



September 3, 2020

On March 7 2020, Governor Andrew M. Cuomo declared a state of emergency through [Executive Order 202](#) to respond to the COVID-19 public health emergency. The top priority for the Office for People With Developmental Disabilities (OPWDD) continues to be the health and safety of New Yorkers with intellectual and developmental disabilities, and our state and voluntary workforce. In response to this state of emergency, and to ensure health and safety, OPWDD, in conjunction with the New York State Department of Health, is working to provide flexibility for the delivery of OPWDD 1915(c) Home and Community-Based Waiver Services. The following modifications to the service system, in place for the duration of the state of emergency, or until revoked by OPWDD), will allow OPWDD providers to continue to meet the needs of the people they support, to the greatest extent possible.

Administrative Directive Memorandum (ADM) #2017-01, *Home and Community-Based Services (HCBS) Waiver and Non-Waiver Enrolled Respite Services*, remains in force except as temporarily amended by the temporary provisions of this directive.

### Use of Technology

Respite services may temporarily be provided remotely using telehealth and without prior approval. The Respite provider must:

- Use good clinical judgment to determine that the telehealth encounter is appropriate;
- Verify that the service can be delivered effectively via verbal prompting/cueing only; and
- Ensure the health and safety of the person will continue to be met via this service modality.

The delivery of Respite services via telephonic transmission is not permissible.

In addition, Respite providers must continue to follow OPWDD's Interim Guidance Regarding the Use of Telehealth/COVID-19, available at: <https://opwdd.ny.gov/coronavirus-guidance/covid-19-guidance-documents>.

### Location of Respite Services

The service definition and limits for Respite services are temporarily modified to allow people who live in a certified residence (Individualized Residential Alternative, Community Residence or Family Care Home) to receive Respite services in the residence, when the following is true:

- The person's day service is suspended due to the emergency or the person is unable to participate in the day service;
- No day services can be delivered in the residence; and

- The daily Respite billing does not exceed six (6) hours of service per day, five (5) days per week, Monday through Friday.

A person is considered unable to attend day services if (a) they, or another resident or staff person from their residence, are under an order of quarantine or isolation; (b) the day service site is not yet at full capacity and cannot safely serve the person; or (c) the person chooses to receive Group Community Habilitation – Residential (Group CH-R) services in lieu of day services for the remainder of the public health emergency.

Respite services may be provided in out-of-state locations, if necessary, for the safety of the person. Services provided in another state must be provided in accordance with the waiver service definition and the person's Life Plan. The Life Plan as may be amended to address service needs throughout the state of emergency. See section below on Care Planning and the Update of Life Plans.

Respite services provided in a supervised residence cannot be billed to Medicaid if the Residential agency is also receiving reimbursement for the time the resident would otherwise have been attending Day Habilitation and/or Prevocational services from another OPWDD provider.

### **Schedule of Services for School Age Children and Young Adults**

Respite services cannot be duplicative of or delivered at the same time as K-12 educational services otherwise available to the person through a local educational agency/district, under the Individuals with Disabilities Education Act (IDEA) or vocational services under the Rehabilitation Act of 1973. For people who receive K-12 educational services, habilitative service hours are limited based upon a person's daily schedule and activities.

The schedule for service delivery for children and young adults who attend school in-person must be outside of regular school hours. For students who are home schooled or are receiving K-12 virtual/remote instruction, habilitative services may be delivered during traditional school hours, but the services must be outside the scheduled time for educational instruction, may not replace educational services and may not be delivered at the same time the child is receiving any educational services.

### **Delivering Additional Support Services and Maintaining Social Distancing**

At the close of business October 14, 2020, OPWDD is rescinding the guidance that allowed Respite providers to temporarily provide and bill Medicaid for services that support the person and his/her family while maintaining social distancing. Through October 14, 2020, Respite providers may deliver groceries or other supplies, or assist with necessary outdoor household chores (such as taking garbage cans to the curb and returning cans to the home). For these types of services, the time that staff spend traveling to the person's home, running the errand, and returning to the

worker's home, may be billed as Respite. After October 14, 2020, billable service time is limited to time when staff are engaged in the delivery of Respite services in a face-to-face manner or using telehealth technology.

### **Billing Guidance**

Respite providers will continue to bill the appropriate fee for services delivered per the current Respite fee schedule, available at:

[https://www.health.ny.gov/health\\_care/medicaid/rates/mental\\_hygiene/](https://www.health.ny.gov/health_care/medicaid/rates/mental_hygiene/).

When calculating the effective reimbursement rate for Respite services delivered by self-hired staff that are funded through a person's Self-Direction budget, the time staff spent as described in the 'Use of Technology' and 'Delivering Services and Maintaining Social Distancing' sections of this document, may be counted as part of the total billable service units.

There will be no duplication of billing for Respite services and services otherwise rendered in provider-owned or controlled residential settings.

### **Care Planning and the Update of Life Plans**

A person's current Life Plan and Staff Action Plan(s) remain in place as long as Respite is listed as an authorized service in the person's Life Plan or in the COVID-19 Life Plan Addendum. Respite providers should ensure that staff know how to safely serve the person and formal updates of the Staff Action Plan must occur no later than sixty (60) days after the end of the COVID-19 state of emergency in accordance with OPWDD's Interim Care Planning Guidance issued April 17, 2020 available at

[https://opwdd.ny.gov/system/files/documents/2020/04/4.17.2020-opwdd\\_covid19\\_careplanningguidance.pdf](https://opwdd.ny.gov/system/files/documents/2020/04/4.17.2020-opwdd_covid19_careplanningguidance.pdf).

### **Respite in Self-Direction**

The foregoing provisions also apply to Respite services delivered by self-hired staff that are funded through a person's Self-Direction budget.