

**Amendments to Rate Setting for Non-State Providers:
Rates for Residential Habilitation Delivered in IRAs & CRs and for
Day Habilitation Services**

Amendments to 14 NYCRR Subpart 641-1

Assessment of Public Comment

OPWDD received comments from one provider association. Below is the assessment of the comments and OPWDD's responses.

1. DDP, E-Scores and Statewide Average Direct Hours Per Provider

COMMENT: The commenter has serious concerns about the IRA direct care hours methodology and the health, safety and community inclusion implication of using statewide averages, E-Scores and acuity based upon the Developmental Disabilities Profile (DDP). The DDP has not been validated and lacks inter-rater reliability.

Approximately 120 providers will receive revenue reductions for direct support hours that they actually provided, while 127 providers will receive increased funding for direct support staffing hours without any documentation that these additional hours are needed. The methodology will significantly reduce the financial support for direct support staff to a point below the level necessary to ensure the health and safety of service recipients.

The regulation should be amended to allow all IRA providers to be funded for the actual direct support hours that they actually provided in the same manner as is proposed for ICFs/DD and day habilitation programs. Also, OPWDD should await implementation of the new Coordinated Assessment System (CAS) assessment tool next year.

RESPONSE: OPWDD and DOH consider that the use of acuity factors is appropriate. DOH is confident in the results of a regression analysis utilizing DDP for the Supervised and Supportive IRAs, which yielded strong regression models with r-squared values between 30 and 40%. The findings for Day Habilitation and ICF yielded r-squared values below an acceptable level, and therefore were not used. Risk assessment tools currently used in acute care payment methodologies on average have lower r-squared values ranging between 15 percent and 30 percent.

2. Capital Component

COMMENT: The capital thresholds included in the proposed regulations are more than six years old (adopted April 1, 2008) and minimally should be made current. This issue is especially problematic for the downstate regions of the State where affordable housing continues to be a significant problem. There needs to be a provision for amendments to the cap and threshold values for capital acquisitions, new construction and leases to be updated on at least a periodic basis based upon an appropriate housing index. The State and the nonprofit providers have made significant investments in real property to support thousands of individuals yet there is no provision to exceed the threshold values:

- especially as homes are reviewed by OPWDD against fire safety guidelines that could require providers to make significant capital investments to meet code;
- for developing new homes that can satisfactorily meet the needs of individuals with significant challenging behaviors and/or medical issues; and
- in order to meet money follows the person goals which require 4 persons or less to live together.

RESPONSE: OPWDD and DOH will not change the regulation at this time, but will consider the comment when subsequent amendments are made to the regulation.