

Residential Habilitation Services: Daily Unit of Service in Non-State Operated Supervised Individualized Residential Alternatives (IRAs) and Supervised Community Residences (CRs)

**AMENDMENT OF 14 NYCRR SUBDIVISION 635-10.5(b)
AND SECTION 671.7**

- **Subdivision 635-10.5(b) is amended by the addition of a new paragraph (3) as follows and existing paragraphs (3)-(9) are renumbered to be (4)-(10):**

(3) Reimbursement for residential habilitation services provided in non-state operated IRAs and CRs on or after July 1, 2014 shall be in accordance with the provisions of Subpart 641-1 of this Title. Subpart 641-1 supersedes the provisions of this subdivision for reimbursement of residential habilitation services provided in non-state operated supervised and supportive IRAs and CRs on or after July 1, 2014, except those provisions pertaining to enrollment and service days in paragraphs (9) - (13) of this subdivision.

Note: Subpart 641-1 includes a provision that changes the unit of service for residential habilitation services provided in non-state operated supervised IRAs and CRs from a monthly to a daily unit of service (See paragraphs (9) and (13) of this subdivision).

- **Renumbered paragraph 635-105(b)(9) is amended as follows and existing subparagraphs (i)-(v) are renumbered to be (iii) -(vii):**

(9) [Monthly] [s]Supervised IRA [price] residential habilitation (Supervised IRA RH).

(i) Reimbursement for residential habilitation services provided in non-state operated IRAs and CRs on or after July 1, 2014 shall be in accordance with the provisions of Subpart 641-1 of this Title. Subpart 641-1 supersedes the provisions of subparagraphs (iii) - (vii) of this paragraph for reimbursement of residential habilitation services provided in non-state operated supervised IRAs and CRs on and after July 1, 2014.

(ii) The unit of service for residential habilitation services provided in non-state operated supervised IRAs and CRs on or after July 1, 2014 shall be a daily unit of service. The requirements of this subparagraph supersede the provisions of subparagraph (v) of this paragraph for residential habilitation services provided in non-state operated supervised IRAs and CRs on or after July 1, 2014.

- **Renumbered subparagraph 635-10.5(b)(9)(v) is amended as follows:**

[(iii)](v) Countable service days.

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

- (a) The full month supervised IRA price shall be paid for services provided to an individual who meets the enrollment requirement in subparagraph (11)[(i)](ii) of this subdivision and who receives face-to-face residential habilitation services in accordance with the individual's individualized service plan (ISP) and residential habilitation plan on each of the 22 days of the enrollment requirement. These are known as countable service days.
- (b) One-half of the full month supervised IRA price shall be paid for services provided to an individual who meets the enrollment requirement in subparagraph (11)[(ii)](iii) of this subdivision and who receives face-to-face residential habilitation services in accordance with the individual's ISP and residential habilitation plan on each of the 11 days of the enrollment requirement. These are known as countable service days.

- **Renumbered subparagraph 635-10.5(b)(9)(vi) is amended as follows:**

[(iv)](vi) Newly certified sites. A newly certified site is an IRA whose reimbursable costs are not already included in the monthly price and at which a provider is initially approved to deliver services pursuant to an operating certificate issued by OPWDD. A newly certified site's annual total reimbursable residential habilitation costs and certified capacity shall be included in the monthly price as calculated in accordance with subparagraph [(ii)]iv of this paragraph except for capital moveable equipment and property insurance components after December 31, 2010. If two countable service days are possible in the month of certification, the new site shall be included in the monthly price in the month of certification. If two countable service days are not possible in the month of certification, the new site shall be included in the monthly price effective the month after the month of certification.

- **Renumbered clause 635-10.5(b)(9)(vii)(e) is deleted as follows:**

[(e) OPWDD may opt to re-examine the capital moveable equipment and property insurance components of the supervised IRA price for purposes of recalculation after December 31, 2015, for Region II and Region III reporting providers, or after June 30, 2016, for Region I reporting providers.]

- **Note: Existing paragraph 635-10.5(b)(10) was previously "reserved"**

- **Renumbered paragraph 635-10.5(b)(10) is amended by the addition of a new subparagraph (i) as follows and existing subparagraphs (i)-(v) are renumbered to be (ii)-(vi):**

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

(i) Reimbursement for residential habilitation services provided in non-state operated IRAs and CRs on or after July 1, 2014 shall be in accordance with the provisions of Subpart 641-1 of this Title. Subpart 641-1 supersedes the provisions of subparagraphs (ii) - (v) of this paragraph for reimbursement of residential habilitation services provided in non-state operated supportive IRAs and CRs on and after July 1, 2014.

• **Renumbered subparagraph 635-10.5(b)(10)(iv) is amended as follows:**

[(iii)](iv) Countable service days.

- (a) The full month [supported] supportive IRA price shall be paid for services provided to an individual who meets the enrollment requirement in subparagraph (11)[(i)](ii) of this subdivision and who receives face-to-face residential habilitation services in accordance with the individual's ISP and residential habilitation plan on four of the 22 days of the enrollment requirement. Services provided on these four days must be delivered, initiated or concluded at the site. No more than two days of service within a week may be counted toward the four-day requirement. These four days are countable service days.
- (b) One-half of the full month [supported] supportive IRA price shall be paid for services provided to an individual who meets the enrollment requirement in subparagraph (11)[(ii)](iii) of this subdivision and who receives face-to-face residential habilitation services in accordance with the individual's ISP and residential habilitation plan on two of the 11 days of the enrollment requirement. Services provided on these two days must be delivered, initiated or concluded at the site. No more than one day of service within a week may be counted toward the two-day requirement. These two days are countable service days.

• **Renumbered subparagraph 635-10.5(b)(10)(v) is amended as follows:**

[(iv)](v) Newly certified sites. A newly certified site is an IRA whose reimbursable costs are not already included in the monthly price and at which a provider is initially approved to deliver services pursuant to an operating certificate issued by OPWDD. The approved total annual budgeted costs established for newly certified supportive IRA sites after June 30, 2011 shall reflect a two percent reduction in

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operating costs as was implemented for providers on July 1, 2011 pursuant to subparagraph (18)(iii) of this subdivision. A newly certified site's annual total reimbursable residential habilitation costs and certified capacity shall be included in the monthly price as calculated in accordance with subparagraph [(ii)](iii) of this paragraph except for capital moveable equipment and property insurance components after December 31, 2010. If two countable service days are possible in the month of certification, the new site shall be included in the monthly price in the month of certification. If two countable service days are not possible in the month of certification, the new site shall be included in the monthly price effective the month after the month of certification.

- **Renumbered clause 635-10.5(b)(10)(vi)(e) is deleted as follows:**

[(e) OPWDD may opt to re-examine the capital moveable equipment and property insurance components of the supportive IRA price for purposes of recalculation after December 31, 2015, for Region II and Region III reporting providers, and after June 30, 2016, for Region I reporting providers.]

- **Paragraph 635.10.5(b)(11) is amended as follows:**

(11) Enrollment requirements for [consumers] individuals enrolled in a supervised or supportive IRA.

(i) Effective July 1, 2014, for the provider to be paid for a daily unit of Supervised IRA RH the individual must be enrolled at the supervised IRA and either services are provided or the person is eligible for a therapeutic leave or retainer day in accordance with the provisions of paragraph (12) of this subdivision.

[(i)](ii) Prior to July 1, 2014, [F] for the provider to be paid a full month supervised IRA price, the [consumer] individual must be enrolled in the provider's supervised IRA program for a minimum of 22 days in the calendar month.; to be paid a full month supportive price, the consumer must be enrolled in the provider's supportive IRA program for a minimum of 22 days in the calendar month.]

[(ii)](iii) Prior to July 1, 2014, [F]for the provider to be paid a one-half month supervised IRA price, the [consumer] individual must be enrolled in the provider's supervised IRA program for a minimum of 11 days in the calendar month.; to be paid a one-half month supportive price, the consumer must be enrolled in the provider's supportive IRA program for a minimum of 11 days in the calendar month.]

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

- (iv) For the provider to be paid a full month supportive price or rate, the individual must be enrolled in the provider's supportive IRA program for a minimum of 22 days in the calendar month.
 - (v) For the provider to be paid a one-half month supportive price or rate, the individual must be enrolled in the provider's supportive IRA program for a minimum of 11 days in the calendar month.
- **Paragraph 635-10.5(b)(12) is amended as follows:**
 - (12) Standards for [countable] service days
 - (i) Supervised IRA RH service days, effective July 1, 2014, require:
 - (a) the individual's presence at the supervised IRA, or one of the following allowable exceptions:
 - (1) the day is a day of discharge from a hospital, nursing home, intermediate care facility (ICF), or other certified, licensed, or government funded residential facility when the individual returns to the supervised IRA;
 - (2) the day is a day when the individual's residence is converted from an ICF to a supervised IRA, or when the designation of an IRA is changed (supportive to supervised or supervised to supportive) and the individual is present at the facility;
 - (3) days when IRA staff deliver and document residential habilitation services to an individual who is away from the residence for the purpose of a vacation or a visit with family or friends, and the location of service delivery is documented; or
 - (4) days when residents of the IRA are relocated due to emergency conditions or other circumstances reported to and approved by the OPWDD regional office for the region where the IRA is located and the entity within OPWDD that is responsible for survey and certification activity. (Individuals must be present at the approved site and the location of the site documented); and

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- (b) provision and documentation of at least one face to face service in accordance with the individual's residential habilitation plan on each service day.
- (ii) Therapeutic leave and retainer days. Effective July 1, 2014, a supervised IRA provider will be paid for therapeutic leave days and retainer days in accordance with 14 NYCRR Subpart 641-1.
- (iii) Countable service days prior to July 1, 2014:
- [(i)](a) In computing the countable service days, the provider cannot include days [that] when the [consumer] individual is in a hospital, nursing home, ICF/DD or other certified, licensed or government funded residential setting.
- [(ii)](b) The day the [consumer] individual is admitted or discharged from one of the other residential settings listed in [subparagraph (i)] clause (a) of this subparagraph may be a countable service day if, on that day, IRA staff deliver residential habilitation services to the [consumer] individual at the IRA.
- [(iii)](c) For supervised IRAs only: in determining countable service days the provider may include days when an individual [consumer] is away from the IRA, for purposes such as vacations and visits with family or friends, only when staff from the [consumer's] individual's IRA deliver and document services to that [consumer] individual that are similar in scope, frequency and duration to the residential habilitation services typically delivered to the [consumer] individual at the IRA.
- [(a)](1) No more than 14 days in a calendar month that meet the conditions of this subparagraph may be countable service days for a full month supervised IRA price.
- [(b)](2) No more than seven days in a calendar month that meet the conditions of this subparagraph may be countable service days for one-half of a full month supervised IRA price.
- [(iv)](d) The provisions of this paragraph notwithstanding, days when all [consumers] residents of the IRA are relocated due to an emergency or other conditions [which] that necessitate relocation for the health and safety of the [consumers] residents may be considered as countable if:

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Final Regulations: Residential Habilitation Services: Daily Unit of Service in
Non-State Operated Supervised Individualized Residential Alternatives (IRAs) and
Supervised Community Residences (CRs)
Effective: July 1, 2014

[(a)](1) the relocation is reported to and approved by OPWDD; and

[(b)](2) staff regularly assigned to the IRA continue to deliver and document residential habilitation services that are similar in scope, frequency and duration to those typically delivered to the [consumers] residents at the certified site.

[(v)](e) [s]Services provided on countable service days must be documented. On any countable service day there must be documentation of at least one residential habilitation service delivered to the [person] individual by IRA staff on that day.

- **Section 671.7 is amended by the addition of a new subdivision (a) as follows and existing subdivision (a) is re-lettered to be (b) which was previously reserved:**

(a) Effective July 1, 2014:

- (1) reimbursement for residential habilitation services provided in non-state operated IRAs and CRs shall be in accordance with the provisions of Subpart 641-1 of this Title. Subpart 641-1 supersedes the provisions of subdivision (b) of this section for reimbursement of residential habilitation services provided in non-state operated supervised and supportive IRAs and CRs on or after July 1, 2014;
- (2) the unit of service for residential habilitation services provided in non-state operated supervised IRAs and CRs shall be a daily unit of service. The requirements of this paragraph supersede the provisions of paragraph (b)(3)(ii) of this section for residential habilitation services provided in non-state operated supervised IRAs and CRs on or after July 1, 2014;
- (3) residential habilitation services in non-state operated supervised CRs shall be provided and documented in accordance with subparagraphs 635-10.5(b)(11)(i) and (12)(i)-(ii) of this Title; and
- (4) residential habilitation services in non-state operated supportive CRs shall be provided and documented in accordance with paragraph 635-10.5(b)(10) and subparagraphs (11)(iv)-(v) of this Title.

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Final Regulations: Residential Habilitation Services: Daily Unit of Service in
Non-State Operated Supervised Individualized Residential Alternatives (IRAs) and
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