

**Cost Report Submission and Penalty Changes**  
AMENDMENTS TO 14 NYCRR SECTION 635-4.4

**FINAL REGULATIONS**

**Effective Date: July 1, 2016**

635-4.4 Failure to file required financial and statistical reports.

- (a) Each provider shall submit all cost reports in the form and format and by the method specified by OPWDD [to OPWDD] so that OPWDD receives them no later than [120 days after the last day of the reporting period] June 1<sup>st</sup> for providers reporting on the January 1<sup>st</sup> through December 31<sup>st</sup> period or December 1<sup>st</sup> for providers reporting on the July 1<sup>st</sup> through June 30<sup>th</sup> period.
- (b) [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. 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, in the form and format and by the method specified by OPWDD, on or before the [original or revised] due date, the provider shall be subject to a reduction in reimbursement under subdivision [(e)] (d) of this section.
- [(d)](c) [If a] A provider [has applied for an extension, it] may make a written request for a waiver of reduction in reimbursement due to extraordinary and/or unforeseeable circumstances beyond its control, such as a natural disaster, 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 extraordinary and/or 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 in reimbursement must be received by OPWDD [within the timeframes specified in subparagraphs (i) and (ii) of this paragraph] no later than June 1<sup>st</sup> for providers reporting on

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the January 1<sup>st</sup> through December 31<sup>st</sup> period or December 1<sup>st</sup> for providers reporting on the July 1<sup>st</sup> through June 30<sup>th</sup> period.

- [(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) If the request is received on or before the due date specified in subdivision (a) of this section, 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 extraordinary and/or 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 extraordinary and/or unforeseeable circumstances beyond the provider's control or that such 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 in reimbursement, the provider shall be subject to a reduction in reimbursement under subdivision [(e)] (d) of this section.
- (4) If OPWDD approves the request for a waiver of the reduction in reimbursement, 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)] (d) this section.

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- ~~(e)~~(d) The reduction in reimbursement shall equal two percent of the total billed [but unremitted] price(s), rate(s) and/or fee(s) in the payment systems beginning on [the first day of the month following] the due date of the cost report, or the revised due date of the cost report if OPWDD has approved the provider's request for a waiver of the reduction in reimbursement in accordance with subdivision (c)(4) 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: Intermediate Care Facilities for Persons with Developmental Disabilities, Medicaid Service Coordination, Day Treatment, Clinic Treatment Facilities, residential habilitation in individualized residential alternatives (IRAs) and community residences (CRs), and all other HCBS waiver services.
- (e) Additional penalty applicable to providers of HCBS waiver services. If the cost report is still outstanding on the first day of the second month following the due date, the two percent penalty will be replaced by a 50 percent penalty on the first day of the eighth month following the due date. This penalty will continue until the next regularly scheduled payment cycle following the due date of the providers' cost report for the subsequent cost reporting period or the last day of the month in which the cost report is received, whichever is later. If OPWDD determines that a provider will likely be unable to meet its financial obligations with the imposition of the 50 percent penalty or if the provider fails to file the overdue cost report by the end of the provider's next cost report period, OPWDD may request that the provider voluntarily surrender its operating certificate for the HCBS services(s) and/or take action to revoke the provider's operating certificate in accordance with Article 16 of the Mental Hygiene Law.
- (f) The following chart provides the dates described in subdivisions (d) and (e) of this section:

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	<u>January 1<sup>st</sup> through December 31<sup>st</sup> Filers</u>	<u>July 1<sup>st</sup> through June 30<sup>th</sup> Filers</u>
<u>Cost Report Due Date</u>	<u>June 1<sup>st</sup></u>	<u>December 1<sup>st</sup></u>
<u>2 Percent Penalty Starts</u>	<u>June 1<sup>st</sup></u>	<u>December 1<sup>st</sup></u>
<u>Due Date to Avoid 50 Percent Penalty</u>	<u>August 1<sup>st</sup></u>	<u>February 1<sup>st</sup> *</u>
<u>50 Percent Penalty Starts</u>	<u>February 1<sup>st</sup> *</u>	<u>August 1<sup>st</sup> *</u>
<u>Due Date of Cost Report for Next Cost Report Period</u>	<u>June 1<sup>st</sup>*</u>	<u>December 1<sup>st</sup></u>

\* These dates apply to the year subsequent to the year the cost report is due.

[(f)] (g) If the provider discovers that a cost report submitted to OPWDD is incomplete, inaccurate or incorrect, the provider must submit a revised cost report.

[(g)] (h) Upon OPWDD’s review of a provider’s cost report that has been submitted in accordance with the form and format specified in this subpart, [I]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 request for a waiver of reduction in reimbursement due to extraordinary and/or unforeseeable circumstances beyond the provider’s control that prevent it from filing a revised cost report or submitting additional data within the 30 day period. A request must contain detailed facts supporting it, describe the extraordinary and/or unforeseeable circumstances and explain why the provider believes such circumstances will prevent it from filing a revised cost report or submitting 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] the penalties described under this subdivision.
- (2) If the provider submits a written 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

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relevant facts and circumstances. OPWDD shall approve the request if OPWDD determines that there are extraordinary and/or unforeseeable circumstances beyond the provider's control that will prevent the provider from filing a revised cost report or submitting additional data within 30 days. OPWDD shall deny the request if OPWDD determines that there are not extraordinary and/or unforeseeable circumstances beyond the provider's control or that such circumstances should not prevent the provider from filing a revised cost report or submitting 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.

- (3) The provider shall be subject to a reduction in reimbursement if:
- (i) it fails to submit, within the 30 day period, a revised cost report or additional data, or a written request; or
  - (ii) OPWDD denies the written request; or
  - (iii) OPWDD approves the written request 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 subdivision [(e)] (d) 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 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.
  - (ii) If OPWDD denies the written request, 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 and the provider does not submit a revised cost report or data by the revised due date, the

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reduction shall begin on the first day of the month following the revised due date.

[(h)] (i) 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)] (j) 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.

(k) Any penalty imposed pursuant to this section because of a delinquent cost report for the periods specified in paragraphs (1) and (2) of this subdivision, shall cease as of the effective date of these regulations.

(1) For providers reporting on the July 1st through June 30<sup>th</sup> period, delinquent cost reports for any periods prior to July 1, 2012 through June 30, 2013.

(2) For providers reporting on the calendar period, delinquent cost reports for any periods prior to January 1, 2013 through December 31, 2013.

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