

Statement of Principles and Recommendations from the Executive Directors of the Northeast Region of EDA

1. We are facing unprecedented fiscal, regulatory and workforce pressures.

Every aspect of our operations is presently being challenged by regulatory and structural changes implemented as part of the transformation agenda, by rate rationalization, and by the work force crisis. Uncertainty as to future funding, as to future regulatory structures and as to the availability of a competent, viable workforce makes strategic planning extraordinarily difficult; it places stress on all levels of management; and it threatens the viability of our agencies, the quality of our services, and ultimately, the health, safety and well-being of the people we support in our programs. To respond to these pressures, we must make sure that we are making the best use of all the resources available to the organization.

2. The financial strength of NYSARC comes from the chapters.

The current aggregated statistics about NYSARC (its reserves, its annual revenues) are a reflection of the combined strength of the individual chapters as the chapters have grown, run programs and raised revenue throughout the 65+ years of NYSARC's existence. As such, the chapters must continue to have a central role in every decision that will potentially impact that financial strength.

3. The program strength of NYSARC comes from the chapters.

The quality of the supports and services that we provide, our relationships with families, with our communities, and our reputation and standing nationally, all are a result of creativity, innovation and leadership at the chapter level. The chapter structure has resulted in innovation (for example, Delaware County and the workforce, Rensselaer County and person-centered supports, Montgomery, Chemung and the Arc of the Adirondack and CQL) that has been recognized nationally and internationally.

4. NYSARC is uniquely situated to both lead the field through its current challenges and survive the fiscal and workforce challenges while providing quality services to people with intellectual and other developmental disabilities and their families.

In our new environment, we face fiscal and regulatory challenges to which we must respond, but the responses must be structured and implemented in ways that capitalize on the strengths we have as chapters and the strength (both potential and actual) that we have as a state-wide organization. NYSARC and its chapters do not have (and never have had) a "top-down" management structure. Local membership elects Boards; Boards hire executive management and implement policies and strategic direction for local chapters. The Board of Governors, elected from members of individual boards, has

set the broader policy parameters within which the chapters have operated, usually relying on recommendations from state office staff and state-level committees. The challenge for the future is how to harness the strengths of this structure to meet the changing environment. Determining what issues remain at chapter level, what issues should be addressed by chapters acting collectively and/or collaboratively, and what issues should be addressed at the state level, is the collective responsibility of the entire organization, but ultimately should be determined by the Board of Governors.

5. NYSARC chapters have already changed the way they operate to respond to this new environment.

The last five years have seen an unprecedented level of collaboration, cooperation and creativity from the chapters—efforts that have been initiated and pursued “organically”, as the ideas have evolved from the chapters to meet the specific needs and challenges of different regions and organizations. From the Collaborative of the Fingerlakes, the first cooperative venture; to PHP, in the metropolitan area; to the North Country MSO; to the sharing of administrative staff; the voluntary unification of chapters; and to collaboration on BIP grants and joint initiatives, chapters across the state, at both the professional and voluntary level, are working together in unique ways to capitalize on the strengths of the organization.

4. Forced “unification” of chapters is not the best answer to either fiscal or quality concerns at a specific chapter, and should not be considered until other options are exhausted.

In recent years, “unification” has frequently been proposed as the best answer to addressing fiscal issues and quality issues. The concept of unification, as a positive response to the challenges NYSARC’s chapters are presently facing, appears repeatedly throughout the policies (both current and proposed) and materials developed by the Fiscal Sustainability Review Committee and the Visioning workgroup. As noted above, voluntary unification has been explored several times, and is being actively pursued by two sets of chapters at this time. Individual chapters, acting through their boards and their professional management, are in the best position to decide if unification is the right step.

Forced unification, however, raises distinctly different issues. Unification is costly; it demands both human resources and fiscal resources. In this environment, in which every resource is straining to meet current demands, forced unification, or operating under the threat of forced unification, threatens chapters’ ability to provide quality services and it takes away resources that are needed to respond to current regulatory and program challenges. Forced unification also inevitably raises the prospect of “spill over liability”—a liability that is too large for an individual chapter, and that therefore must be borne, in some way, by the larger corporation.

5. The best way to avoid spillover liability is by keeping individual chapters strong and avoiding forced unifications.

We are currently aware of two situations that may give rise to spillover liability, both of which arise from forced unifications. Possibly the biggest threat to providers is an unknown audit liability, arising from actions by OPWDD, the OMIG, or the MFCU. In the past, in these situations, individual providers have been handled separately, and paybacks have been structured in ways that providers have been able to manage. Forced unification, however, is highly likely to result in spillover liability because the unifying chapter will insist, as a condition of pursuing the unification, that certain past obligations (obligations over which the unifying chapter had no control) will be paid by the corporation as a whole, rather than by the unifying chapter.

6. Because any assessment of spillover liability is tapping into reserves that each chapter has developed over its years of operations, determining how to assess spillover liability should be done through a true cooperative process, with participation by the chapters, so that no one category of chapter is disadvantaged. Such determinations should be made on a case-by case basis, taking into account all of the circumstances that are relevant at the time.

Recommendations

On October 4, 2016, NYSARC circulated an e-mail entitled "Revised Chapter Policy Viability Policy Discussion." This consisted of two documents and a spread sheet. The documents include recommendations for changes to the Chapter Manual regarding debt and the budget process along with a discussion of spillover liability. The proposals appear to give significant discretion and authority to the NYSARC CFO to make determinations as to the length of time for determining chapter viability, for determining when access to working capital may be limited based on an assessment of "structural debt" and for making determinations about the methodology for assessing and recovering spillover liabilities.

We recommend that no action be taken on these proposals at the upcoming Board of Governor's meeting, in order to allow further review and discussion of the impact of the proposed changes on chapter operations. First, there has not been time to discuss or review this proposal. The most recent revision came in early October, after all the regional meetings had been held. The document presented for discussion purposes at the regional meetings contained numerous provisions, but it was unclear what would be proposed for action at the upcoming Board of Governors meeting.

Second, we believe that soliciting the input from chapter CFOs and EDs is critical to making these proposals workable and productive. It has only been one year since we have been operating under the Fiscal Sustainability guidelines. The proposals with respect to finances are potentially much more far-reaching and intrusive to chapter

operations than the proposals regarding governance, and yet there has been much less discussion of these proposals. For the reasons enumerated above, any change in policy that heightens the possibility of forced unifications should be considered very carefully.

Third, the proposal to limit access to working credit, apparently beyond the limitations enacted 1 year ago (when the authorized line of credit was reduced from two months of operating expenses to 30 days) has not been fully explored, and may cause hardship or administrative burdens in the current year as chapters work to absorb the 2017 “rate rationalized” rates and as chapters work to implement the transition from sheltered workshops to integrated businesses.

We recognize that the present environment poses both quality and financial threats to chapter operations. We do not believe that a “top down” management approach is the best way to respond to these threats. We believe that we should continue and expand our work with the chapters in our region to address both financial and quality issues and to prepare for funding and program changes. Consistent with our history and our culture, we need to continually examine where we will benefit from state-wide action, and where we will benefit from local or regional approaches.

As a result of steps already taken, NYSARC chapters have more knowledge about both finances and quality at other chapters than at any time in our history. We are collaborating and working together in ways that are unprecedented. We are just beginning to realize the benefits of these steps; we do not believe that it is a productive response to our current environment, nor is it consistent with our history or our culture, to take further steps that centralize decisions and that may hasten forced unifications, without giving time to realize the benefit of the recent steps.