

**CFR Penalty Amendments  
Amendments to 14 NYCRR Section 635-4.4**

**FINAL REGULATIONS  
Effective Date: Monday, June 1, 2015**

- **Section 635-4.4 is amended as follows:**

- (a) Each provider shall submit all cost reports to OPWDD so that OPWDD receives them no later than 120 days after the last day of the reporting period.
- (b) [OPWDD may grant] A provider may apply for one 30 day extension for filing a cost report. An application for extension shall document in writing that the provider cannot file the cost report by the original due date specified in subdivision (a) of this section [for reasons beyond its control, and shall include an explanation of such reasons]. In the event that the provider applies for an extension, the revised due date for filing a cost report shall be 150 days after the last day of the reporting period.
- (c) If the provider fails to file a cost report on or before the original or revised due date, the provider shall be subject to a reduction in reimbursement under subdivision (e) of this section. [taking into account any granted extension, OPWDD shall send the provider a written notice of failure to file a cost report. Such notice shall give the provider an opportunity to submit, within fifteen days of receipt of such notice, the cost report or a written statement that unforeseeable factors beyond its control prevented it from filing the cost report by the due date, with detailed facts supporting the statement.]
  - [(1) If the provider files the cost report within the 15 day period, the provider shall not be subject to a reduction in reimbursement under this subdivision.]
  - [(2) If the provider submits a written statement within the 15 day period, OPWDD shall review it and notify the provider in writing of OPWDD's determination. OPWDD's determination shall be final. If OPWDD's determination is that unforeseeable circumstances beyond the provider's control prevented it from filing the cost report by the due date, OPWDD shall also determine a revised due date for the cost report and notify the provider in writing of the revised due date.]
  - [(3) The provider shall be subject to a reduction in reimbursement under this subdivision:]

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- [(i) if it does not submit the cost report or written statement within the 15 day period; or]
- [(ii) if OPWDD determines that there were no unforeseeable circumstances beyond the provider's control that prevented it from filing the cost report by the due date; or]
- [(iii) if OPWDD determines that there were unforeseeable circumstances beyond the provider's control that prevented it from filing the cost report by the due date and the provider does not submit the cost report by the revised due date.]

(d) If a provider has applied for an extension, it may make a written request for a waiver of reduction in reimbursement due to unforeseeable circumstances beyond its control which will prevent it from filing the cost report by the revised due date. The application must contain detailed facts supporting the request, describe the unforeseeable circumstances and explain why the provider believes such circumstances will prevent it from filing the cost report by the revised due date.

(1) Written requests for a waiver of the reduction must be received by OPWDD within the timeframes specified in subparagraphs (i) and (ii) of this paragraph.

(i) For circumstances that occur prior to the original due date specified in subdivision (a) of this section (120 days after the last day of the reporting period), the request must be received prior to the original due date.

(ii) For circumstances that occur during the 30 day extension period, the request must be received no later than the revised due date specified in subdivision (b) of this section (150 days after the last day of the reporting period). In order to demonstrate that such circumstances occurred during the 30 day extension period, the written request must include the date of occurrence of the circumstances.

(2) OPWDD shall review the request and approve or deny the request based upon the facts and circumstances described in the application and any other relevant facts and circumstances. OPWDD shall approve the request if OPWDD determines that there are unforeseeable circumstances beyond the provider's control that will prevent the provider from filing the cost report by the revised due date. OPWDD shall deny the request if OPWDD determines that there are not unforeseeable circumstances beyond the provider's control or that such

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circumstances should not prevent the provider from filing the cost report by the revised due date. OPWDD shall notify the provider in writing of its approval or denial of the request. OPWDD's determination shall be final.

- (3) If OPWDD denies the request for a waiver of the reduction, the provider shall be subject to a reduction in reimbursement under subdivision (e) of this section.
- (4) If OPWDD approves the request for a waiver of the reduction, OPWDD shall determine a revised due date (that is beyond the 30 day extension period) and shall notify the provider in writing of the revised due date. If the provider does not submit the cost report by the revised due date, the provider shall be subject to a reduction in reimbursement under subdivision (e) this section.

[(4)] (e) The reduction in reimbursement shall equal two percent of the total billed but unremitted price(s), rate(s) and/or fee(s) in the [OPWDD] payment systems beginning on the first day of the month following the due date of the cost report or the revised due date [established pursuant to paragraph (c)(2) of this section] and continuing until the next regularly scheduled payment cycle following the last day of the month in which the cost report is received. For a provider subject to this sanction, the reduction shall apply to reimbursements for the following services: [ICF/DD services (I]Intermediate Care Facilities for Persons with Developmental Disabilities[)], Medicaid [s]Service [c]Coordination, [d]Day [t]Treatment [services], [c]Clinic [t]Treatment [f]Facilities, and [the following] all HCBS waiver services[: residential habilitation services (community residential habilitation services in a community residence, residential habilitation services in an IRA, and residential habilitation services in family care), community habilitation services, day habilitation services, prevocational services, supported employment services, respite services, plan of care support services, and family education and training services].

[(d)] In the event that OPWDD cannot develop the price/rate/fee for a facility or service so that it will be effective on the first day of the price/rate/fee period, because the provider did not submit a cost report or other requested data by the due date, the price/rate/fee will be the lower of the following amounts until such time as OPWDD can develop a price, rate or fee:]

[(1)] the average price/rate/fee for facilities or services having similar operating characteristics; or]

[(2)] the price/rate/fee in existence on the last day of the price/rate/fee period prior to the subject price/rate/fee period.]

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- (e) When OPWDD develops a revised price/rate/fee for a service for which a price/rate/fee was paid in accordance with subdivision (d) of this section, the price, rate or fee developed will be effective on the first day of the month following OPWDD's receipt of the cost report. OPWDD shall, upon application by the provider within 60 days subsequent to submission of the cost report or other requested data, and based on a finding that the factor(s) causing the delay has been corrected, make the price/rate/fee retroactive to the beginning of the price/rate/fee period in question.]
- (f) If the provider discovers that a cost report submitted to OPWDD is incomplete, inaccurate or incorrect [prior to receiving its new base period price, rate, or fee], the provider must submit a revised cost report. [Upon receipt of the revised cost report, OPWDD may incorporate the revised cost report data into its computation of the base period price/rate/fee without the provider having to file an appeal application.]
- (g) If OPWDD determines that a cost report is incomplete, inaccurate, incorrect or otherwise unacceptable, OPWDD shall send the provider a written notice. Such notice shall give the provider an opportunity to submit, within a 30 day period from receipt of such notice, a revised cost report or additional data, or a written [statement that] request for a waiver of reduction in reimbursement due to unforeseeable [factors] circumstances beyond the provider's control that prevent it from filing a revised cost report or submitting additional data within the 30 day period[, with detailed facts supporting the statement]. A request must contain detailed facts supporting it, describe the unforeseeable circumstances and explain why the provider believes such circumstances will prevent it from filing a revised cost report or additional data within 30 days.
- (1) If the provider files a revised cost report or submits additional data within the 30 day period, the provider shall not be subject to a reduction in reimbursement under this subdivision.
- (2) If the provider submits a written [statement] request within the 30 day period, OPWDD shall review the request and approve or deny the request based upon the facts and circumstances described in the application and any other relevant facts and circumstances. OPWDD shall approve the request if OPWDD determines that there are unforeseeable circumstances beyond the provider's control that will prevent the provider from filing a revised cost report or additional data within 30 days. OPWDD shall deny the request if OPWDD determines that there are not unforeseeable circumstances beyond the provider's control or that such circumstances should not prevent the provider from filing a revised cost

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report or additional data within 30 days. OPWDD shall notify the provider in writing of its approval or denial of the request. OPWDD's determination shall be final. If OPWDD approves the request, OPWDD shall set a revised due date for the revised cost report or additional data and give the provider written notice of the revised due date. [OPWDD shall review the statement and determine whether unforeseeable circumstances beyond the provider's control prevented it from filing a revised cost report or submitting additional data within the 30 day period, and notify the provider in writing of OPWDD's determination. OPWDD's determination shall be final. If OPWDD determines that unforeseeable circumstances beyond the provider's control prevented it from filing the revised cost report or submitting the additional data within the 30 day period, OPWDD shall set a revised due date for the revised cost report or additional data and give the provider written notice of the revised due date.]

- (3) The provider shall be subject to a reduction in reimbursement:
- (i) if it fails to submit, within the 30 day period, a revised cost report or additional data, or a written request [statement]; or
  - (ii) OPWDD denies the written request [determines that there were no unforeseeable circumstances beyond the provider's control that prevented it from filing a revised cost report or submitting additional data within the 30 day period]; or
  - (iii) OPWDD approves the written request [determines that unforeseeable circumstances beyond the provider's control prevented it from filing a revised cost report or submitting additional data within the 30 day period] and the provider does not submit a revised cost report or additional data by the revised due date.
- (4) A reduction in reimbursement under paragraph (3) of this subdivision shall be in accordance with [paragraph (c)(4)] subdivision (e) of this section, except that it shall begin on the applicable date specified in subparagraphs (i) – (iii) of this paragraph and continue until the next regularly scheduled payment cycle following the last day of the month in which OPWDD receives the revised cost report or additional data.
- (i) If the provider fails to submit a revised cost report, additional data or a written [statement] request within the 30 day period, the reduction shall begin on the first day of the month following the end of the 30 day period.

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- (ii) If OPWDD denies the written request [determines that there were no unforeseeable circumstances beyond the provider's control that prevented it from filing a revised cost report or submitting additional data within the 30 day period], the reduction shall begin on the first day of the month following the end of the 30 day period.
  - (iii) If OPWDD approves the written request [determines that unforeseeable circumstances beyond the provider's control prevented it from filing a revised cost report or submitting additional data within the 30 day period] and the provider does not submit a revised cost report or data by the revised due date, the reduction shall begin on the first day of the month following the revised due date.
- (h) Revised cost reports submitted under this section must be certified by the provider's chief executive officer and, if requested by OPWDD, a public accountant who meets all the requirements specified in section 635-4.3(c)(2) of this Subpart.
- (i) Calendar Year 2014 Cost Reports
- (1) Any provider that requests an extension and fails to submit a complete calendar year 2014 cost report by May 30, 2015, shall be subject to a penalty under this section effective June 1, 2015.
  - (2) Any provider that would otherwise be subject to a penalty in accordance with the regulations that were immediately in effect prior to June 1, 2015, shall be subject to such penalty.

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