

## Clinic Treatment Service Locations and Independent Practitioner Services for Individuals with Developmental Disabilities

Amendment of 14 NYCRR Parts 635, 671 and 679 and the Addition of a New  
Subpart 635-13

### REVISED PROPOSED REGULATIONS

Effective Date: April 1, 2016  
Comments Due: March 4, 2016

- **Subdivision 679.1(b) is amended as follows:**
  - (b) Evidence of compliance with this Part along with Parts 633, 624, and 635 of this Title serve as the principal bases for the certification and recertification by the Office [of Mental Retardation and] for People With Developmental Disabilities [(OMRDD)] OPWDD (see glossary) of a clinic treatment facility serving persons with developmental disabilities.
- **Subdivision 679.1(c) is amended as follows:**
  - (c) The purpose of a clinic treatment facility is to serve principally persons (see subdivision [e] of this section) with developmental disabilities and their collaterals (see glossary) as stipulated herein, either at a main clinic site[(s)] certified by OPWDD [,] or at a certified satellite site (see glossary) listed by address on the facility's operating certificate[,], or, prior to the effective date of these regulations, off-site,[:]; by: ...
    - (3) Providing convenient access to clinical services, including services available at nontraditional business hours, in nontraditional settings, making use of treatments delivered at certified satellite sites and, prior to the effective date of these regulations, when authorized, off-site.
    - (4) Providing clinical services that are not duplicative or substitutive of [additional] services provided by existing clinic treatment facilities [except when there is documentation that the person's needs so warrant]. However, services described by the same clinical procedure code may be provided to address different clinical needs as documented in the clinic treatment plan. The treatment

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coordinator must document in the clinic treatment plan the coordination of similar clinical services provided to ensure there is no duplication of services.

**Note: Paragraphs 679.1(c)(1),(2), and (5)-(6) are unchanged.**

- **A new paragraph 679.1(c)(7) is added as follows:**

(7) Providing clinical services that are not duplicative of Early Intervention services authorized through an Early Intervention Plan (EIP) or School or Preschool Supportive Health services authorized through an Individualized Education Plan; or duplicative of services available through the Intermediate Care Facility for Individuals with Intellectual Disabilities program, OPWDD operated or certified residential or day programs, or OPWDD funded Home and Community Based Services (HCBS).

- **Subdivision 679.1(d) is amended as follows:**

(d) ... [OMRDD] OPWDD .... [OMRDD] OPWDD ....

(1) ... [OMRDD] OPWDD ....

(2) ... [OMRDD] OPWDD ....

- **Subdivision 679.1(e) is amended as follows:**

(e) As used herein, the terms, *people*, [and] *person(s)*, and individual(s) shall be understood to refer to those who have been admitted and are receiving services at a clinic treatment facility.

- **Paragraph 679.2(a)(1) is amended as follows:**

(1) Section 13.07 of the Mental Hygiene Law makes it the responsibility of [OMRDD] OPWDD to assure the development of comprehensive plans, programs, and services in the areas of research, prevention, care, treatment, rehabilitation, education, and training of persons with developmental disabilities. The [OMRDD] OPWDD also has the responsibility to ensure that such care, treatment, and other appropriate services provided under its aegis are of high quality and effectiveness and that the personal and civil rights of persons receiving [care and treatment] services are adequately protected.

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- **Paragraph 679.2(a)(3) is amended as follows:**

(3) Prior to April 13, 2015, [S]section 43.02 of the Mental Hygiene Law authorize[s]d the commissioner to establish rates or methods of payment for services at facilities subject to licensure by OPWDD. Effective April 13, 2015, section 43.02 of the Mental Hygiene Law authorizes the Department of Health to establish such rates and methods for payment, subject to the approval of OPWDD. Section 43.02 of the Mental Hygiene Law also authorizes the commissioner of OPWDD [and] to require financial, statistical, and program information as the commissioner may determine necessary.

- **Subdivision 679.2(b) is amended as follows:**

(b) Sections 364 and 364(a) of the Social Services Law provide that [OMRDD] OPWDD shall be responsible for establishing and maintaining standards for medical care and services in facilities under its jurisdiction and that it will do so in accordance with cooperative arrangements with the Department of Social Services and other State agencies.

- **Subdivision 679.3(d) is amended as follows:**

(d) The governing body shall ensure the development and implementation of a written quality assurance program (subject to [OMRDD's] OPWDD's approval), that includes a planned and systematic process for monitoring and assessing on an ongoing basis, the quality and appropriateness of the treatment, regardless of service delivery location, and clinical performance of staff. The plan shall include a means to resolve identified problems, pursue opportunities to improve the care and treatment provided, and incorporate the regular, ongoing input of [consumers] individuals receiving services, collaterals, and referral source representatives. The plan shall be subject to [OMRDD] OPWDD review and approval as part of the process for issuing a new operating certificate [or for a facility's first recertification occurring after April 1, 1993].

- **Subdivisions 679.4(a)-(c), (e), (g)-(j), (l)-(p) are amended as follows:**

(a) [OMRDD] OPWDD....

(b) [OMRDD] OPWDD....

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

(c) [OMRDD] OPWDD....

(e) [OMRDD] OPWDD....

(g) [OMRDD] OPWDD....

(h) [OMRDD] OPWDD....

(i) [OMRDD] OPWDD....

(j) [OMRDD] OPWDD....

(l) [OMRDD] OPWDD....

(1) ... [OMRDD] OPWDD....

**Note: Paragraphs 679.4(l)(2) and (3) are unchanged.**

(m) [OMRDD] OPWDD....

(n) [OMRDD] OPWDD.... [OMRDD] OPWDD....

(o) ... [OMRDD] OPWDD....

(p) [OMRDD] OPWDD....

**Note: Subdivisions 679.4(d), (f), and (k) are unchanged.**

- **Subdivision 679.5(a) is amended as follows:**

(a) The unit of service shall be a clinic visit as defined below whether the service is delivered at the main certified site[,] or at a certified satellite site[,] or, prior to the effective date of these regulations, off-site.

- **Paragraph 679.5(b)(2) is amended as follows:**

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(2) If an on-site clinic visit is provided and claimed for reimbursement on the same day as an off-site clinic visit (as allowed prior to the effective date of these regulations), reimbursement for each visit is considered a separate clinic visit.

- **Subdivision 679.6(a) is amended as follows:**

(a) Cost report. Each agency that operates a clinic treatment facility certified by OPWDD shall, on an annual basis, be required to submit a cost report prepared in accordance with Subpart 635-4 of this Title, for each certified site including costs associated with any certified satellite sites and, as allowed prior to the effective date of these regulations, costs associated with service delivery off-site.

- **Subdivision 679.6(b) is amended as follows:**

(b) Each agency that operates a clinic treatment facility shall provide OPWDD information it requests, including but not limited to the following: services provided by CPT/HCPSCS and/or CDT codes, where such services were delivered (*i.e.*, on-site[,] or at a certified satellite site[s,] or, prior to the effective date of these regulations, off-site) and revenues by funding source or payee. These data shall correspond to the identical time period of the cost report.

- **Paragraph 679.7(a)(4) is amended as follows:**

(4) Initial clinic treatment plans shall reflect coordination with all of the person's other individualized written plans of services that are required by law or regulation. In addition, for persons who reside in an OPWDD-certified residence, such initial clinic treatment plans shall identify any clinic services to be delivered prior to the effective date of these regulations in the OPWDD-certified residence and the justification for the delivery of the specific clinic services in the residence.

- **Subdivision 679.7(b) is amended as follows:**

(b) In order for the clinic treatment facility to be reimbursed for any clinic service delivered in an OPWDD-certified residence, as allowed prior to the effective date of these regulations, the clinic treatment facility shall [develop] retain a written description of the clinic services [to be] delivered in each residence, specifying the persons who [will] received services, the specific services that [will be] were delivered to each person, and the justification for delivery of clinic services in the residence. The clinic treatment

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facility shall [document] retain the consent of the executive director (or his/her designee) of the agency operating the residential facility or sponsoring agency [to] for the delivery of such clinic services as described. Such consent [shall be obtained] was required on at least an annual basis. Consent [shall also be obtained] was required before a new person [begins to receive] began receiving clinic services at the residence and before any person [begins to receive] began receiving a type of clinic service at the residence for which there [is] was no current consent.

- **Paragraph 679.8(a)(2) is amended as follows:**

- (2) Evaluation and management (E&M) services. Services and/or consultations as designated by CPT provided by a physician, nurse practitioner or an appropriately supervised physician assistant.

- **Subparagraphs 679.8(c)(1)(i) and (ii) are amended as follows:**

- (i) Peer Group A. Except for clinics described in subparagraph [clause (iii)](c) of this [sub]paragraph, Peer Group A shall be comprised of clinic treatment facilities that have the certified main clinic site located in New York City or Long Island, *i.e.*, the counties of New York, Bronx, Kings, Queens, Richmond, Nassau and Suffolk. The base rate for Peer Group A is \$180.95.

- (ii) Peer Group B. Except for clinics described in subparagraph [clause (iii)](c) of this [sub]paragraph, Peer Group B shall be comprised of clinic treatment facilities that have the certified main clinic site located in a county other than those identified in [clause (a)] subparagraph (i) of this [sub]paragraph. The base rate for Peer Group B is \$186.99.

- **Subdivision 679.99(b) is amended as follows:**

- (b) Agency/facility. As used in this Part, a term used to indicate that the stated requirement needs to be considered in relation to the administrative structure of both the agency and the site-specific facility and acted upon accordingly. The term agency used alone means the agent or operator of a facility operated or certified by [OMRDD] OPWDD. In the case of State-operated facilities, the Developmental Disabilities [Services] State Operations Office (DDSOQ) is considered to be the agency.

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- **Paragraph 679.99(d)(3) is amended as follows:**

(3) The governing body of a State-operated clinic treatment facility is the central office administration of [OMRDD] OPWDD and includes the administration by the Developmental Disabilities [Services] State Operations Office (DDSOO) director and his/her delegate(s).

- **Subdivision 679.99(e) is amended as follows:**

(e) Care, managed health. The use of a service delivery management system for medical care (see section 679.3(k)[2] of this Part) delivered by the Part 679 certified facility, designed to minimize the need for accessing hospital emergency room services and the length of stay for inpatient hospital care as well as ensuring access to appropriate health care. Nothing herein shall preclude a person's access to emergency medical care as appropriate, solely because of his or her disability or because he or she is receiving medical care from a Part 679 clinic. It includes the following components applicable to every person admitted for and receiving medical care as his or her principal source of health care in an [OMRDD] OPWDD certified clinic treatment facility:

- **Subdivision 679.99(g) is amended as follows:**

(g) Commissioner. The commissioner of the New York State Office [of Mental Retardation and] for People With Developmental Disabilities, or his or her designee.

- **Subdivision 679.99(j) is amended as follows:**

(j) Disability, developmental. A disability of a person which:

(1) [(i)] is attributable to

(i) [mental retardation] intellectual disability, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia or autism;

(ii) [is attributable to] any other condition of a person found to be closely related to [mental retardation] intellectual disability because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with [mental retardation] intellectual disability

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or requires treatment and services similar to those required for such persons; or

- (iii) [is attributable to] dyslexia resulting from a disability described in subparagraph (i) or (ii) of this paragraph;

**Note: Paragraphs 679.99(j)(2),(3), and (4) are unchanged.**

- **Subdivision 679.99(k) is amended as follows:**

- (k) ... [OMRDD] OPWDD ....

- **Subdivision 679.99(l) is amended as follows:**

- (l) Facility, clinic treatment. A certified physical space or setting and/or its services including any certified satellite location(s) and providing clinical services pursuant to this Part, principally to persons with developmental disabilities, where such services are provided on an outpatient (*i.e.*, nonresidential) basis. For clinics authorized to deliver services on an exclusively off-site basis (as allowed prior to the effective date of these regulations), the term *facility* includes the headquarters for administration, management (including clinical records management), and clinician office space which holds an appropriate certificate of occupancy in accordance with the requirements of the locality having jurisdiction.

- **Subdivision 679.99(n) is amended as follows:**

- (n) [OMRDD] OPWDD. The New York State Office [of Mental Retardation and] for People With Developmental Disabilities and all of its administrative subdivisions.

- **Subdivision 679.99(o) is amended as follows:**

- (o) Off-site services. Prior to the effective date of these regulations, [A]allowed clinic services (see subdivision (s) of this section) delivered by practitioners of the healing arts (see subdivision (c) of this section at any location(s) other than the clinic's main certified site or a certified clinic satellite site (see subdivision (t) of this section). This may have included delivery of authorized clinic services from a mobile van that [meets] met appropriate Department of Transportation vehicular requirements and [is] was suitably

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equipped and staffed. Off-site services are not allowable clinic treatment services, effective on the effective date of these regulations.

- **Paragraphs 679.99(p)(4) and (5) are amended as follows:**

- (4) meets the definition of professional as set forth at subdivision [(p)] (r) of this section; or
- (5) meets the designation of student-in-training as set forth at section 679.3[(1)] (l)(2) of this Part.

- **Paragraph 679.99(s)(1) is amended as follows:**

- (1) *Diagnostic.* Any medical/clinical procedures or supplies recommended by a physician or other licensed practitioner of the healing arts, within the scope of his or her practice under State law, to enable him or her to identify the existence, nature or extent of illness, injury, primary developmental disability, or other health [deviation] condition in the person.

- **Subdivision 679.99(t) is amended as follows:**

- (t) *Site, satellite.* A physical location or dedicated space meeting the physical plant and environmental standards of Subpart 635-7 of this Title appropriate to a clinic treatment facility, where the clinic regularly or periodically delivers Part 679 authorized services[,]
- (1) A satellite site must occupy either:
  - (i) *dedicated space, which is used exclusively for provision of Article 16 clinic treatment services, or*
  - (ii) *designated space, which is multi-purpose space that can be used by other programs or services based on a written arrangement, including a schedule that identifies the days and times when the space is used for provision of Article 16 clinic treatment services.*
- (2) A satellite site may be co-located with another OPWDD certified or funded non-residential program or service in accordance with the provisions of this subdivision.

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- (3) Effective on the effective date of these regulations, no space co-located in an educational setting serving students in any grades from preschool through grade 12 will be certified as an Article 16 clinic satellite site. However, OPWDD will not revoke or refuse to renew the certification of such a co-located space solely because it is located in an educational setting, if the space was certified by OPWDD prior to the effective date of these regulations.
- (4) [which is available to any eligible consumer to “walk-in” for service by appointment,] Services delivered at a satellite site must be available, by appointment, to any individual who is eligible to receive such services.
- (5) [and which is] Every satellite site must be specifically approved, periodically inspected, and listed by address as a satellite clinic on the Article 16 clinic operating certificate issued by [OMRDD] OPWDD.

- **Subdivision 679.99(u) is amended as follows:**

- (u) *Specialist, applied behavioral sciences.* A person with a master's degree from an accredited program in a clinical and/or treatment field of psychology and/or a NYS license in Mental Health Counseling, who has training in assessment techniques and behavioral program development and who functions under the supervision of a licensed psychologist.

- **Subdivision 679.99(x) is amended as follows:**

- (x) ... [OMRDD] OPWDD ....

- **A new Subpart 635-13 is added to 14 NYCRR as follows:**

Subpart 635-13 Independent Practitioner Services for Individuals with Developmental Disabilities

635-13.1 Applicability and Service Definition

- (a) This subpart is applicable to Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD) provided to individuals who meet the eligibility criteria specified in this subpart.

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- (b) IPSIDD is a Medicaid State Plan service that consists of clinical services identified in subdivision (c) of this section provided on and after the effective date of these regulations.
- (c) IPSIDD services include the following clinical services that are not delivered as part of an individual's residential and/or day habilitation service:
- (1) Occupational therapy;
  - (2) Physical therapy;
  - (3) Speech and language pathology;
  - (4) Psychology;
  - (5) Social Work.
- (d) Independent practitioners must comply with the requirements of this subpart to provide and receive reimbursement for IPSIDD.

Section 635-13.2 Eligibility Criteria.

To receive IPSIDD, the individual must:

- (a) be determined by OPWDD to have a developmental disability as defined in section 1.03(22) of the Mental Hygiene Law, and
- (b) not be enrolled at a facility or program that includes provision of the services identified in subdivision 635-13.1(c) of this subpart as part of its service model and reimbursement rates (e.g., developmental center, special residential unit, specialty hospital, intermediate care facility for individuals with intellectual disabilities (ICF/IID), day treatment facility, skilled nursing facility, rehabilitation hospital, adult day healthcare facility, PACE center).

635-13.3 Qualifications for Providing and Billing for IPSIDD

- (a) To provide and bill for IPSIDD the independent practitioner must be a clinician licensed in NYS:

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

- (1) whose name and credentials have been submitted to, and verified by, OPWDD; and
  - (2) who has had specialized training and 2 years of experience treating individuals with developmental disabilities.
- (b) An Applied Behavioral Sciences Specialist (ABSS) may provide IPSIDD under the supervision of a licensed psychologist who meets the qualifications specified in subdivision (a) of this section. The ABSS must have a Master's Degree in a clinical and/or treatment field of psychology from an accredited institution and/or a NYS license in Mental Health Counseling and training in assessment techniques and behavioral program development.
- (c) To bill for IPSIDD, the independent practitioner must coordinate service provision with other providers of services identified in subdivision 635-13.1(c) in order to prevent duplication of services.

635-13.4 General Provisions on Service Delivery

- (a) Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD) may be delivered in the following locations:
- (1) Individualized Residential Alternatives (IRAs), Community Residences (CRs) or Family Care Homes certified by OPWDD, or private residences;
  - (2) Certified day habilitation, pre-vocational, and day training facilities;
  - (3) Community settings as deemed appropriate by the clinician, including community settings where OPWDD services may occur; or
  - (4) Clinicians' private offices.
- (b) IPSIDD services are prohibited from being delivered in the following locations:
- (1) Educational settings serving students in any grade from preschool through grade 12;
  - (2) Private schools certified by OPWDD;

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- (3) ICFs/IID;
  - (4) Day Treatment Facilities;
  - (5) Clinic treatment facilities certified by OPWDD, DOH, OMH and OASAS;
  - (6) Hospitals (including an OPWDD certified specialty hospitals); or
  - (7) Other licensed or certified residential or day healthcare settings that include the clinical services identified in subdivision 635-13.1(c) of this subpart as part of their service models and reimbursement rates (e.g., skilled nursing facilities, rehabilitation centers, adult day healthcare facilities, PACE centers).
- (c) IPSIDD services cannot be provided to individuals receiving or eligible to receive similar clinical services from the Early Intervention program. IPSIDD services must not duplicate or replace Preschool Supportive Health services or School Supportive Health services authorized through an approved Individualized Educational Plan (IEP); however, IPSIDD services may address service needs of preschool and school aged children that are not addressed in the IEP and are not school-related as determined by the child's committee on special education.
- (d) IPSIDD services must not duplicate or replace services available through the ICF/IID program, or OPWDD operated or certified residential or day programs. IPSIDD services must not duplicate OPWDD funded Home and Community Based Services (HCBS), including Intensive Behavioral Services, or services provided in clinic treatment facilities and hospital outpatient departments or services provided by Certified Home Health Agencies. However, services described by the same clinical procedure code may be provided to address different clinical needs.
- (e) Time spent receiving another Medicaid service shall not be counted toward IPSIDD billable service time in instances when the Medicaid service is received simultaneously with IPSIDD.
- (f) See 10 NYCRR Part 86 for reimbursement methodology.
- **Clause 635-10.4(b)(1)(xvi)(b) is amended as follows:**

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

- (b) [psychological] behavioral intervention and support 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]
- **Subparagraph 671.5(a)(7)(ii) is amended as follows:**
  - (ii) [psychological] behavioral intervention and support 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]

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