



**ADMINISTRATIVE DIRECTIVE**

<b>Transmittal:</b>	19-ADM-02R
<b>To:</b>	Executive Directors of Voluntary Provider Agencies Developmental Disabilities State Operations Offices (DDSOOs) Directors Developmental Disabilities Regional Offices (DDROs) Directors Provider Associations
<b>Issuing OPWDD Office:</b>	Division of Policy and Program Development
<b>Date:</b>	April 10, 2019
<b>Subject:</b>	Permissible Out-of-State or Country Home and Community-Based Services (HCBS) Waiver Services Delivery
<b>Suggested Distribution:</b>	Habilitation Program/Service Staff Quality/Compliance Staff Billing Department Staff Care Managers and Care Manager Supervisors
<b>Contact:</b>	<a href="mailto:peoplefirstwaiver@opwdd.ny.gov">peoplefirstwaiver@opwdd.ny.gov</a>
<b>Attachments:</b>	

<b>Related ADMs/INFs</b>	<b>Releases Cancelled</b>	<b>Regulatory Authority</b>	<b>MHL &amp; Other Statutory Authority</b>	<b>Records Retention</b>
2002-01 2006-01 2006-04 2012-01 2014-01 2015-01 2016-01 2017-03 2018-06 2018-09	2019-02	14 NYCRR Parts 635, 636, and 18 NYCRR §360- 3.5 42 CFR §431.52	MHL §§13.07,13.09(b) and 43.02 Social Security Act §1902(a)(16) OPWDD's Comprehensive Waiver under §1915(c) of the Social Security Act. 42 U.S.C. §1396(n)(c)	18 NYCRR §504.3(a) 18 NYCRR §517.3 14 NYCRR §635-4.5

## **Purpose:**

The purpose of this Administrative Memorandum is to update and revise the parameters, previously described in ADM #2019-02, under which the Office for People With Developmental Disabilities (OPWDD) permits Section 1915(c) Home and Community-Based Services (HCBS) Waiver services to be delivered outside of New York State (NYS) or the United States. These revisions are retroactively applied to the date of the original ADM #2019-02, April 10, 2019.

## **Background:**

Mental Hygiene Law section 13.07 gives the Commissioner of OPWDD authority to develop and provide quality programs and services for individuals with developmental disabilities. The NYS Medicaid provider policy manual, available at “eMedNY”, provides general guidance about NYS Medicaid beneficiaries receiving services out-of-state, including that prior approval from the state agency may be required. This ADM describes the particular circumstances under which OPWDD HCBS Waiver services may be delivered outside NYS or outside the country.

## **Out-of-State Service Delivery:**

An OPWDD authorized provider may deliver HCBS Waiver services to an eligible individual while outside NYS only under the following circumstances:

1. The HCBS Waiver service is delivered
  - i. by an authorized OPWDD provider; and
  - ii. within the same scope, frequency and duration as when the service is typically delivered in NYS;
2. The individual receives HCBS Waiver services outside NYS;
3. The individual’s travel during the provision of their HCBS Waiver service delivery is derived from the individual’s Life Plan/Individualized Service Plan (ISP) following a person-centered planning process;
4. Service provision **does not** occur in one of the following site-based locations outside of NYS:
  - i. Site-based certified programs outside of NYS (e.g., New Jersey certified residential program); or
  - ii. Any other uncertified congregate setting that would require certification or a permit if located within NYS (e.g., camp facility); and
5. The individual can be safely served in the Out-of-State location (including the administration of any medications).

### **Out-of-Country Service Delivery:**

An OPWDD authorized provider may deliver HCBS Waiver services to an individual who is residing on a temporary basis outside of the United States. Out-of-Country service delivery is permitted only under the following circumstances:

1. The individual's travel during the provision of their HCBS Waiver service delivery is derived from the individual's Life Plan/ISP following a person-centered planning process;
2. The individual can be safely served in the Out-of-Country location (including the administration of any medications); and
3. The individual receives HCBS Waiver services outside the United States in only the following four (4) locations:
  - i. The Commonwealth of Puerto Rico (U.S. Territory);
  - ii. The U.S. Virgin Islands (U.S. Territory);
  - iii. Guam (U.S. Territory); or
  - iv. Canada.

### **General Guidance:**

The delivery of HCBS Waiver services outside of NYS or the United States must be described annually in the individual's Life Plan/ISP to be eligible for payment and must not overlap with or be duplicative of any other Medicaid service delivered to the individual. The out-of-state/out-of-country travel may be described generally in the Life Plan/ISP without including specific dates. For example, the Life Plan/ISP might describe the anticipated travel as follows: "the person enjoys travelling during vacations, including to locations outside of NYS." OPWDD authorized providers are responsible for meeting all regulatory guidelines during service delivery and when billing for HCBS Waiver services, including the maintenance of appropriate service documentation in accordance with OPWDD regulation and policy.

This memorandum also applies to individuals who self-direct the delivery of their HCBS Waiver services.

### **Records Retention:**

New York State regulations require each Medicaid provider to prepare and maintain contemporaneous records to demonstrate its right to receive Medicaid payment for a service and in case of subsequent audit.

All documentation specified above, including the ISP/Life Plan, Habilitation Plan/Staff Action Plan, and service documentation must be retained for a period of six (6) years from the date the service was delivered or when the service was billed, whichever is later.

**Technical Assistance:**

For questions regarding this memorandum, please contact the Division of Policy and Program Development , Waiver Unit at: [peoplefirstwaiver@opwdd.ny.gov](mailto:peoplefirstwaiver@opwdd.ny.gov).