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Administrative Memorandum - #2010-01

**TO: Executive Directors of Voluntary Agencies
DDSO Directors
Provider Associations**

FROM: Diana Jones Ritter, Commissioner

SUBJECT: Clarification of Payment Standards and Program Standards

DATE: July 16, 2010

Suggested Distribution:

Executive Management Staff
Agency Managers
Billing Department Staff
Quality/Compliance Staff

Background:

OPWDD has issued guidance documents (including Administrative Memoranda) to provide general information or guidance to assist regulated parties in complying with statutes, regulations or other legal requirements. OPWDD has also promulgated a body of regulations in 14 NYCRR which governs the operation of services pursuant to the Commissioner's authority in the Mental Hygiene Law.

Historically, OPWDD has established requirements in its regulations and guidance documents which are identified as "billing standards" (or as some other equivalent term). These "billing standards" have been used to establish the specific service parameters that must be documented in order for providers to receive reimbursement for a particular service claim. A "billing standard" or some other equivalent term has the same meaning as a "payment standard" as discussed in this ADM.

Historically, OPWDD has also established requirements in its regulations and guidance documents which have not been identified as “billing standards” or some equivalent term. These requirements govern aspects of service delivery which are not elements required to support payment of an individual service claim, such as service quality standards, or are not considered to be required documentation elements to support payment of service claims. These **always** have been considered to be “program standards.”

The Mental Hygiene Law creates a statutory framework by which the Commissioner is empowered to establish and employ various enforcement tools to ensure compliance with established standards. These enforcement tools include: plan of corrective actions; non-renewal of operating approvals; suspensions and limitations of operating certificates, and fines or other fiscal sanctions as well as restitution.

OPWDD is committed to the enforcement of the requirements established in statute, regulation, and guidance documents. OPWDD’s two tiered enforcement system is comprised of a program certification and program quality review function on the one hand with a fiscal audit function on the other hand. The program certification and program quality review unit surveys against program standards and imposes sanctions and plans of corrective action, if appropriate, in accordance with the enforcement tools identified in the Mental Hygiene Law. The fiscal audit unit examines compliance with payment standards in OPWDD guidance documents, federal and state statutes and regulations and recommends recoveries to the Office of the Medicaid Inspector General (OMIG), if warranted, based on non-compliance with OPWDD payment standards and/or those federal and state law and regulations that have been determined by the state or federal agency which promulgated such regulations to be a requirement for payment under the Medicaid program.

Purpose:

1. To clarify OPWDD’s intent with respect to how its requirements established by regulation or policy are intended to be applied. Please note this ADM only governs OPWDD’s standards and providers remain obligated to comply with regulations which are lawfully issued by other state or federal authorities.
2. To distinguish between “payment standards” and “program standards” in guidance documents. A “payment standard” means a “billing standard” (or equivalent term) that, if violated, can lead to potential fiscal recoveries and recoupment. A “program standard” means a standard that, if violated, can lead to potential sanctions, such as a plan of corrective action, which do not include fiscal recoveries. Sanctions that can be imposed for violation of program standards are those specified in the Mental Hygiene Law (including plan of corrective actions; non-renewal of operating approvals; suspensions and limitations of operating certificates, and fines or other fiscal sanctions as well as restitution).
3. To announce that all future guidance documents and regulations issued by OPWDD which are intended to contain a payment standard will clearly identify the payment standard as such against which claims for Medicaid reimbursement will be audited. All standards in future regulations and guidance documents which do not carry this specific designation shall be considered program standards.

Applicability to current standards:

OPWDD has historically made a distinction between payment standards and program standards. OPWDD has always considered that **only** those requirements that are labeled a “billing standard” or equivalent term would be subject to a fiscal recovery, if violated. Auditing related to adherence to those payment standards has been the responsibility of OPWDD’s fiscal audit unit, though as of October 1, 2010 that responsibility will be shifted to the OMIG. It has always been OPWDD’s intent that all requirements that are not specifically labeled as “billing standards” or “payment standards” or some equivalent term are deemed to be program standards and are not subject to fiscal recoveries if violated.

This ADM effectuates the Commissioner’s authority to distinguish between those issues that are addressed through program sanctions as distinguished from those that are addressed through fiscal recoveries. This distinction is in furtherance of OPWDD’s longstanding policy that not every violation of OPWDD standards should result in a fiscal recovery because to do so would impose an unreasonably harsh standard of compliance and suggest that all standards ultimately are both a payment and a program standard.

Application to specific service types and requirements:

In order to specifically identify the current payment standards, OPWDD has reviewed the current requirements in its guidance documents requirements. Guidance documents with payment standards that are currently in effect are identified in attachment A (List of OPWDD Guidance Documents with Payment Standards) to this ADM.

These guidance documents with payment standards shaded in grey are posted on the OPWDD website (www.omr.state.ny.us) in a list associated with this ADM. Every current guidance document that contains a payment standard is identified, with all payment standards in these guidance documents shaded in grey. Any requirement in these guidance documents which is not shaded in grey is a program standard. Furthermore, any requirement in a current guidance document which is not on the list is a program standard.

As future guidance documents are issued, if they contain any payment standards the guidance document will be added to the list on the website, and all payment standards within the document posted on the list will be shaded in grey. Any future requirement in a guidance document on the list which is not shaded in grey is a program standard. Any future requirement in a guidance document which is not added to the list on the website is also a program standard.

If you have any questions about the information in this ADM, please contact Eugenia Haneman, Director of Medicaid Standards at (518) 408-2096 or at Eugenia.Haneman@omr.state.ny.us.

cc: OPWDD Leadership Team
Barbara Brundage
Eugenia Haneman

Attachment A

List of OPWDD Guidance Documents with Payment Standards

Every current guidance document that contains a payment standard is listed. These documents are available on the OPWDD website with all payment standards in these guidance documents shaded in grey. Any requirement in these guidance documents which is not shaded in grey is a program standard or an explanation, illumination or illustration to aid auditors in interpreting the documents. Please note that there may be instances where materials may be partially shaded in a sentence, paragraph or beneath a header. It is OPWDD's intent that only those words that are shaded shall be considered part of a payment standard and any other words with in a sentence or paragraph or below a header that are not shaded should be construed to be a program standard or an explanation, illumination or illustration to aid auditors in interpreting the documents.

ADM #2002-01 (IRA Residential Habilitation Service Documentation Requirements):

ADM #2003-02 (Plan of Care Support Services)

ADM #2003-03 (Habilitation Plan Requirements)

ADM #2003-04 (Day Habilitation Service Documentation Requirements)

ADM #2004-01 (At Home Residential Habilitation)

ADM # 2005-01 (Standards for Article 16 Clinics)

ADM #2005-02 (HCBS Waiver Respite/Non Waiver Enrolled Respite Service Documentation)

ADM #2006-01 (Group Day Habilitation Service Documentation Requirements)

ADM #2006-02 (Individual Day Habilitation Service Documentation Requirements)

ADM #2006-03 (Service Documentation Requirements for Prevocational Services)

ADM #2006-04 (Family Care Residential Habilitation Service Documentation Requirements)

ADM #2007-01 (Supported Employment Service Delivery and Documentation Requirements)

ADM #2008-02 (Day Treatment Billing Standards)

ADM #2009-01 (At Home Residential Habilitation Service Documentation)

Attachment A

ADM #2009-02 (Consolidated Supports and Services Documentation Requirements)

Medicaid Service Coordination Vendor Manual

Chapter 2/Page 3

Chapter 4/Page 3 ; Page 4; Page12 through page 14

Chapter 5/Page 1

Insert A effective October 1, 2009

Insert B effective October 1, 2009

Chapter 6/Page 2 through 4

February 15, 2008 Guidance Letter on Medicaid Service Coordination Billing for Individuals in a Hospital

June 13, 2006 Guidance Letter to ICF Agency Executives

February 18, 2004 Guidance Letter to ICF Provider Agency Directors

June 19, 2007 Medical Supplies Letter to Agency Executive Directors

Appendix Bs for OPTS Contracts

Service Documentation Requirements for OPTS At Home Residential Habilitation

Service Documentation Requirements for OPTS Blended Day Habilitation, Prevocational and Supported Employment Services (Blended DPS)

Supervised IRA Residential Habilitation

Service Documentation Requirements for Blended Day Habilitation and Prevocational Services (Blended DP)

Service Documentation Requirements for Blended Day Habilitation and Supported Employment (Blended DS)

Service Documentation Requirements for OPTS Blended Prevocational and Supported Employment Services (Blended PS)

Service Documentation Requirements for OPTS Free-Standing Respite Services

Service Documentation Requirements for OPTS Group Day Habilitation

Service Documentation requirements for OPTS Individual Day Habilitation

Attachment A

Service Documentation Requirements for OPTS Prevocational Services

Service Documentation Requirements for OPTS Hourly Respite Services

Service Documentation Requirements for OPTS Monthly Supported Employment

Service Documentation Requirements for OPTS Supplemental Group Day
Habilitation

Service Requirements for OPTS Supplemental Individual Day Habilitation

Service Documentation Requirements for OPTS Guest Home Respite Services

Service Documentation Requirements for General Developmental Disability
Hourly Services (Assistive Technology)

Service Documentation General Developmental Disability Per Unit Services
(Dementia Support)

Service Documentation Requirements for General Developmental Disability
Hourly Services (Future Planning)

Service Documentation Requirements for General Developmental Disability
Hourly Services (Trip Planning)

Service Documentation Requirements for General Developmental Disability
Monthly Services (Room & Board)

Service Documentation Requirements for General Developmental Disability
Monthly Services (Psychologist)

Service Documentation Requirements for General Developmental Disability
Monthly Services (Social Worker)

Service Documentation Requirements for General Developmental Disability Per
Diem Services (Emergency Housing)

Service Documentation Requirements for General Developmental Disability Per
Diem Services (Traineeship)

Service Documentations Requirements for OPTS General Developmental
Disability Per Unit Service (Transportation Services)