

**Day and Residential Habilitation Changes
Amendment of 14 NYCRR Subparts 635-9 and 635-10 and Part 671
PROPOSED REGULATIONS**

Permanent Effective Date: November 1, 2015

Comments Due: October 5, 2015

- **Existing subparagraph 635-9.1(a)(1)(xxii) is amended as follows:**

(xxii) Supervised community residences (CRs) and supervised individualized residential alternatives (IRAs) [facilities shall assume] are responsible for the cost of [services which]:

(a) services that are necessary to meet the needs of [consumers] individuals while in the residence; [and]

(b) services that, prior to August 1, 2004, could have been met by home health aide or personal care services separately billed to Medicaid[.]; and

(c) services specified in subparagraph 635-10.4(b)(1)(xvi) of this Part and paragraph 671.5(a)(7) of this Title that, prior to the effective date of these regulations, may have been separately billed to Medicaid.

- **A new subparagraph 635-9.1(a)(1)(xxiii) is added as follows:**

(xxiii) Supportive CRs and supportive IRAs are responsible for the cost of services that, prior to [the effective date of these regulations], could have been met by a home health aide or personal care services separately billed to Medicaid, as specified in subparagraph 635-10.4(b)(1)(xvii) of this Part and paragraph 671.5(a)(8) of this Title.

- **Existing paragraph 635-9.1(a)(3) is amended as follows:**

(3) Family care.

(i) The sponsoring agency (see glossary) [shall assume] is responsible for the cost of:

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- (a) Any item or service for which the sponsoring agency has been paid or will be reimbursed from local, State, or Federal funds. This includes services that, prior to the effective date of these regulations, could have been met by a home health aide or personal care services separately billed to Medicaid, as specified in subparagraph 635-10.4(b)(1)(xvii) of this Part.

Note: Existing clauses (b) – (k) of this subparagraph and subparagraph (ii) of this paragraph are unchanged.

• **Existing subparagraph 635-10.4(b)(1)(xv) is amended as follows:**

- (xv) Residential habilitation services in a supervised IRA [shall] include [services which]:
- (a) services that are necessary to meet the needs of [consumers] individuals while in the residence; [and]
- (b) services that, prior to August 1, 2004, could have been met by home health aide or personal care services separately billed to Medicaid[.];
- (c) services that, prior to the effective date of these regulations, could have been met by home health aide or personal care services separately billed to Medicaid, with those services provided in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site; and
- (d) services specified in subparagraph (xvi) of this paragraph that, prior to the effective date of these regulations, may have been separately billed to Medicaid.

• **A new subparagraph 635-10.4(b)(1)(xvi) is added as follows:**

- (xvi) Effective on the effective date of these regulations, residential habilitation services in a supervised IRA include the following clinical services delivered to an individual that are directly related to the individual's residential habilitation plan:
- (a) nutrition services that consist of meal planning and monitoring, assessment of dietary needs and weight changes, development of specialized diets, diet education, and food safety and sanitation training;

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- (b) psychological services delivered by a licensed psychologist, licensed clinical social worker, or behavioral intervention specialist that consist of:
- (1) behavioral assessment and intervention planning, delivery and review or monitoring of behavioral interventions, and behavioral support services provided pursuant to section 633.16 of this Title; and
 - (2) psychotherapy services; and
- (c) nursing services that consist of:
- (1) training and supervision of direct support staff who perform health-related and delegated nursing tasks that include, but are not limited to, observation for illness and injury, medication administration, tube feeding, and colostomy care;
 - (2) development and monitoring of written plans of nursing services that identify interventions direct support staff carry out to address individuals' health care needs;
 - (3) availability of nursing supervision, by a Registered Nurse, on site or by telephone, at all times to respond to direct support staff in order to address individuals' ongoing and immediate health care needs;
 - (4) coordination of individuals' health care services, including, but not limited to, arranging for needed medical appointments and diagnostic testing, interfacing on behalf of individuals with community-based healthcare providers, and ensuring that treatments are carried out in accordance with physicians' orders; and
 - (5) provision of direct nursing care that cannot be delegated to direct support staff and that is available within the staffing plan at the residence and/or is not available through other sources.

• **A new subparagraph 635-10.4(b)(1)(xvii) is added as follows:**

- (xvii) Residential habilitation services for an individual who resides in a supportive IRA or Family Care Home include services that, prior to the

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effective date of these regulations, could have been met by a home health aide or personal care services separately billed to Medicaid; either

- (a) at the residence at any time; or
- (b) in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site.

- **Existing paragraph 635-10.5(c)(2) is amended as follows:**

- (2) Day habilitation services shall be reimbursed as either individual day habilitation, supplemental individual day habilitation, group day habilitation or supplemental group day habilitation. Effective on the effective date of these regulations, individual day habilitation services and supplemental individual day habilitation services are no longer available. Subdivisions (i) and (ii) of this paragraph are retained for such services that were delivered prior to the effective date of these regulations.

Note: Existing subparagraphs (i) – (iv) of this paragraph are unchanged.

- **Existing subparagraph 635-10.5(c)(4)(iv) is amended as follows:**

- (iv) For individual day habilitation and supplemental individual day habilitation services provided prior to the effective date of these regulations, total annual reimbursable costs derived through the application of the above methodology shall be trended in accordance with subdivision (i) of this section and divided by the total annual projected hours of utilization.

- **Existing paragraph 635-10.5(c)(5) is amended as follows:**

- (5) The unit of service for individual day habilitation and supplemental individual day habilitation services provided prior to the effective date of these regulations, shall be one hour equaling 60 minutes and is reimbursed in 15-minute increments. When there is a break in the service delivery during a single day, for billing purposes, the provider may combine the duration of each non-continuous period of service provision (or "session") that is provided during the day, when at least one service/staff action delivered in accordance with the individual's day habilitation plan is documented for each session.

Note: Existing subparagraphs (i) – (v) of this paragraph are unchanged.

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- **Existing subparagraph 635-10.5(c)(6)(iii) is amended as follows:**

- (iii) Supplemental group day habilitation services may not be billed to Medicaid for:
 - (a) [consumers] individuals who live in residential settings with 24-hour staffing; for example, supervised individualized residential alternatives (IRAs) and supervised community residences (CRs)[.]; and
 - (b) effective on the effective date of these regulations, individuals who live in supportive IRAs, supportive CRs, and Family Care Homes.

- **Existing paragraph 671.5(a)(6) is amended as follows:**

- (6) The provider of community residential habilitation services in a supervised community residence [shall be] is responsible for the cost of [services which]:
 - (i) services that are necessary to meet the needs of [consumers] individuals while in residence; [and]
 - (ii) [which] services that, prior to August 1, 2004₁, could have been met by home health aide or personal care services separately billed to Medicaid[.];
 - (iii) services that, prior to the effective date of these regulations, could have been met by home health aide or personal care services separately billed to Medicaid, with those services provided in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site; and
 - (iii) services specified in paragraph 671.5(a)(7) of this Part that, prior to the effective date of these regulations, may have been separately billed to Medicaid.

- **A new paragraph 671.5(a)(7) is added as follows:**

- (7) Effective on the effective date of these regulations, residential habilitation services in a supervised CR include the following clinical services delivered to an individual that are directly related to the individual's residential habilitation plan:

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- (i) nutrition services that consist of meal planning and monitoring, assessment of dietary needs and weight changes, development of specialized diets, diet education, and food safety and sanitation training;
 - (ii) psychological services delivered by a licensed psychologist, licensed clinical social worker, or behavioral intervention specialist that consist of:
 - (a) behavioral assessment and intervention planning, delivery and review or monitoring of behavioral interventions, and behavioral support services provided pursuant to section 633.16 of this Title; and
 - (b) psychotherapy services; and
 - (iii) nursing services that consist of:
 - (a) training and supervision of direct support staff who perform health-related and delegated nursing tasks that include, but are not limited to, observation for illness and injury, medication administration, tube feeding, and colostomy care;
 - (b) development and monitoring of written plans of nursing services that identify interventions direct support staff carry out to address individuals' health care needs;
 - (c) availability of nursing supervision, by a Registered Nurse, on site or by telephone, at all times to respond to direct support staff in order to address individuals' ongoing and immediate health care needs;
 - (d) coordination of individuals' health care services, including, but not limited to, arranging for needed medical appointments and diagnostic testing, interfacing on behalf of individuals with community-based healthcare providers, and ensuring that treatments are carried out in accordance with physicians' orders; and
 - (e) provision of direct nursing care that cannot be delegated to direct support staff and that is available within the staffing plan at the residence and/or is not available through other sources.
- **A new paragraph 671.5(a)(8) is added as follows:**

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- (8) The provider of community residential habilitation services in a supportive CR is responsible for the cost of services that, prior to the effective date of these regulations, could have been met by a home health aide or personal care services separately billed to Medicaid; either
- (a) at the residence at any time; or
- (b) in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site.

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