

**Amendments to 14 NYCRR Subparts 641-1, Rate Setting for non-state providers;  
635-4.4, Financial Reporting and Audit Requirements; and 635-10.4,  
Reimbursement of Waiver Services**

**PROPOSED REGULATIONS**

**Effective Date: Upon Adoption**

- **Existing Subpart 641-1 is amended to read as follows:**

Section 641-1.1. [Applicability] Rate Setting For Non-State Providers

[On or after November 1, 2014] R[ates of reimbursement for residential habilitation services provided in community residences, including IRAs, and for day habilitation services, other than those provided by OPWDD, shall be determined in accordance with [this Subpart] Title 10 NYCRR 86-10. The rates of payment made for services rendered to title XIX recipients established in accordance with the methodology contained in this Title 10 NYCRR Part 86-10 shall be contingent upon Federal financial participation (FFP) and approval.

- **Existing Sections 641-1.2 – 641-1.4 are REPEALED**
- **Existing Section 635-4.4 (c) is amended to read as follows:**

(c) A provider may make a written request for a waiver of reduction in reimbursement due to extraordinary and/or unforeseeable circumstances beyond its control, such as a natural disaster, or other circumstance as determined by the OPWDD commissioner, which will prevent it from filing the cost report by the due date. The application must contain detailed facts supporting the request, describe the extraordinary and/or unforeseeable circumstances and explain why the provider believes such circumstances will prevent it from filing the cost report by the due date

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

- **Existing clause 635-10.4(d)(4)(vii)(e) is amended to read as follows:**

(e) *Environmental modifications* are selected internal and external changes to a person's physical home environment, required by the person's individualized service plan, which provide appropriate site accommodations to meet the person's fire safety evacuation needs identified pursuant to clause (a)(3)(i)(d) of this section, and which are necessary to ensure the health, welfare and safety of the person or which enable him or her to function with greater independence in the home and without which the person's continued residence could be jeopardized. A given environmental modification(s) will be provided on a limited one-time only installation/construction basis to a given residence to the extent necessary to enable people with physical infirmities and disabilities to live safely in community homes outside the institutional setting. Nothing herein shall preclude additional environmental modifications at the same site at a time in the future, if the person's needs substantially change; or at a new site if the move was due to causes beyond the person's control; or was programmatically justified (e.g., the person chose to live at a greater level of independence). Allowable modifications are subject to limits set in the HCBS Waiver and include:

- **Existing clause 635-10.4(d)(4)(vii)(f) is amended to read as follows:**

(f) *Adaptive technologies* are those devices, aids, controls, appliances or supplies of either a communication or adaptive type, determined necessary to enable the person to increase his or her ability to function in a home and community-based setting with independence and safety. The equipment, whether of a communication or adaptive type, must be documented in the person's individualized service plan as being essential to the person's habilitation, ability to function, or safety (including fire safety evacuation needs); are subject to limits set in the HCBS Waiver; and have an essential relationship to support/maintain (or obtain) the person's current or desired residence.