



To: Provider Associations
Voluntary Provider Agency Executive Directors
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DDRO Directors
IBR Director
Commissioner's Advisory Council
DDPC Consumer Caucus
OPWDD Required Regulations Mailing List

From: OPWDD Counsel's Office, Bureau of Policy and Regulatory Affairs

Date: April 11, 2016

Re: Proposed Regulations – Cost Report Submission and Penalty Changes

Comments Due: Monday, June 6, 2016

Suggested distribution:

Agency Administrators and Managers
Agency Financial Officers

Background:

Existing OPWDD regulations in 14 NYCRR Section 635-4.4 require that providers file annual consolidated fiscal reports (cost reports) no later than 120 days after the last day of the reporting period, and allow for one 30 day extension, upon request, for providers that are unable to meet the 120 day deadline. The regulations also impose a two percent reduction in reimbursement on any provider that fails to submit its cost report in accordance with the requirements.

Purpose:

The proposed amendments make changes to the requirements for the submission of cost reports and penalties for failure to submit cost reports in accordance with requirements. The amendments require providers to submit their cost reports in the form and format prescribed by OPWDD on or before the specified date in the regulations and replace the time period requirements (e.g. 120 or 150 days to submit cost reports) in existing regulations with specific due dates. The amendments also extend the due date to incorporate the 30 day extension period in the current regulations and eliminate the requirements associated with making requests for an extension. The amendments also add a table that outlines the respective deadlines for cost report filers. OPWDD expects that this will reduce confusion among providers about due dates.

The proposed amendments add new penalties applicable to providers of Home and Community Based Services (HCBS) waiver services for failure to submit cost reports in accordance with the specified deadlines. If the cost report is still outstanding at the time specified in the regulations, the existing two percent reduction in reimbursement penalty will be replaced by a 50 percent penalty. If a provider is unable to meet its fiscal obligations with such a penalty, the amendments allow OPWDD to request that the provider voluntarily surrender its operating certificate and/or revoke the operating certificate in accordance with Article 16 of the Mental Hygiene Law. OPWDD expects that the addition of these penalties will facilitate increased compliance with the regulations, thereby increasing protections for individuals receiving services. Further, OPWDD's HCBS waiver, as approved by the federal government, eliminates federal funding for providers that fail to meet the required deadlines. Since the federal funding equates to 50 percent, this penalty is, in effect, an elimination of federal funding for the HCBS waiver services.

The proposed amendments also eliminate penalties for delinquent cost reports associated with time periods prior to those specified in the amendments. For providers filing on the July 1st through June 30th period, the specified time period is prior to July 1, 2012 through June 30, 2013. For providers filing on the calendar period, the specified time period is prior to January 1, 2013 through December 31, 2013. This new provision will protect providers from excessive penalties and undue hardship, and facilitate recovery from past penalties.

The scheduled effective date of these regulations is July 1, 2016.

The full text of the proposed regulations is posted on the OPWDD website at www.opwdd.ny.gov. Look under "Regulations & Guidance."

Public comments:

The deadline for public comment for the proposed regulations is the close of business on Monday, June 6, 2016. Written comments should be addressed to:

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For questions regarding specific application of this regulation, please contact Joanne Howard by email at rate.setting@opwdd.ny.gov or by telephone at (518) 402-4330.

Thank you.