

**OPWDD Response to Public Comments Received September 16, 2019 –
October 18, 2019 on the OPWDD 1915(c) Comprehensive Home and
Community-Based Services (HCBS) Waiver “2019 Renewal”**

Introduction

On September 16, 2019, the New York State Office for People With Developmental Disabilities (OPWDD) posted a copy of the draft 1915(c) Comprehensive Home and Community-Based Services (HCBS) Waiver “2019 Renewal” to the OPWDD website for a 30-day public comment period. This document provides an overview of changes to the OPWDD Comprehensive review, a summary of public comment received, and technical changes made to the waiver based on CMS review of the draft submission. These technical changes in the final, approved Waiver do not affect the experience of Waiver enrollees or providers.

With the Centers for Medicare and Medicaid Services (CMS), the final approved 2019 Waiver Renewal is available at the following web page:

www.opwdd.ny.gov/opwdd_services_supports/people_first_waiver/HCBS_waiver_services.

Overview of Waiver Changes & the Public Comment Process

The key proposed changes included in the draft Renewal were:

Operational/Policy Changes:

- Level of Care Eligibility Determinations (LCEDs): OPWDD revised the 1915(c) HCBS Waiver to allow Nurse Practitioners to sign and authorize/approve initial LCED determinations as well as subsequent annual LCED re-determinations. A LCED is used to evaluate and re-evaluate an individual’s eligibility to receive HCBS Waiver services.
- Self-Direction Circle of Support Meetings: OPWDD revised the 1915(c) HCBS Waiver to reduce the required frequency of Circle of Support meetings for individuals electing to self-direct their services from quarterly to twice per year.
- Self-Direction, Individual Directed Goods and Services (IDGS): OPWDD revised the 1915(c) HCBS Waiver to incorporate a minor technical change to summer camp certification with regard to New York State Sanitary Code Subpart 7.
- Technical updates to reflect current operational and quality improvement policies put in place since the previous renewal: Changes included updates to the prioritization of need policy and Waiver quality assurance review activities, workgroups, and committees. These changes also include a description of OPWDD’s new Division of Data Management & Strategy, which is responsible for advancing OPWDD’s data driven quality improvements.

Fiscal Changes:

- Rate Setting Changes related to the New York State Budget: OPWDD is adjusting the 1915(c) HCBS Waiver to revise the Residential Habilitation, Day Habilitation and Site-Based Prevocational Services Rate Setting methodologies related to agency administration costs based on the approved

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2019-2020 New York State Budget.

- Self-Direction, Personal Resource Account (PRA): OPWDD is revising the 1915(c) HCBS Waiver to reflect changes made to the PRA regarding direct care and clinical direct support salary increases.
- Self-Direction, Individual Directed Goods and Services, Clinician and Therapy Payment Levels: OPWDD is revising the 1915(c) HCBS Waiver to update existing clinician and therapy payment capitation levels per current Federal Bureau of Labor Statistics values.

OPWDD conducted two web-based informational sessions to explain the proposed changes included in the draft Waiver 2019 Renewal on September 19, 2019. The September 19, 2019 WebEx PowerPoint and audio recording are available on the 1915(c) HCBS Waiver home page at:

www.opwdd.ny.gov/opwdd_services_supports/people_first_waiver/HCBS_waiver_services.

Public Comment:

General Comments

1. Comment:

A respondent noted that the HCBS Waiver is lengthy and very technical in nature; this technical language, is neither clear nor effective for communication with individuals and families.

Response:

Medicaid Waiver agreements between states and the Centers for Medicare and Medicaid Services (CMS) are, by nature, long and technical because they must precisely set forth program requirements and rate methodologies and must also adhere to the format mandated by CMS. For the draft 2019 Renewal, OPWDD conducted webinars to guide stakeholders' review of the document. The materials from the webinars remain available on OPWDD's website.

2. Comment:

A respondent expressed concern that OPWDD and the Department of Health (DOH) did not make the draft 2019 Renewal readily available in languages other than English.

Response:

OPWDD has satisfied all Federal requirements for public notice.

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Service Options/Changes

3. Comment:

Stakeholders requested that Self-Direction services, especially Community Habilitation, continue to be available via the OPWDD 1915(c) HCBS Waiver.

Response:

The proposed Waiver Renewal does not make any changes to Community Habilitation. Self-direction remains an option in the OPWDD 1915(c) Waiver.

4. Comment:

Respondents recommended the expansion of Assistive Technology services, housing supports, and transportation services under the OPWDD 1915(c) HCBS Waiver.

Response:

OPWDD regularly assesses the level of services offered through its Waiver and is not including the recommended expansion of services in the HCBS Waiver Renewal application at this time.

5. Comment:

Stakeholders suggested removing the requirement of a communication/audio disability in order to receive Music Therapy services available under Individual Directed Goods and Services (IDGS). Recommendations were also made to revise the qualifications for Music Therapy providers to include professionals who are not licensed by the New York State Department of Education.

Response:

While OPWDD regularly assesses the level of services offered through its Waiver, it is not eliminating the communication/audio disability requirement in this 2019 Waiver Renewal.

OPWDD does not have the authority to expand the qualifications for Music Therapy clinicians as this is the responsibility of the New York State Education Department, Office of the Professions.

6. Comment:

A respondent expressed concern that the IDGS Clinician and Therapy Payment Rates are too low and do not include Board Certified Behavior Analysts (BCBAs) as well as other clinical professions.

Response:

OPWDD's draft 2019 Waiver Renewal reflects increases in payment rates based on updated Federal Bureau of Labor Statistics (BLS) data. The Renewal

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continues the practice of using the 90th percentile of the hourly wage according to the BLS for the clinical professions.

Behavioral services may be accessed through Article 16 Clinics, Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD), and Intensive Behavioral Services (IBS). These supports are outside of an individual’s self-directed budget, and therefore are in no way limited by Personal Resource Accounts (PRAs).

7. Comment:

A stakeholder asked if IDGS Funding could include coverage for cellular phones.

Response:

There are other sources for funding cellular phone costs, which makes funding through a Medicaid Waiver inappropriate. The SafeLink program provides a free smartphone with data, minutes, and messaging services for individuals with developmental disabilities in New York State who are also eligible for Supplemental Security Income (SSI). Additional information is available at: <https://www.safelinkwireless.com/Enrollment/Safelink/en/Web/www/default/index.html#!/aboutUs>.

Rate Setting

8. Comment:

Stakeholders noted that the proposed changes regarding agency administration costs from the New York State 2019-2020 Budget will create a financial hardship for smaller HCBS Waiver provider agencies. Respondents recommended that the State revise this proposal to reflect current OPWDD regulations under Part 645 and New York Executive Order 38. In addition, stakeholders recommended that the Regional Average General and Administrative Hourly Component should be revised to incorporate actual costs and not allowable costs.

Response:

The changes regarding agency administration costs are independent from Executive Order 38, and only limit the portion of those costs that may be considered in the computation of an agency’s Medicaid rate. This action applies to all providers, regardless of size, and is undertaken to ensure that available resources for direct service delivery are maintained.

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9. Comment:

A respondent expressed concern regarding the definition of rebasing included in Addendum A and recommended that the State follow the current rebasing process.

Response:

The definition of “rebasing” included in Addendum A does not preclude the state from continuing to follow a two-year rebase period.

10. Comment:

Stakeholders requested that the Special Populations Funding be extended to all individuals who self-direct and have intensive needs.

Response:

The 2019 Waiver Renewal does not include an expansion of eligibility for Special Populations Funding. However, this funding allowance remains available to individuals who formerly lived in certain types of institutional settings.

11. Comment:

Stakeholders requested that funding be made available for individuals who do not self-direct their services and transition from a residential setting to the community.

Response:

Community Transition Services (CTS) are non-recurring set-up expenses for individuals who are transitioning from an institutional or other provider-operated living arrangement to a private residence in the community where the person is directly responsible for their own living expenses. The Waiver was updated to clearly reflect that this HCBS Waiver service is not specific to self-direction as it is available to all individuals who qualify.

12. Comment:

Respondents expressed concern that self-directing individuals are not included in the description of Higher Needs Funding. The respondents noted that all information regarding the establishment of Self-Direction Budgets must be made publicly available.

Response:

Higher Needs Funding is not a line item in an individual’s Self-Direction Budget nor incorporated into the calculation of an individual’s Personal Resource Account (PRA). Rather, Higher Needs Funding provides a temporary adjustment to the rate setting methodology for Day and Residential Habilitation providers until such time as updated cost report information is available for rate setting purposes.

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Other Comments

13. Comment:

A respondent noted that the Waiver identified an incorrect timeframe for finalizing initial Life Plans.

Response:

The Waiver Renewal is corrected to align with published OPWDD Care Coordination Organizations/Health Homes (CCO/HH) Policy Guidance, that allows 90 days to finalize the Life Plan following the enrollment into a CCO or the HCBS Waiver. CCO/HH Policy Guidance is published at the following website: https://opwdd.ny.gov/providers_staff/care_coordination_organizations/providers/ccco-manual.

14. Comment:

A respondent questioned if services authorized prior to December 31, 2019 will continue to be available on and after January 1, 2020.

Response:

The 2019 Renewal of the OPWDD 1915(c) HCBS Waiver does not impact an individual’s current service authorizations. Any change in service authorization for individuals would occur through the normal reassessment process that currently applies to all OPWDD 1915(c) HCBS Waiver enrollees and would be subject to the enrollees’ due process and fair hearing rights.

15. Comment:

Stakeholders recommend an increase to the enrollment projections for the five-year Renewal period (2019-2024) due to the number of new Care Coordination Organization/Health Home (CCO/HH) enrollments.

Response:

The 1915(c) HCBS Waiver enrollment projections are based on the trending of historical data from the Medicaid Payment System. The projections for each year consider both new opportunities and a termination factor for the people who choose to disenroll from the HCBS Waiver. OPWDD is not updating the projected HCBS Waiver enrollments at this time.

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16. Comment:

Stakeholders requested additional information regarding the implementation of the Coordinated Assessment System (CAS) especially for the establishment of Self-Direction PRAs. The respondents are concerned about the utilization of the CAS as information from workgroups and the Optumas report have not been released publicly. Additionally, a stakeholder noted that OPWDD must adhere to due process requirements for service authorization in conjunction with the utilization of the CAS.

Response:

Federal funding requires the use of a comprehensive assessment tool that meets the conflict of interest standards. In order to meet this requirement, OPWDD is transitioning to the Coordinated Assessment System (CAS). OPWDD continues to work with stakeholder workgroups on the use of the CAS across OPWDD’s service system. Stakeholders will have additional opportunities to provide feedback on how the CAS will be utilized to establish Self-Direction PRAs including the posting of a future amendment to the OPWDD 1915(c) HCBS Waiver for public comment.

Guidance regarding the grievance and appeals process for individuals in the OPWDD system, can be found in Appendix F of the 2019 Waiver Renewal. Appendix F-1 describes the process for notifying a person of the right to request a Fair Hearing to appeal decisions related to the HCBS Waiver. Appendix F-2 describes the grievance process available when a person objects to the way a provider is delivering an approved HCBS waiver service.

The implementation of the CAS will not change a person’s right to request a Fair Hearing or any other due process requirements. The right to request a Fair Hearing continues to be available when OPWDD denies, reduces, or discontinues a person’s access to a Medicaid funded service.

17. Comment:

A respondent expressed concern that the 2019 draft Waiver Renewal does not reference an HCBS Transition Plan.

Response:

OPWDD’s HCBS Settings Transition Plan is included in the New York State Statewide HCBS Settings Transition Plan. Additional information is available on the New York State Department of Health (DOH) website at: https://www.health.ny.gov/health_care/medicaid/redesign/home_community_base_d_settings.htm.

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18. Comment:

A stakeholder questioned why the language regarding the prioritization of participant needs was revised. The stakeholder expressed concern that these changes will no longer look at an individual’s need for services on an individual basis.

Response:

The categories used to prioritize participant need for access to HCBS Waiver services has always aligned with categories used for assessing need for certified residential services. In 2015, OPWDD implemented the Certified Residential Opportunities (CRO) protocol to ensure fair access to certified residential services based on individuals’ needs. The update to the 2019 Renewal, aligns the Waiver prioritization with the standards already in place for residential services and in no way diminishes OPWDD’s person-centered approach to assessing individual need for access to services. The 2019 Renewal for submission to CMS has been updated to make the commitment to person-centered needs assessment explicit.

Additional information on the levels, which replaced Priority 1, 2 and 3, and are now identified as Emergency Need, Substantial Need and Current Need, are described in further detail on the OPWDD website at the following two links: https://opwdd.ny.gov/commissioners_message/new-priority-categories-for-housing-opportunities-announced and https://opwdd.ny.gov/opwdd_services_supports/residential_opportunities/Residential_Support_Categories.

19. Comment:

Stakeholders requested that OPWDD communicate the change in the Circle of Support meeting frequency requirement to Support Brokers and Care Managers.

Response:

In July of 2019 OPWDD released a new Administrative Directive Memorandum (ADM) regarding Support Brokerage services, ADM #2019-06 (available at: https://opwdd.ny.gov/opwdd_regulations_guidance/adm_memoranda). This ADM, titled “Service Documentation for Support Brokerage Services”, describes the continued person-centered nature of Circle of Support meetings and specifies that these meetings must occur at least twice a year or more frequently if needed by the person receiving services. As a result of this change, OPWDD updated the training curriculum for Support Brokers in July 2019 and presented this information during the June 13, 2019 Fiscal Intermediary/Support Broker Quarterly WebEx and June 27, 2019 Central Broker Authorization training. The Central Broker Authorization training was recorded and is available on the OPWDD website at: https://opwdd.ny.gov/providers_staff/info-for-providers.

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Changes Made to the OPWDD Comprehensive Waiver Based on CMS Review

During the CMS review of the State’s Waiver submission, the State agreed to several technical changes requested by CMS. These changes, which do not affect the provision of services to individuals, include:

- Correcting the description of the Fiscal Intermediary (FI) to reflect that these providers operate as an Organized Health Care Delivery System (OHCDS). This is a technical change that reflects the current FI operation of making payments for self-directed services and submitting claims to Medicaid (eMedNY) for payment.
- Updates to performance measures to streamline state reporting and consistently reflect the sampling methodologies used for each data source.
- Changes to the non-waiver cost projections used in Appendix J and the corresponding descriptions of the base data and trend methodologies applied for each year of the five-year agreement.

The final approved Waiver is available at the following link:

www.opwdd.ny.gov/opwdd_services_supports/people_first_waiver/HCBS_waiver_services.