

Amendments to 14 NYCRR Parts 619, 624, 625, 633, and 635

ADOPTED REGULATIONS

Effective Date: Upon Filing

- **Amendment to the title of existing Part 619 to read as follows:**

PART 619. CERTIFICATION OF FACILITIES AND [HOME AND COMMUNITY BASED SERVICES (HCBS)] SERVICES

- **Amendment to existing section 619.1 to read as follows:**

This Part applies to all facilities and [HCBS waiver] services certified by OPWDD.

- **Amendment to existing of subdivision (c) of section 619.2 to read as follows:**

- (c) For the purposes of this Part, an operating certificate means a document pertinent to the appropriate class of facility or [HCBS waiver] service that conveys authorization by OPWDD of a provider of services to operate specific facilities or [HCBS waiver] to deliver certain services identified on or as an attachment to such document.

- **Addition of a new paragraph (10) of subdivision (d) of section 619.2 to read as follows:**

(10) Services approved in a Medicaid state plan that are designated for individuals with intellectual or developmental disabilities.

(i) Such Medicaid state plan services include:

(a) Comprehensive Health Home Care Management;

(b) Basic Home and Community Based Services (HCBS) Plan Support; and

(c) Crisis Services for Individuals with Intellectual and/or Developmental Disabilities.

Note: New material is underlined and deleted material is in [brackets].

- **Amendment to existing subdivision (d) of section 619.3 to read as follows:**

(d) The initial certification and amendments to all classes of operating certificates, except those services enumerated in paragraph ten of subdivision d of section 619.2 of this Part that were certified effective July 2, 2020, must be in accordance with certification of need and terms of approval requirements in Part 620 of this title. Beginning July 3, 2020, initial certification of those exempt services and amendments to those services, must comply with certification of need and terms of approval requirements in Part 620 of this title.

- **Amendment to existing subdivision (g) of section 619.3 to read as follows:**

(g) The certification or recertification of facilities and/or [HCBS waiver] services may be contingent on the receipt of an acceptable plan of corrective action in a form and format specified by OPWDD.

- **Amendment to existing subdivision (d) of section 624.1 to read as follows:**

(d) Programs that are certified under sections 16.03(a)(4) or 16.03(a)(5) of the Mental Hygiene Law and are funded by OPWDD, but that are not operated by OPWDD, are not considered to be “facilities and programs that are certified or operated by OPWDD” as that phrase is used throughout this Part. The requirements of Part 624 apply to reportable incidents and notable occurrences that are under the auspices (see glossary, section 624.20 of this Part) of such programs, except that such programs are not required to report incidents to the Justice Center’s Vulnerable Persons’ Central Register (VPCR).

- **Amendment to existing subdivision (j) of section 624.2 to read as follows:**

(j) Facilities and programs that are certified or operated by OPWDD, except those programs that are certified under paragraphs 16.03(a)(4) or 16.03(a)(5) of the Mental Hygiene Law, are required to comply with relevant provisions of Article 20 of the Executive Law (Protection of People with Special Needs) and Article 11 of the Social Services Law (Protection of People with Special Needs), and to implement regulations promulgated by the Justice Center for the Protection of People with Special Needs (Justice Center).

- **Amendment to existing paragraph (1) of subdivision (d) of section 624.5 to read as follows:**

(1) Facilities and programs that are operated or certified by OPWDD must report all reportable incidents to the VPCR. (Non-certified programs that are not State operated, and programs certified under sections 16.03(a)(4) or
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16.03(a)(5) of the Mental Hygiene Law that are not State operated, are not required to report to the VPCR).

- **Amendment to existing subparagraph (ii) of paragraph (3) of subdivision (h) of section 624.5 to read as follows:**

(ii) In other cases (e.g., incidents in non-certified programs that are not operated by OPWDD or in programs certified under sections 16.03(a)(4) or 16.03(a)(5) of the Mental Hygiene Law that are not operated by OPWDD), the agency will determine whether the incident is to be reclassified and must report any reclassification in IRMA. (This reclassification is subject to review by OPWDD.)

- **Amendment to existing paragraph (1) of subdivision (o) of section 624.5 to read as follows:**

(1) for reportable incidents of abuse and neglect in programs that are not certified or operated by OPWDD, or are certified under sections 16.03(a)(4) or 16.03(a)(5) of the Mental Hygiene Law and not operated by OPWDD, and for reportable significant incidents and notable occurrences in all facilities and programs certified, operated, or funded by OPWDD:

- **Amendment to existing paragraph (4) of subdivision (e) of section 624.7 to read as follows:**

(4) Concerning facilities and programs that are not operated by OPWDD, including non-certified programs and programs certified under sections 16.03(a)(4) or 16.03(a)(5) of the Mental Hygiene Law, the IRC must monitor all actions taken to implement recommendations made by the Central Office of OPWDD or the Justice Center.

- **Amendment to existing subdivision (e) of section 625.1 to read as follows:**

(e) Programs that are certified under sections 16.03(a)(4) or 16.03(a)(5) of the Mental Hygiene Law and are funded by OPWDD, but that are not operated by OPWDD, are required to report and address events and situations that are not under the auspices of an agency in accordance with this Part. Such certified programs are not, however, required to report deaths to the Justice Center.

- **Amendment to the title of existing Part 633 to read as follows:**

PART 633. PROTECTION OF INDIVIDUALS RECEIVING SERVICES IN FACILITIES AND SERVICES OPERATED AND/OR CERTIFIED BY OPWDD

Note: New material is underlined and deleted material is in [brackets].

- **Amendment to existing subdivision (c) of section 633.1 to read as follows:**
 - (c) This Part contains requirements applicable to all facilities and services operated or certified by the Office for People With Developmental Disabilities, hereinafter referred to as OPWDD (see glossary section 633.99 of this Part). In a family care home, the sponsoring agency (see glossary) and the holder of the operating certificate shall be responsible for ensuring compliance with this Part.
- **Amendment to existing subdivision (d) of section 633.1 to read as follows:**
 - (d) The implementation date for compliance with this Part shall be January 31, 1988. For services certified pursuant to paragraph (10) of subdivision (d) of section 619.2 of this Title, the implementation date for compliance with this Part shall be July 2, 2020, except that, for such services, the implementation date for compliance with sections 633.5, 633.6 and 633.8 of this Part shall be January 1, 2021.
- **Amendment to existing subdivision (e) of section 633.1 to read as follows:**
 - (e) In every instance in this regulation, the terms people, person/persons or individual/individuals shall refer to those who have met the admission criteria for an OPWDD operated or certified facility and who have been admitted, or who have applied to and been screened for services and for whom a clinical record is maintained or processed by such facility as well as those individuals receiving services certified by OPWDD.
- **Amendment to existing subdivision (d) of section 633.2 to read as follows:**
 - (d) The OPWDD certification process defined in subdivision 633.2(c) of this section is superseded by requirements in Part 619 of this Title, Certification of Facilities and Services [Home and Community Based Services (HCBS), effective on the effective date of these regulations].
- **Amendment to existing subparagraph (i) of paragraph (1) of subdivision (a) of section 633.22 to read as follows:**
 - (i) facilities holding an operating certificate issued by OPWDD (e.g., residences, family care homes, day treatment, day training, sheltered workshops), home and community based waiver services, [Medicaid Service Coordination] state plan services enumerated in paragraph ten of subdivision d of section 619.2 of this Title, family support services, individual support services; and

Note: New material is underlined and deleted material is in [brackets].

- **Amendment to existing clause (g) of subparagraph (i) of paragraph (2) of subdivision (d) of section 633.22 to read as follows:**
 - (g) a [service coordinator] care manager and a supervisor of a [service coordinator] care manager [, including a Medicaid Service Coordinator (MSC) and a MSC supervisor]; and
- **Amendment to existing paragraph (2) subdivision (b) of section 635-4.1 to read as follows:**
 - (2) **Services** for the purposes of this Subpart, services shall mean ICF/DD services (Intermediate Care Facilities for Persons with Developmental Disabilities), Comprehensive Health Home Care Management, Basic HCBS Plan Support, Crisis Services for Individuals with Intellectual and/or Developmental Disabilities [Medicaid service coordination], day treatment services, clinic treatment facilities (see Part 679 of this Title), and all HCBS waiver services.
- **Amendment to existing subdivision (d) of section 635-4.4 to read as follows:**
 - (d) The reduction in reimbursement shall equal two percent of the total billed price(s), rate(s) and/or fee(s) in the payment systems beginning on the due date of the cost report, or the revised due date of the cost report if OPWDD has approved the provider's request for a waiver of the reduction in reimbursement in accordance with paragraph (c)(4) of this section, and continuing until the next regularly scheduled payment cycle following the last day of the month in which the cost report is received. For a provider subject to this sanction, the reduction shall apply to reimbursements for the following services: Intermediate Care Facilities for Persons with Developmental Disabilities, Comprehensive Health Home Care Management, Basic HCBS Plan Support, Crisis Services for Individuals with Intellectual and/or Developmental Disabilities [Medicaid Service Coordination], Day Treatment, Clinic Treatment Facilities, residential habilitation in individualized residential alternatives (IRAs) and community residences (CRs), and all other HCBS waiver services.
- **Existing Sections 635-5.1, 5.2, and 5.3 are repealed.**

Note: New material is underlined and deleted material is in [brackets].