

**NYPWA Commissioners' Meeting Summary
September 9, 2021**

Tammy DeLorme, NYPWA President

Welcome Back...Live and In-Person

Tammy DeLorme welcomed everyone to the September Commissioners' Meeting. This was our first in-person meeting (with Webex option) in eighteen months. Those who came on Wednesday had dinner together and breakfast conversations the next day. Our last in-person meeting was on March 12, 2020. It has been a very long, strange trip since then. Commissioners expressed their ongoing appreciation to Tammy DeLorme for leading the Association during this difficult time.

NYPWA Policy Forum will be hosted virtually-*only*, by Casey Family Programs, on Zoom, Oct. 7th.

Our November 4th and December 9th meetings will *tentatively be hybrid* with an in-person option at Longfellows Inn, Saratoga and a Webex option. If circumstances require it, meetings will be restricted to Webex-only.

Our Winter Conference 2022 RFP announcement and details will be issued in the near future. Mike McMahon (Montgomery), our commissioners' conference liaison, is interested in your ideas for topics and speakers.

Family First – QI, QRTP and Emergency Regulations

Districts are still missing information that they need for the implementation of Family First prior to the scheduled September 29th effective date. Questions remain regarding model contracts despite the August 30th OCFS administrative directive ([21-OCFS-ADM-20](#) and its FFPSA Model Contract [attachment](#))—and the August 13th ADM ([21-OCFS-ADM-17](#)) on the “Role and Responsibility of the QI in NYS (including attachments on [LDSS attestation—QI Meets Established Criteria](#) and a [QI Model Contract](#)).

The Family First emergency regulations were filed with the Department of State on August 24, 2021 and became effective immediately upon filing. They appeared in the [State Register](#) on September 8 and are available on the OCFS website ([click here](#)). The comment period expires on November 8, 2021.

There is much uncertainty regarding payment for the Qualified Individual (QI). OCFS has scheduled a webinar for Monday, September 20th from 1pm to 2:30pm.

Child Welfare Court Improvement Project Family First Implementation Webinars

In preparation for Family First's implementation, the Child Welfare Court Improvement Project in collaboration with OCFS, will host a three-part webinar series in September on how OCFS and the Courts will implement certain components of the Act. Topics include kinship initiatives, court reviews, congregate care requirements, and the state's prevention services plan. According to OCFS, the program is intended for judges, AFC's and assigned counsel, child welfare agency staff, and service providers.

- September 14 – FFPSA and Kinship (12:30 PM to 2:00 PM)
- September 21 – Court Reviews, Congregate Care, Qualified Residential Treatment Program (QRTP) (12:30 PM to 2:00 PM)
- September 28 – Prevention (12:30 PM to 2:00 PM)

OCA Family First Family Court Rule Change

The NYPWA submitted a letter to Judge Marks, Chief Administrative Judge of the Courts on September 3rd with our concerns and recommendations over the recent Family First court rules issued by the Office of Court Administration (OCA).

Mark Maves, Counsel to the NYPWA, gave an update on the proposed rule. As noted in the letter, the NYPWA stated that this regulation contains provisions that: 1) conflict with and exceed applicable federal and state law; 2) do not reflect the intent of federal and state legislators; and 3) are vague and create the potential of uneven and inconsistent application. There is also a concern that the regulations as written will lead to difficulties in implementing the Families First legislation at the ground level.

The NYPWA also held conversations with OCFS regarding this matter. OCFS has submitted its own letter to Judge Marks expressing OCFS's legal, policy and fiscal concerns regarding section 205.18 of the Uniform Rules of the Family Court, relating to FFPSA. COFCCA also sent a letter in opposition to the rule change.

Policy Forum on Cross-System Kids with Complex Needs

This year's virtual Policy Forum (October 7) will be dedicated to exploring local initiatives to serve cross-systems kids with complex needs.

Local Commissioner Panelists will include Nancy Williams (Broome), Brian Hart (Chemung), Thalia Wright (Monroe), Eileen Tiberio (Ontario), Darcie Miller (Orange), Stacy Alvord (Oswego), Kathryn Muller (Steuben) and Tammy DeLorme (Washington/NYPWA President).

Other speakers include representatives from Casey Family Programs and the Council of Family and Child Caring Agencies (COFCCA) and the Healthcare Association of New York State (HANYS). They will share their perspectives on how to help those with complex care needs.

HANYS has recently issued a white paper on the issue as it pertains to New Yorkers of all ages, entitled: "[The Complex Case Discharge Delay Problem](#)".

Eileen Tiberio (Ontario) developed a spreadsheet that districts can use to record relevant data on complex cases.

Eviction Moratorium and ERAP Updates

On September 1, lawmakers returned to Albany in a rare Extraordinary Session called by Governor Hochul to extend the state's eviction moratorium to January 15, 2022. Lawmakers also voted to enhance aspects of the state's Emergency Rental Assistance Program (ERAP). According to a [statement](#) released by the Senate Majority, beyond extending the moratorium, the legislation ([A.40001/S.50001](#); Chapter 417) would also:

- Allow residents of localities that opted out of the statewide program to apply for financial assistance through the state program if their locality has fully distributed its funds.
- Expand ERAP eviction protections to residents of localities that have applied for assistance through a program administered by a locality that opted out of the statewide program.
- Add a nuisance standard to ERAP's eviction protections to provide landlords with a basis to start an eviction proceeding against a covered tenant if a tenant is a nuisance or has inflicted substantial damage to a property.
- Create a due process mechanism for landlords to challenge the Hardship Declaration submitted by residential tenants to challenge the Declaration, and direct judges to require residential tenants to apply for ERAP if their hardship claim is valid.
- Authorize the OCA to access limited ERAP application data to allow the court to determine whether to stay an eviction proceeding.
- Extend the period covered by the state's Tenant Safe Harbor Act to January 15, 2022.
- Increase the budget appropriation for ERAP from \$2.35B to \$2.6B and amend the appropriation to allow these funds to be allocated to residents of localities that opted out of the Statewide program. ([A.40002/S.50002](#); Ch. 418)
- Increase the Hardship Fund from \$100M to \$250M and provide for the fund to be used for tenants whose incomes are between 80% - 120% AMI, landlords whose tenants vacated their property with rent unpaid, and landlords whose tenants are unresponsive or uncooperative. ([A.40002/S.50002](#); Ch. 418)
- Provide a new \$25M budget appropriation to fund legal services for tenants facing evictions. ([A.40002/S.50002](#); Ch. 418)

The Governor [announced](#) that the amount of ERAP assistance paid out has nearly doubled in the past three weeks—or roughly 30,787 payments totaling nearly \$400M. She also announced that beginning Wednesday, September 15, the state is accepting applications for rental assistance from households adversely impacted by the pandemic and earning between 80% and 120% AMI, a group that was previously ineligible to receive ERAP funds.

Despite these developments, local districts are still awaiting on more detailed data reports and fielding complaints from landlords and tenants on the cumbersome state ERAP portal system.

Motel/Hotel Rules (New Part 902, Title 18 NYCRR)

Commissioners described the proposed rules as over-reaching and expressed deep concern that motels and hotels will choose not to comply. These private businesses may simply decide to no longer serve individuals and families referred by local districts, leaving many people in a worse situation. The regulations also add significant administrative burdens and mandates for additional services without providing a source of funding. Upgrading temporary accommodations while ignoring substandard permanent housing is viewed as short-sighted. The proposed rules hinder, rather than help.

In some of the largest districts (e.g., Suffolk), motels have been converted to OTDA certified shelters. However, in smaller counties, the districts typically make use of individual rooms and not entire buildings because the same motels/hotels primarily serve other travelers such as people in town on business or tourists. In some cases, motels might be willing to speak up and oppose the rules (if asked) but in other cases they are not dependent on DSS referrals and may prefer not to serve them. The smallest counties do not have all the services in-county that are required by the proposed rules. Many localities do not want shelters built in their communities and the state has been unwilling to consider state land and buildings for regional options.

There are several years of momentum behind these regulations based on the former Governor's priorities. ***We now have a new Governor and, with that, the opportunity to start anew and let our voices be heard.***

We have all been invited to comment on the draft rules *in advance* of the formal Notice of Proposed Rulemaking that would later be published in the New York State Register, followed by a 60-day public comment period. The next four weeks are a window of opportunity provided by the NYS Register State Administrative Procedures Act (SAPA), which requires that OTDA take measures to ensure that small businesses and local governments are afforded an opportunity to participate in the rulemaking process. OTDA's deadline for comment is October 18th. You may want to comment before the OTDA webinar on the proposed rule on October 12th. It is also being held to meet SAPA requirements.

The NYPWA will send a letter to the OTDA commissioner to articulate our widespread concerns. A copy will be emailed to all commissioners by Sept. 17th. Local DSS Commissioners are encouraged to write their own letters to the OTDA Commissioner, expressing county-specific impacts, and email copies to the NYPWA. We plan to reach out to our contacts in the Governor's office to express our collective concerns and recommendations.

Commissioners discussed the tangible impact these restrictive hotel/motel regulations would have on their ability to keep people safe.

Kristen Monroe (Cortland) shared her letter to OTDA with all commissioners. Many commissioners voiced their support for the points made. You may wish to review her letter in preparing your own comments.

Her opening statement is compelling: “The proposed regulations are well intended but show a clear disconnect from the day-to-day work done by local district staff to keep homeless individuals and families safely housed. Due to this disconnected understanding, the regulations as proposed will compromise our ability to address daily challenges in housing homeless individuals.”

The letter received an acknowledgement from the OTDA Commissioner, but the issues raised were not addressed.

New Rules for PCS & CDPAP—Effective November 8th (Sort of)

New rules for Personal Care Services (PCS) and Consumer Directed Personal Assistance Program (CDPAP) were issued in the September 8th [State Register](#) (also available in full on the DOH [website](#)). Among the many provisions, the new rule establishes the Independent Assessor (IA) role in homecare services, which is expected to eventually take some of the burden off local district staff. However, many of these changes won't take full effect on November 8th—and changes that do go into effect will require a 60-day notice prior to implementation.

Please refer to the DOH Notice of Adoption of Changes to PCS/CDPAS Regulations, sent to all commissioners and Medical Directors on Friday, September 10, 2021, from doh.sm.State.Plan.Services_services@health.ny.gov. The email notice refers to updated regulations governing Personal Care Services (PCS) at 18 NYCRR § 505.14 and Consumer Directed Personal Care Services (CDPAS) at 18 NYCRR § 505.28

It was recommended that Commissioners make sure the appropriate staff read the new regulations which cover changes in the following areas: Frequency of Assessments, Independent Assessor, Independent Practitioner Panel, Independent Review Panel, Minimum Need Requirements, One fiscal intermediary (FI), Annual CDPAP notification, Consumer and designated representative responsibilities, and Strengthen and clarify denial reasons and requirements.