies (Agency for Persons with Disabilities; Department of Business and Professional Regulation Building Code; and, Department of Insurance State Fire Marshal) to Work Together to Resolve Contradictory Licensure Requirements for Homes that Serve Individuals with Intellectual Disabilities. Per Chapter 393.067, F.S., the Agency for Persons with Disabilities is authorized to license residential group homes as follows: 393.067(1): *The agency shall provide through its licensing authority and by rule license application procedures, provider qualifications, facility and client care standards, requirements for client records, requirements for staff qualifications and training, and requirements for monitoring foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs that serve agency clients.* (Note: Comprehensive transitional education programs no longer exist in Florida.) The Agency has also adopted Rule 65G-2.001 – 2.017 to ensure that licensure of residential homes occurs consistently and that such homes operate in a manner that meets the health and safety needs of residents served.

Chapter 419(2) defines community residential homes as: *Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be deemed a single-family unit and a noncommercial, residential use for the purpose of local laws and ordinances. Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be allowed in single-family or multifamily zoning without approval by the local government, provided that such homes are not located within a radius of 1,000 feet of another existing such home with six or fewer residents or within a radius of 1,200 feet of another existing community residential home. Such homes with six or fewer residents are not required to comply with the notification provisions of this section; provided that, before licensure, the sponsoring agency provides the local government with the most recently published data compiled from the licensing entities that identifies all community residential homes within the jurisdictional limits of the local government in which the proposed site is to be located in order to show that there is not a home of six or fewer residents which otherwise meets the definition of a community residential home within a radius of 1,000 feet and not a community residential home within a radius of 1,200 feet of the proposed home. At the time of home occupancy, the sponsoring agency must notify the local government that the home is licensed by the licensing entity. For purposes of local land use and zoning determinations, this subsection does not affect the legal nonconforming use status of any community residential home lawfully permitted and operating as of July 1, 2016.*

Within the last three years, Florida Building Codes changed and now appear to be limiting the number of unrelated persons who can live in licensed residential group homes to only four or five individuals which is contrary to Chapter 419(2), F.S. More and more residential service providers are reporting their applications for 6-bed community residential homes are being classified as "business rather than residential" applications. According to county building code representatives, homes that serve 6 individuals warrant "R4" business classification whereas homes that serve 5 (and in some cases only 4 individuals) are treated as "R3" residential homes. In addition to having a negative fiscal impact for provider agencies who have found the 6-bed model to covers costs, the change in the Building Code requirements create an institutional feel within homes that were intended to serve as family residences.

Resolution of this issue will require agreement between the Agency for Persons with Disabilities, the Department of Business and Professional Regulations Building Code Enforcement, and the Department of Insurance State Fire Marshal with subsequent statutory amendments to Chapter 553, Florida Statutes and Florida Building Code Rule. Florida ARF asks that the Administration convene a work group between the identified agencies and other stakeholders to resolve the above described concerns.

#5. Fund Cost of Medicaid Transportation Services for Providers Who Offer this Essential Service. For many years, iBudget Waiver providers have negotiated transportation rates with the Agency for Persons with Disabilities and have worked with the Department of Transportation to obtain grant funded vehicles (5310 Program). Many providers indicate the rates do not cover the cost and that rates are based on outdated data.

Last year, a legislative panel reviewed concerns regarding transportation services for individuals with disabilities. Florida ARF testified that "one size does not fit all – and that families and individuals need multiple transportation options." Further, the cost of the service must be covered if the Medicaid funded transportation service system is to survive.

This current fiscal year the Agency for Persons with Disabilities received funding to further study transportation concerns. Preliminary discussions suggest recommendations will be forthcoming such as: Pay providers at an "averaged" rate at about the 50th percentile; pay providers per mile rather than per trip; and, require all providers to meet extensive Coordination for Transportation Disadvantaged regulations before being approved

as Medicaid Transportation providers. Further study and review of Florida's iBudget transportation concerns, including more stakeholder input, is requested.

#6. Pursue Use of Remote Technology. Florida should review creative services that can reduce costs and bring added value for opportunities for full life in the community such as Remote Technology. Remote monitoring technology is a promising service that has the potential to help users gain greater independence and control over their lives by reducing in-person staff presence. It may also create opportunities for providers to extend their existing workforces by providing greater flexibility as to the nature of the support provided. Such services require states and providers to think outside of the box of long-held assumptions of what services for people with intellectual and developmental disabilities (IDD) look like and find innovative ways to help people live the lives they choose with the supports they need.

- Remote technology includes a number of different assistive devices and interactive products that can be used to help people to live safely and well while increasing their ability to be independent in their homes. Services can include anything from automatic pill dispensers to sensor mats, all the way to full remote monitoring and communication. Full remote monitoring may entail systematic use of technological devices that work together to provide live-monitoring in an individual's home, and can include electronic sensors, speakers and microphones, tele-cameras, smoke detectors, temperature detectors, and personal emergency response systems.

- Remote monitoring is offered by several vendors that contract with other states to provide remote monitoring and on-demand in-person support. Individual homes are linked to a remote monitoring site staffed with trained support providers that are familiar with the individual and their needs. Vendors include Rest Assured® Telecare, Sengistix, and Night Owl Support.

- If states can find ways to incentivize remote technologies by allowing providers to share some portion of cost savings, the service is likely to be viewed favorably, and adopted more widely. Several states, including Colorado, Illinois, and Wisconsin, currently offer adaptive equipment or aid services that are defined in such a way that they can include remote technology. Indiana and Ohio states specifically offer remote technology as a part of their Medicaid Waiver services.

Again, thank you for the opportunity to serve on the DeSantis-Nunez Transition on Health and Wellness. If we can be of further assistance, please do not hesitate to contact me at 850-942-3500 or ssewell@floridaarf.org.

Sincerely,

Suzanne Sewell

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Florida Association of Rehabilitation Facilities