

**Community Habilitation Amendments
Amendment of 14 NYCRR Subpart 635-10**

Effective October 1, 2014

- **Subdivision 635-10.1(e) is amended as follows:**
 - (e) [Only section 635-10.4(b)(2) and (c)-(f) of this Subpart are applicable to eligible persons receiving waiver community residential habilitation services in facilities operated by providers of services pursuant to Part 671 of this Title.] The allowable activities for waiver community residential habilitation services provided in accordance with Part 671 of this Title are not subject to the provisions of paragraph 635-10.4(b)(1).

- **Paragraph 635-10.4(b)(4) is amended as follows:**
 - (4) Community habilitation phase II (CH II) services were delivered between October 1, 2012 and September 30, 2013 and are no longer available. CH II services are ... CH II services.

 - (Note: rest of paragraph is unchanged.)

- **Paragraph 635-10.5(c)(7) is amended as follows:**
 - (7) Billing limits for group day habilitation, [and] supplemental group day habilitation, and prevocational services (see subdivision (e) of this section).
 - (i) Limit of one full unit or two half units.
 - (a) This limit applies to an individual who, on a given day:
 - (1) does not receive supplemental group day habilitation; and
 - (2) if the individual lives in an Individualized Residential Alternative (IRA), Community Residence (CR), or family care home (FCH), the individual also does not receive community habilitation (CH) services. [On a given day, for an individual who does not receive supplemental group day habilitation on that day,]
 - (b) On a given day, a maximum of the following may be reimbursed:
 - [(a)](1) one full unit of group day habilitation; or

Note: New material is underlined and deleted material is in [brackets].

[(b)](2) one full unit of a blended service which includes group day habilitation (a blended service is a combination of day habilitation, prevocational services [(see subdivision (e) of this section)] and/or supported employment services); or

[(c)](3) one full unit of prevocational services; or

(4) any combination of two half units of: group day habilitation, prevocational services or blended services.

(Note: current subparagraphs (ii) and (iii) are deleted.)

(ii) Limit of one and a half units or three half units.

(a) This limit applies to an individual who receives supplemental group day habilitation on a given day.

(b) On a given day, a maximum of the following may be reimbursed:

(1) one full unit of group day habilitation, supplemental group day habilitation, prevocational services or blended services and one half unit of any of these services; or

(2) three half units of any of these services.

(iii) For individuals who live in an IRA, CR or FCH and receive community habilitation on a given day, additional billing limits are described in paragraphs (11) and (12) of subdivision (ab) of this section.

(iv) Where more than one agency delivers services on a given day to the same individual, the total number of units and/or hours of CH services billed for that day by all agencies may not exceed the maximum allowed daily units and/or hours described in subparagraphs (i) [, (ii) and (iii)] – ~~(iv)~~ of this paragraph.

(v) Exceptions. The following applies only to requests made prior to the effective date of these amendments.

(Note: clauses (a) – (c) are unchanged.)

● **Paragraph 635-10.5(e)(9) is amended as follows:**

(9) Billing limits for prevocational services, group day habilitation, and supplemental group day habilitation (see subdivision (c) of this section).

(Note: current subparagraphs (i) – (iii) are deleted.)

- (i) Limit of one full unit or two half units.
 - (a) This limit applies to an individual who, on a given day:
 - (1) does not receive supplemental group day habilitation; and
 - (2) if the individual lives in an Individualized Residential Alternative (IRA), Community Residence (CR), or family care home (FCH), the individual also does not receive community habilitation (CH) services.
 - (b) On a given day, a maximum of the following may be reimbursed:
 - (1) one full unit of group day habilitation; or
 - (2) one full unit of a blended service which includes group day habilitation (a blended service is a combination of day habilitation, prevocational services and/or supported employment services); or
 - (3) one full unit of prevocational services; or
 - (4) any combination of two half units of: group day habilitation, prevocational services or blended services.
- (ii) Limit of one and a half units or three half units.
 - (a) This limit applies to an individual who receives supplemental group day habilitation on a given day.
 - (b) On a given day, a maximum of the following may be reimbursed:
 - (1) one full unit of group day habilitation, supplemental group day habilitation, prevocational services or blended services and one half unit of any of these services; or
 - (2) three half units of any of these services.
- (iii) For individuals who live in an IRA, CR or FCH and receive community habilitation on a given day, additional billing limits are described in paragraphs (11) and (12) of subdivision (ab) of this section.

- (iv) On a given day, a maximum of one full unit per individual, either one full unit or two half units, may be reimbursed for supplemental group day habilitation.
- (v) Where more than one agency delivers services on a given day to the same individual, the total number of units and/or hours of CH services billed for that day by all agencies may not exceed the maximum allowed daily units and/or hours described in subparagraphs (i) – (iv) of this paragraph.

[(iv)] (vi) Exceptions. The following applies only to requests made prior to the effective date of these amendments.

(Note: clauses (a) – (c) are unchanged)

- **Subdivision 635-10.5(ab) is amended as follows**

(ab) *Hourly community habilitation (CH) services.* The following shall apply to CH services (see section 635-10.4(b)(3) of this Subpart).

- (1) [Individuals who live in a residence which is operated or certified by OPWDD (including family care homes)] are not eligible to receive CH services.]

Eligibility for CH services.

(i) The following individuals are eligible to receive CH services:

(a) Individuals who do not live in a setting certified or operated by OPWDD (e.g. a private home); and

(b) Individuals who live in the following residences certified by OPWDD: Individualized Residential Alternative (IRA), Community Residence (CR) and Family Care Home (FCH).

(ii) Prior to the effective date of these amendments, no individual who lived in a residence certified or operated by OPWDD (including a family care home) was eligible to receive CH services.

- (2) Reimbursement shall be contingent upon prior OPWDD approval of the person's need for CH services. [OPWDD shall approve persons for CH services based on the need for services to protect the health or safety of the person or of his or her caregiver, the compatibility of the individual with available CH services, and the individual's relative need for supports for daily living.]

- (i) For all individuals (except for those who live in an Individualized Residential Alternative (IRA), a Community Residence (CR), or a family care home (FCH)), OPWDD shall approve persons for CH services based on the individual's relative need for supports for daily living and the individual's need for community-based activities.
- (ii) For individuals who live in an IRA, CR or FCH, OPWDD shall approve persons for CH services based on the individual's need for community-based activities.

(Note: paragraphs (3) – (5) are unchanged.)

- (6) In order to be billable, CH services may not be delivered at a site certified by OPWDD or at a site operated by OPWDD which would be required to be certified if it were operated by another provider. Examples of such sites include but are not limited to a certified day habilitation site, a family care home, a supportive or supervised IRA, and a free-standing respite center certified as an IRA. However, an exception to this rule is that CH services are billable if the services are delivered at clinic treatment facilities certified in accordance with Part 679 of this Title (also known as "article 16 clinics") and the services delivered are in accordance with the exception in clause (7)(i)(e) of this subdivision.
- (7) Time spent receiving another Medicaid service cannot be counted toward the CH billable service time, except as follows:

- (i) If the individual lives in a setting which is not certified or operated by OPWDD (e.g. a private home) or a FCH:

(Note: current subparagraphs (i) – (iv) are renumbered as clauses (a) – (d) and are unchanged. Current subparagraph (v) is renumbered as clause (e) and clauses (v)(a) – (d) are renumbered as subclauses (e)(1) – (4) and are unchanged except for the amendment of subclause (e)(4).)

- (4) Notwithstanding any other provision of this subdivision, CH services delivered in accordance with this [subparagraph] clause are billable regardless of location (even if the clinical service is delivered at a facility certified by OPWDD).

- (ii) For individuals who live in an IRA or CR:
 - (a) The individual may concurrently receive hospice and CH services.
 - (b) Time when the Medicaid service coordination (MSC) service coordinator is conducting the face-to-face MSC visit with the individual may be counted toward the CH billing as long as the CH staff is present. This

concurrent billing is allowed in order to promote the coordination of services.

- (c) Nursing services may be provided concurrently with CH services, but only in cases where the CH plan describes supports and services that are distinct and separate from the supports and services being provided by the nursing staff.
- (8) CH services are not billable while an individual is in a hospital, nursing home, rehabilitation facility, or [intermediate care facility for persons with developmental disabilities (ICF/DD, see Part 681 of this Title)] ICF/DD. CH services are billable on the day of admission to or discharge from one of these settings so long as the services are not provided in the hospital, nursing home, rehabilitation facility or ICF/DD.
- (9) For each continuous service delivery period or session, the CH provider must document:
- (i) the service start time and the service stop time [, the ratio of individuals to staff at the time of service delivery, and];
 - (ii) the provision of at least one service/staff action delivered in accordance with the individual's CH plan;
 - (iii) for individuals who do not live in an IRA, CR or FCH; the ratio of individuals to staff at the time of service delivery; and
 - (iv) for individuals who live in an IRA, CR or FCH; whether the CH service is delivered on an individual or group basis.
- (10) The unit of service for CH services shall be one hour equaling 60 minutes and is reimbursed in 15 minute increments. When there is a break in the service delivery during a single day, the provider may combine, for billing purposes, the duration of each continuous period of service provision (or session) that is provided during the day. [that has the same individual to staff ratio] In order to be combined, each session must have the same individual to staff ratio (for individuals who do not live in a residence certified by OPWDD). For individuals who live in an IRA, CR or FCH, all sessions being combined must be either "individual" or "group" but the individual to staff ratio in the group CH may vary.
- (11) Billing limits for individuals who live in a supervised IRA or supervised CR.
- (i) Community habilitation services may only be reimbursed if the services are delivered on weekdays and have a service start time prior to 3:00 p.m.

- (ii) CH services may not be reimbursed on a given day that the individual receives:
 - (a) one full unit of group day habilitation services; or
 - (b) one full unit of prevocational services; or
 - (c) one full unit of a blended service (which is a combination of day habilitation and prevocational services); or
 - (d) any combination of two half units of: group day habilitation, prevocational services or blended services.

- (iii) On a given day, a maximum of the following may be reimbursed:
 - (a) six hours of CH services; or
 - (b) the combination of:
 - (1) one half unit of: group day habilitation, prevocational services or blended services; and
 - (2) four hours of CH services.

- (12) Billing limits for individuals who live in a supportive IRA, supportive CR or FCH: On a given day, a maximum of the following may be reimbursed:
 - (i) eight hours of CH services; or
 - (ii) the combination of:
 - (a) one half unit of: group day habilitation services, supplemental group day habilitation services, prevocational services or blended services; and
 - (b) six hours of CH services; or
 - (iii) the combination of:
 - (a) one full unit or two half units of: group day habilitation services, supplemental group day habilitation services, prevocational services or blended services; and
 - (b) four hours of CH services; or
 - (iv) the combination of:

- (a) one full unit and one half unit or three half units of: group day habilitation services, supplemental group day habilitation services, prevocational services or blended services (one half or one full unit of these must be supplemental group day habilitation services); and
- (b) two hours of CH services.

(13) Where more than one agency delivers services on a given day to the same individual who lives in an IRA, CR, or family care home the total number of units and/or hours of CH services billed for that day by all agencies may not exceed the maximum allowed daily units and/or hours described in paragraphs (11) and (12) of this subdivision.

[(11)](14) CH which is self-directed or family-directed. The following requirements apply to CH services which are self-directed or family-directed, and are in addition to [the] all other provisions [of paragraphs (1)-(10)] of this subdivision.

(Note: rest of paragraph is unchanged.)

[(12)](15) Community habilitation fee setting.

(Note: rest of paragraph is unchanged except for the addition of a new clause (iii)(d))

- (d) Effective on the effective date of these amendments, the fees for CH delivered to an individual who lives in a CR, IRA or FCH are as follows:

Fee is hourly per person

	<u>Individual</u> <u>Serving 1</u>	<u>Group</u> <u>Serving 2-4</u>
<u>Region I</u>	<u>\$37.05</u>	<u>\$23.16</u>
<u>Region II</u>	<u>\$38.39</u>	<u>\$23.99</u>
<u>Region III</u>	<u>\$37.51</u>	<u>\$23.44</u>

(Note: paragraphs (13) – (15) are renumbered as (16) – (18) and are unchanged.)

● **Subdivision 635-10.5(ac) is amended as follows:**

- (ac) Community habilitation phase II (CH II) services. The following [shall apply] applied to CH II services (see section 635-10.4(b)(4) of this Subpart), which were delivered between October 1, 2012 and September 30, 2013 and are no longer available.

(Note: rest of subdivision is unchanged.)