

**OPWDD Response to Public Comments Received June 1, 2020 – July 1, 2020
on the OPWDD 1915(c) Comprehensive Home and Community-Based
Services (HCBS) Waiver Draft October 1, 2020 Amendment**

Introduction

On June 1, 2020, the New York State Office for People With Developmental Disabilities (OPWDD) posted a copy of a draft amendment to the 1915(c) Comprehensive Home and Community-Based Services (HCBS) Waiver to the OPWDD website for a 30-day public comment period. The effective date of this amendment is October 1, 2020. This document provides an overview of changes included in the Draft October 1, 2020 OPWDD HCBS Waiver Amendment and a summary of public comment received.

Overview of Waiver Changes & the Public Comment Process

The key proposed changes included in the Draft October 1, 2020 Amendment were:

Operational/Policy Changes:

- Community Habilitation: Clarification that all HCBS Waiver services, including Community Habilitation, are authorized by OPWDD Regional Offices via clinical review for consistent, efficient and fair decision making.
- Service Limits for Environmental Modifications, Assistive Technology, and Vehicle Modifications: Clarification that service limits (which may be exceeded due to medical necessity) are per calendar year.
- Documentation of Choices Form Signatures: Removal of the Care Manager and Regional Office Representative signature from the Documentation of Choices form. The form will continue to require the person's (or advocate's if applicable) signature.
- OPWDD-Department of Health (DOH) Annual Life Plan Oversight Review: Removal of the Care Coordination Organization/Health Home (CCO/HH) Consent Form from the required documents reviewed during the annual OPWDD-DOH Life Plan oversight review.

Fiscal Changes:

- Rate Setting Changes related to the approved 2020-2021 New York State Budget: OPWDD is proposing to adjust the Occupancy Adjustment for Supervised Residential services; reimbursement rate for Vacancy, Retainer and Therapy Days; and institute an annual billing limit for the number of billable Therapy Days.
- Community Prevocational Services Fee Regions: The rate setting regions for Community Prevocational Services will be realigned with the rate setting regions already in use for Community Habilitation services.
- Self-Direction, Individual Directed Goods and Services, Transportation: Clarification regarding service-related transportation costs that are included in the reimbursement methodology for a service that cannot be billed via IDGS Transportation.
- Provider Cost Report Deadline Exception: Expansion of unforeseeable circumstances to include "or other circumstance as determined by the OPWDD Commissioner" for situations when a provider's cost report submission may be delayed without penalty.

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OPWDD conducted two web-based informational sessions to explain the proposed changes included in the Draft October 1, 2020 Waiver Amendment on June 4, 2020. A recording of the June 4, 2020 webinar is available on the OPWDD 1915(c) HCBS Waiver home page at: <https://opwdd.ny.gov/providers/home-and-community-based-services-waiver>.

Based on stakeholder and feedback from the Centers for Medicare and Medicaid Services (CMS), the final submitted version of the October 1, 2020 Amendment includes the maintenance of the CCO/HH Consent Form collection during OPWDD-DOH annual Life Plan review and current service limits for Environmental Modifications, Assistive Technology, and Vehicle Modifications as per year.

The final CMS approved version of the October 1, 2020 Amendment will be posted to the OPWDD website at: <https://opwdd.ny.gov/providers/home-and-community-based-services-waiver>.

Detailed responses to public comments received are described below.

Public Comment:

General Comments

1. Comment:

A respondent expressed concern that OPWDD and the Department of Health (DOH) did not make the Draft October 1, 2020 Amendment readily available in languages other than English, nor in American Sign Language.

Response:

OPWDD has satisfied all Federal requirements for public notice in relation to this Amendment application. OPWDD did not receive any requests to translate the document to languages other than English and would have provided a translation upon request.

2. Comment:

Respondents inquired if this amendment includes any changes related to the COVID-19 pandemic response.

Response:

This amendment does not include changes related to COVID-19. OPWDD received flexibilities to address HCBS Waiver operations during the COVID-19 pandemic in an emergency amendment known as an Appendix K. The current OPWDD HCBS Waiver Appendix K amendment remains in effect until March 2021. The current Appendix K and any future revisions to the current OPWDD

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HCBS Waiver Appendix K are accessible on the CMS website at:

<https://www.medicaid.gov/resources-for-states/disaster-response-toolkit/home-community-based-services-public-health-emergencies/emergency-preparedness-and-response-for-home-and-community-based-hcbs-1915c-waivers/index.html>.

Community Habilitation

3. Comment:

Stakeholders requested additional details regarding the Community Habilitation service authorization process and the clinical review tools. Concerns were expressed about the ability to request a Fair Hearing for Community Habilitation services.

Response:

OPWDD Regional Offices will continue to authorize HCBS Waiver services including Community Habilitation. The new language added was to operationalize a statewide protocol for reviewing future service requests to ensure consistency across all Regional Offices statewide. Additional details about the review tools and standards are under development and have not yet been finalized. OPWDD will be consulting feedback from the public via stakeholder groups including the Commissioner's Developmental Disabilities Advisory Council (DDAC).

Additionally, people will continue to have due process rights and have the option to request a Fair Hearing for all HCBS Waiver services including Community Habilitation service authorizations.

4. Comment:

Respondents inquired if the Community Habilitation clinical review tools would be applied to people currently receiving Community Habilitation services. In addition, respondents asked about how this clinical review will impact Self-Directed Community Habilitation.

Response:

The review tools and clinical determinations made regarding authorizations for Community Habilitation will not apply to those currently receiving Community Habilitation services or to Self-Hired Community Habilitation services available under Self-Direction.

5. Comment:

Stakeholders asked if there are any changes regarding Community Habilitation service delivery, service limits or funding especially in relation to the Community First Choice Option (CFCO) State Plan within this Amendment.

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Response:

The Draft October 1, 2020 Amendment does not include the implementation of service limits or any changes to the service definition or funding (fee schedule) for Community Habilitation services.

Rate Setting

6. Comment:

Thousands of respondents expressed concerns about the proposed funding adjustments for Supervised Residential Habilitation services including the draft revisions to reimbursement for Retainer Days, Vacancy Days, Therapy Days and elimination of the Occupancy Adjustment. These concerns included:

- Negative impact on people receiving services particularly those who are older or have complex needs and Direct Support Professionals especially during the COVID-19 pandemic;
- Implementation will result in a loss of revenue for agencies, risk the closure of residences and effectuate agencies going out of business which decreases freedom of choice and community living access;
- Proposed changes do not reflect agencies' true costs as costs do not decrease when one person is absent from the residence and in cases of hospitalization the increased costs related to a person's discharge planning and advocacy during the hospital stay;
- Adjustments are targeted to residential services only, however, alternative options could have been pursued across other programs including Day Habilitation, Community Habilitation and Self-Direction where other cost savings could have been found; and
- Disparity between voluntary agency operated residences and State operated residences as State Operations is receiving an increase in funding and the proposed adjustments are not being applied to State Operations.

Respondents suggested the following alternative approaches:

- Implement decreased reimbursement for Retainer Days to 50% after the first 14 days are billed per person per year;
- Revise Therapy Days billable limit to 40 home visits versus 96 days;
- Create a regional approach based on acuity for Occupancy Adjustments with a cap of 5%;
- Transition State Operations to voluntary agencies;
- Consider lower billing for services due to COVID-19 pandemic;
- Institute a 2% cut across the board to all providers and programs;
- Evaluate cost savings in 100% State Funded Services;
- Revise calculation for rates based upon total costs, including total actual Direct Care Staff and Clinical Staff costs; and
- Update reimbursement rates and fees on a periodic basis.

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Response:

OPWDD reviewed each of the proposed modifications to the proposed methodology to determine whether these modifications would achieve the savings required per the approved New York State 2020-2021 Budget. In conducting this review, OPWDD noted that there was no consensus among stakeholders regarding an alternative approach to achieve these savings. Following this review, OPWDD concluded that by targeting payments for the non-delivery of services rather than implementing reductions to rates paid for services delivered, OPWDD would best be able to preserve essential community-based services while also achieving the required budget savings.

7. Comment:

Stakeholders expressed disagreement with a decrease in funding for instances when a residential staff member accompanies a person receiving services outside of their normal residence for situations such as a vacation with families or holiday visits to a family member's home.

Response:

This draft amendment does not change the flexibility of Residential Habilitation service delivery provided by a staff member to a person outside of the residence if the services are delivered in the same scope, frequency and duration as further described on page 316 of the Draft October 1, 2020 Amendment and OPWDD Administrative Directive Memorandum (ADM) #2014-01 available on the OPWDD website at: <https://opwdd.ny.gov/regulations-guidance>.

8. Comment:

A respondent requested clarification regarding the proposed limits for Therapy Days and Retainer Days.

Response:

The Draft October 1, 2020 Amendment includes a billing limit of 96 Therapy Days per rate year per person at 50% of the provider's established rate. People residing in a supervised residence may be absent from the residence for the purposes of therapy leave in excess of 96 days, however, the provider will not be able to bill for more than 96 Therapy Days.

Additionally, the amendment includes a proposed change for the billing rate of Retainer Days to 50% of the provider's current established rate. The limitation on the number of Retainer Days a provider may bill continues to be 14 Retainer Days multiplied by certified capacity.

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9. Comment:

A stakeholder asked if the draft Amendment includes a 2% across-the-board reduction in funding for all programs.

Response:

This draft amendment does **not** include a 2% reduction to funding for all programs.

10. Comment:

Respondents inquired what base year will be utilized for the Supervised Residential Habilitation rate setting methodology changes and when these changes will be implemented.

Response:

The proposed effective date of the Supervised Residential Habilitation rate setting methodology changes is October 1, 2020 and these changes will be based upon the July 1, 2019 rates.

11. Comment:

Stakeholders inquired more details about the proposed change for Community Prevocational Services reimbursement.

Response:

As described on pages 314-315 of the draft amendment, the rate setting fee regions for Community Prevocational Services is proposed to be realigned with the rate setting regions already in use for Community Habilitation fees for consistency with DOH rate setting regions for other OPWDD services and other New York State service systems. The current Community Prevocational Services fee schedule includes three regions as follows:

- Region 1: 5 boroughs of New York City;
- Region 2: Counties of Suffolk, Nassau, Rockland, Westchester and Putnam;
- Region 3: Remaining counties in New York State not included in Region 1 or 2.

Effective October 1, 2020 or after, the rate setting fee regions for Community Prevocational Services will be defined by two regions:

- Downstate: 5 boroughs of New York City, and Nassau, Suffolk, Westchester, Rockland, Putnam, Dutchess, Orange, Sullivan and Ulster counties;
- Upstate: All remaining counties.

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12. Comment:

A respondent asked if the rate period will change from July 1 to June 30 to October 1 to September 30.

Response:

There will continue to be two rate periods, January 1 to December 30 and July 1 to June 30.

Service Changes

13. Comment:

Stakeholders suggested removing the eligibility 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:

OPWDD will continue to assess the level of Music Therapy services offered through IDGS, however, we are not eliminating the communication/audio disability requirement as a part of this draft amendment. In addition, 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.

14. Comment:

A respondent expressed concern with the \$15,000 service limit for Environmental Modifications, Assistive Technology, and Vehicle Modifications as some projects exceed these limits. The respondent requested the rationale regarding the implementation of these service limits. Additionally, another respondent inquired about the timing parameters of the \$15,000 service limit.

Response:

In July 2019, the OPWDD HCBS Waiver was amended to align the service limits for these three services with the future implementation of the New York State Community First Choice Option (CFCO) State Plan.

The \$15,000 service limit is per person, per service, per year and may be exceeded due to medical necessity.

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Proposals Regarding Forms

15. Comment:

Stakeholders expressed concern about the elimination of the Care Coordination Organization/Health Home (CCO/HH) Consent Form from the annual OPWDD-DOH Life Plan oversight review. Additionally, a stakeholder inquired and requested an explanation regarding why CCO/HH Consent Forms will no longer be required.

Response:

As described in the DOH-OPWDD CCO/HH Provider Policy Guidance and Manual (available on the OPWDD website at: <https://opwdd.ny.gov/providers/cco-policy-manual>), CCO/HH Consent Forms are required prior to enrollment into a CCO/HH and are not subject to the proposed changes in this draft amendment.

The proposed change in the draft amendment was a request to remove the CCO/HH Consent Form from the list of documentation reviewed during the annual OPWDD-DOH Life Plan oversight review. Based upon public comment received, OPWDD and DOH will continue to review the CCO/HH Consent Form during the annual Life Plan oversight review.

16. Comment:

A respondent stated that removal of the Care Manager and Regional Office signatures on the Documentation of Choices form contradict the requirements needed for CCO/HH enrollment.

Response:

The Documentation of Choices form is related to documenting a person's freedom of choice regarding his/her decision to receive HCBS Waiver services instead of services at an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) not CCO/HH enrollment. OPWDD is requesting to remove the requirement that a person's Care Manager and Regional Office representative sign the Documentation of Choices form in addition to the person (or advocate if applicable). The person (or advocate) will continue to be required to sign the form.