

**Summary of Assessment of Public Comment
Rate Setting for Non-State Providers:
IRA/CR Residential Habilitation and Day Habilitation**

OPWDD received numerous comments from providers, provider associations and a consultant. Below is a summary of the comments received and OPWDD's responses. A more detailed assessment of the Public Comments received is available on the OPWDD website at www.opwdd.ny.gov.

1. Values for Budget Neutrality Adjustment and Regional Averages

COMMENT: The values of the Budget Neutrality Adjustment and regional averages, as well as the method for calculating the regional averages, should be published as part of the regulations.

RESPONSE: These values will not be included in the regulation text. The regional averages will be posted on the Department of Health's (DOH) website.

2. Implementation Date

COMMENT: Rates should not be implemented July 1, 2014 because providers have not yet been provided with their rates.

RESPONSE: The methodology will be implemented on July 1, 2014.

3. State operated providers

COMMENT: The rate methodology should include the cost of State operated community residences and day habilitation programs in the development of regional rates.

RESPONSE: The methodology will not be changed to include State operated programs in the development of regional rates.

4. DOH Regions

COMMENT: OPWDD regions should be used rather than DOH regions.

RESPONSE: OPWDD and DOH consider that the DOH regions are closely aligned with OPWDD regions and are appropriate for use in the methodology.

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COMMENT: The use of DOH regions does not group similar wage and cost structures and economies on a rational basis, and fails to address the regional cost differences which exist across upstate New York. Use of these regions will create rate distortions which will lead to significant health, safety and quality issues.

RESPONSE: OPWDD and DOH consider that the DOH regions are appropriate for use in this methodology.

5. Region 1 Providers

COMMENT: The methodology unfairly discriminates against OPWDD Region One providers.

RESPONSE: OPWDD believes the methodology does not discriminate against any group of providers.

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

COMMENT: The Developmental Disabilities Profile (DDP) has not been validated, was never designed as a tool to allocate direct care hours among providers serving individuals with developmental disabilities; lacks inter-rater reliability. DDP scores are out of date and are updated inconsistently. There are no specific requirements, qualifications or training for staff who conduct the assessment. The DDP is not a reliable tool for determining acuity due to inconsistencies with who completes the instrument and how it is completed. Since DDP forms are completed by providers who have been aware for a long period of time that rates would be created from their use, they are not accurate representations of the acuity of individuals receiving services.

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: 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.

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COMMENT: By not using the Medical component of the DDP, the methodology fails to capture non nurse staffing necessary to provide quality of care to an individual with significant medical needs. There should be an adjustment for acuity related to medical complexity of individuals, or, if there is no way to reasonably adjust for medical acuity, agencies should be provided their actual hours until a reasonable method can be developed.

RESPONSE: Since the methodology both uses an E-Score adjustment and includes all the clinical hours the provider reported, the methodology takes into account medical acuity of the individuals in the residence.

COMMENT: For residential habilitation, each agency is provided only 75% of their actual hours, plus 25% of the state average hours modified by acuity. This means that agencies are either losing hours they are actually using to care for individuals or they are getting more hours than they presumably need to care for individuals. 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 takes away more than a million hours of direct care staffing from agencies that are using them to support individuals with complex medical needs and giving them to agencies that have demonstrated, based on CFR reporting, that they don't need them. 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.

RESPONSE: OPWDD and DOH consider that the use of acuity factors is appropriate.

COMMENT: The E-Score calculation is based upon subjective and ill defined factors and a tool which was never designed to measure appropriate staffing needs.

RESPONSE: The use of E-Scores and the calculation is appropriate.

COMMENT: The use of a regional average will reduce wages or slow wage growth for direct support workers, who are already poorly compensated.

RESPONSE: The use of regional averages is appropriate.

7. CFR data

COMMENT: The CFR database may be flawed.

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RESPONSE: OPWDD and DOH are not changing the methodology in response to this comment.

8. Facility Cost Component and State Wide Budget Neutrality Adjustment

COMMENT: The regulation should state that this value of the Budget Neutrality Adjustment will be revised annually to include the value of services expansion and other funding increases added after June 30, 2014.

RESPONSE: OPWDD and DOH have decided that no change to the regulation is necessary at this time in response to the comment. However, the comment will be taken under advisement for consideration when subsequent amendments are made to the regulation.

COMMENT: The methodology to calculate residential facility costs is not consistent with the federal Social Security Administration regulations and expectations on the use of Supplemental Security Income (SSI). The rate methodology for facility costs could take a portion of a person's SSI, even though all of their room and board costs have not been covered, and use it to reduce the cost of a Medicaid funded waiver residential habilitation service. This will result in the misuse of the SSI and the SNAP benefits. Under federal regulations, it is the responsibility of the representative payee to know the person's needs and to use the SSI benefits in the person's best interest to meet their maintenance needs. The State cannot make this decision either on behalf of the person or their representative payee. The budget neutrality calculation should occur at the very end of the calculation when the State can decide how much of the true (actual) excess room and board costs over SSI/SNAP benefits it wants to supplement providers.

RESPONSE: OPWDD and DOH have decided that no change to the regulation is necessary at this time in response to the comment. However, the comment will be taken under advisement for consideration when subsequent amendments are made to the regulation.

9. Capital Component

COMMENT: The capital thresholds included in the proposed regulations are more than 6 years old and should be made current.

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.

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COMMENT: The short term interest time limit should be increased from 12 months to 18 months without limitation between acquisition or renovation phases.

RESPONSE: OPWDD and DOH are not changing the regulation at this time, but will take this comment into consideration.

COMMENT: The regulations should state that the property reimbursement section only applies to PPAs issued on or after the July 1, 2014.

RESPONSE: OPWDD and DOH are not changing the regulation at this time, but will take this comment into consideration.

10. Trend Factor

COMMENT: The regulation fails to describe the use of a trend factor when the base year is being updated.

RESPONSE: The language as stated is correct. Trend factors will not be applied in years in which the methodology is rebased.

11. Therapeutic Leave Days

COMMENT: Therapeutic leave days will be reimbursed at zero dollars to start and reimbursed after a period of time. This will have major cash flow implications on providers. It is our understanding that OPWDD and DOH plan to correct this through an emergency regulation, which will indicate that the provider will be reimbursed for therapeutic leave days at its residential habilitation rate starting July 1, 2014.

Finally, since reimbursement for therapeutic leave days will commence July 1, 2014, this section needs to be amended to exclude reference to therapeutic leave days.

RESPONSE: DOH has made system changes in order to allow providers to be paid for therapeutic leave days as they are reported. With respect to the remainder of the comment, OPWDD and DOH have decided that no change to the regulations is necessary at this time in response to the comment. However, the comment will be taken under advisement for consideration when subsequent amendments are made to the regulation.

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12. Vacancy Days

COMMENT: The last sentence in section 641-1.6(b)(3) needs to be amended as follows: “Providers will be paid for vacant bed days at seventy five percent of the daily operating rate as calculated pursuant to paragraph (1) of subdivision (c) of section 641-1.3 of this Subpart up to a maximum of *ninety consecutive vacancy days per vacancy*”.

RESPONSE: The vacant bed language is correct as written. The maximum allowable vacant bed days for the initial period will be limited to a maximum of ninety days per bed.

13. Initial Period

COMMENT: The definition of “initial period” (7/1/14- 12/31/14 for calendar year providers and 7/1/14-6/30/15 for fiscal year providers) is not needed, because rebasing will occur on 7/1/15 for all providers, minimal changes will occur on 1/1/15, and the first year of transition is 7/1/14-6/30/15 for all providers. In 641-1-6 (Transition Period and reimbursement), there is no reference to the “initial period” but rather to the “base operating rate” which as defined in 641-1.2(d) has a different meaning.

RESPONSE: The “initial period” will be July 1, 2014 through June 30, 2015 and refers to the first year of operation under the new methodology, while the “base operating rate” refers to the reimbursement amount calculated by dividing the annual reimbursement by applicable annual units of service in effect on June 30, 2014. No change to the regulation is necessary at this time in response to the comment. However, the comment will be taken under advisement for consideration when subsequent amendments are made to the regulation.

14. Appeals and Corrections to Rates

COMMENT: There should be an appeal process, and a 90 day correction period from the beginning of the rate period for either provider or State error.

RESPONSE: OPWDD and DOH are not changing the regulation at this time, but will take this comment into consideration.

15. Template Funding

COMMENT: Template funding should be addressed in the regulations.

RESPONSE: OPWDD and DOH are not making any changes to the regulation at this time, but will take this comment into consideration.