

SUPPORT BROKERAGE SERVICES (SB)

Effective April 13, 2015

Audit protocols assist the Medicaid provider community in developing programs to evaluate compliance with Medicaid requirements under federal and state statutory and regulatory law, and administrative procedures issued by the New York State Office for People With Developmental Disabilities (OPWDD). The protocols listed are intended solely as guidance in this effort. This guidance does not constitute rulemaking by OPWDD and may not be relied on to create a substantive or procedural right or benefit enforceable, at law or in equity, by any person. Furthermore, nothing in the protocols alters any statutory, regulatory or administrative requirement and the absence of any statutory, regulatory or administrative citation from a protocol does not preclude OPWDD from enforcing a statutory, regulatory or administrative requirement. In the event of a conflict between statements in the protocols and statutory, regulatory or administrative requirements, the requirements of the statutes, regulations and administrative procedures govern.

A Medicaid provider's legal obligations are determined by the applicable federal and state statutory and regulatory law. Audit protocols do not encompass all the current requirements for payment of Medicaid claims for a particular category of service or provider type and therefore are not a substitute for a review of the statutory and regulatory law or administrative procedures.

Audit protocols are applied to a specific provider or category of service(s) in the course of an audit and involve OPWDD's application of articulated Medicaid agency policy and the exercise of agency discretion. Audit protocols are used as a guide in the course of an audit to evaluate a provider's compliance with Medicaid requirements and to determine the propriety of Medicaid expended funds. In this effort, OPWDD will review and consider any relevant contemporaneous documentation maintained and available in the provider's records to substantiate a claim.

New York State, consistent with state and federal law, can pursue civil and administrative enforcement actions against any individual or entity that engages in fraud, abuse, or illegal or improper acts or unacceptable practices perpetrated within the medical assistance program. Furthermore, audit protocols do not limit or diminish OPWDD's authority to recover improperly expended Medicaid funds and OPWDD may amend audit protocols as necessary to address identified issues of non-compliance. Additional reasons for amending protocols include, but are not limited to, responding to a hearing decision, litigation decision, or statutory or regulatory change.

OPWDD AUDIT PROTOCOL – SUPPORT BROKERAGE SERVICES

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1.	Missing Record
OPWDD Audit Criteria	If no record is available for review, claims for all dates of service associated with the individual will be disallowed.
Regulatory References	18 NYCRR Section 504.3(a) 18 NYCRR Section 540.7(a)(8)
2.	No Documentation of Service
OPWDD Audit Criteria	If the record does not document that support brokerage services were provided, the claim will be disallowed.
Regulatory References	18 NYCRR Section 504.3(a) 18 NYCRR Section 517.3(b)(2)
3.	No Determination of a Developmental Disability
OPWDD Audit Criteria	The claim for services provided in the absence of a clinical assessment substantiating a specific determination of developmental disability will be disallowed.
Regulatory References	14 NYCRR Section 635-10.3(a) and (b)(1)
4.	Missing Copy of Individualized Service Plan (ISP)
OPWDD Audit Criteria	A copy of the individual's ISP, covering the time period of the claim, must be maintained by the agency. The claim will be disallowed in the absence of an ISP. If the ISP is not in place prior to the service date and in effect for the service date, the claim will be disallowed.
Regulatory References	14 NYCRR Section 635-99.1(bk) OPWDD ADM #2015-06, pp 6-7
5.	Unauthorized Support Brokerage Provider
OPWDD Audit Criteria	The claim will be disallowed if the ISP does not specify the category of waiver service that the agency is providing (i.e. support brokerage; support broker), does not identify the fiscal intermediary agency that is billing for the support brokerage services, and does not identify the agency or broker providing the support brokerage service (if different from the Fiscal Intermediary Agency).
Regulatory References	14 NYCRR Section 635-99.1(bk) OPWDD ADM #2015-06, p 7
6.	Identification of Frequency, Duration of Service and Effective Date of Service
OPWDD Audit Criteria	The claim will be disallowed if the ISP does not: <ul style="list-style-type: none"> • Specify that the frequency for SB is "hourly." • Specify the duration for SB is "ongoing." • Have an effective date for SB services that is on or before the first day of service for which the agency bills for SB services.
Regulatory References	14 NYCRR Section 635-99.1(bk) OPWDD ADM #2015-06, p 7

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7.	Missing Support Brokerage Agreement
OPWDD Audit Criteria	The claim will be disallowed if the agency does not have a support brokerage agreement.
Regulatory References	OPWDD ADM #2015-06, p 6

8.	Missing Required Elements of the Support Brokerage Agreement
OPWDD Audit Criteria	The support broker agreement must contain these required elements: the individual's name; the name of the support broker providing brokerage services; the name of the agency for which the support broker works, if there is one, otherwise state that the broker is independent; a description of the responsibilities that the support broker is expected to perform; the signature of the support broker; the date that the support broker signed the agreement; the signature of the individual (may be a designee or guardian); the date that the individual (or designee or guardian) signed the agreement.
Regulatory References	OPWDD ADM #2015-06, p 6

9.	Missing Support Brokerage Service Documentation
OPWDD Audit Criteria	The claim will be disallowed in the absence of documentation of the services and supports provided by the support broker.
Regulatory References	OPWDD ADM #2015-06, p 5

10.	Missing Required Elements of Service Documentation
OPWDD Audit Criteria	The SB service documentation must contain the following required elements: the individual's name and CIN; the name of the support broker providing the brokerage services; identification of the category of waiver services being provided (e.g. support broker or support brokerage); a description of support brokerage services provided during each "session" (continuous period of support broker services provision) that are drawn from the support broker agreement; documentation of start and stop times for each continuous period of service provision or "session"; the date the service was provided; the signature of the support broker delivering and documenting the service; the date the service was documented and signed by the support broker. The claim will be disallowed if one or more of the required elements are missing.
Regulatory References	OPWDD ADM #2015-06, p 5-6

11.	Missing Team Planning Meeting Documentation
OPWDD Audit Criteria	The claim will be disallowed in the absence of evidence that four team planning meetings occurred per year.
Regulatory References	OPWDD ADM #2015-06, p 4, p 6

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12.	Missing Required Elements of Team Planning Meeting Documentation
OPWDD Audit Criteria	<p>The agency must have evidence of the team planning meeting including: the individual’s name; the name of the support broker providing the brokerage service; identification of the category of waiver services being provided (e.g. support broker or support brokerage); identification of attendees; a description of the discussion and results of the meeting (e.g. topics discussed, and changes that need to occur to the individual’s plan and budget); the date the meeting took place; the signature of the support broker; the date the documentation was signed by the support broker.</p> <p>The claim will be disallowed if one or more of the required elements are missing.</p>
Regulatory References	OPWDD ADM #2015-06, p 6
13.	Services Performed by Unqualified Support Brokers
OPWDD Audit Criteria	<p>Support Brokers are required to successfully complete OPWDD approved trainings (Broker Training Institute, Person Centered Planning – Introduction and Advanced, Developing a Self-Directed Budget, and Self-Advocacy/Self-Determination) prior to delivering brokerage services.</p> <p>The claim will be disallowed if the broker did not complete the required training prior to delivering services.</p>
Regulatory References	OPWDD ADM #2015-06, p 4
14.	Annual Training Requirement Not Met
OPWDD Audit Criteria	<p>Support Brokers must attend professional development trainings annually. The claim will be disallowed if the support broker does not obtain 12 hours of professional development annually.</p>
Regulatory References	OPWDD ADM #2015-06, p 4
15.	Billing for Services by Ineligible Support Broker
OPWDD Audit Criteria	<p>The support broker is not permitted to provide service coordination or HCBS waiver services to an individual he or she provides support broker services for.</p> <p>The claim will be disallowed if the support broker also provided MSC or other HCBS waiver services to the individual.</p>
Regulatory References	OPWDD ADM #2015-06, p 5
16.	Billing for Services by Ineligible Provider
OPWDD Audit Criteria	<p>For dates of service prior to 4/1/2016, the claim will be disallowed if the Fiscal Intermediary does not have a Medicaid Provider Agreement.</p>

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	Effective 4/13/2016, the claim will be disallowed if the agency does not have an operating certificate identifying certification for Fiscal Intermediary services.
Regulatory References	For services prior to 4/13/2016, 14 NYCRR Part 635-10.1(b) For services effective 4/13/2016, New York State Mental Hygiene Law, Section 16.03(a)(4)

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