

**Amendment of 14 NYCRR Subparts 635-10.5  
Service Duration Regulations  
EMERGENCY/PROPOSED REGULATIONS**

**Effective Date: Upon Filing**

- Addition of a new clause (d) to Subpart 635-10.5(c)(6)(i) to read as follows:

(d) Beginning on October 15, 2020 and ending upon revocation by OPWDD, due to the COVID-19 Public Health Emergency, group day habilitation and supplemental group day habilitation services may be delivered, and payment for such services made, for durations set forth in guidance issued by the OPWDD Commissioner.

- Addition of a new paragraph (19) to Subpart 635-10.5(c) to read as follows:

(19) Beginning on October 15, 2020 and ending upon revocation by OPWDD, due to the COVID-19 Public Health Emergency, providers will be authorized to bill for services rendered using the flexible definitions of the program day duration for day habilitation authorized by subpart 635-10.5(c)(6)(i)(d) if either of the following conditions (i) or (ii) and condition (iii) are met:

(i) The provider operates day habilitation services in a geographic area that meets Department of Health thresholds for program closure due to increased rates of COVID-19 cases or the local public health agency has required a program to close. This designation requires that center-based day services are closed and that community-based services are operating at a reduced capacity. This authorization for the use of the modified billing rules will end with the de-designation of the area; or

(ii) The provider is not required to close its day habilitation services by either New York State or the local public health agency. However, the provider closes the program as a preemptive measure due to the elevated percentage of individuals and staff at a particular site

that have either tested positive for COVID-19 or are required to quarantine because of close contact with a person who tests positive for COVID-19. These modifications to the program day durations associated with non-mandatory closures may be in effect for a period of up to fourteen (14) days for risk mitigation. Longer durations of the flexibilities (beyond fourteen days) would occur only where there is a subsequent designation of the region as being subject to closure or another period of quarantine is determined to be necessary. The agency must report the closure to OPWDD and demonstrate the need for the closure based on Incident Reporting Management Application (IRMA) reporting of positive COVID-19 cases among individuals and staff at the affected sites; and

(iii) Providers will continue to work in partnership with OPWDD to make more available non-center-based and telehealth modalities in an effort to increase community involvement of waiver enrollees and to protect the delivery of services during future emergencies.

- Addition of a new subparagraph (v) to Subpart 635-10.5(ag)(4) to read as follows:

(v) Beginning on October 15, 2020 and ending upon revocation by OPWDD, due to the COVID-19 Public Health Emergency, site-based prevocational services may be delivered, and payment for such services made, for durations set forth in guidance issued by the OPWDD Commissioner.

- Addition of a new paragraph (8) to Subpart 635-10.5(ag) to read as follows:

(8) Beginning on October 15, 2020 and ending upon revocation by OPWDD, due to the COVID-19 Public Health Emergency, providers will be authorized to bill for services rendered using the flexible definitions of the program day duration for site-based prevocational services authorized by subpart 635-10.5(ag)(4)(v) if either of the following conditions (i) or (ii) and condition (iii) are met:

(i) The provider operates site-based prevocational services in a

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

geographic area that meets Department of Health thresholds for program closure due to increased rates of COVID-19 cases or the local public health agency has required a program to close. This designation requires that center-based prevocational services are closed and that community-based prevocational services are operating at a reduced capacity. This authorization for the use of the modified billing rules will end with the de-designation of the area; or

- (ii) The provider is not required to close its site-based prevocational services by either New York State or the local public health agency. However, the provider closes the program as a preemptive measure due to the elevated percentage of individuals and staff at a particular site that have either tested positive for COVID-19 or are required to quarantine because of close contact with a person who tests positive for COVID-19. These modifications to the program day durations associated with non-mandatory closures may be in effect for a period of up to fourteen (14) days for risk mitigation. Longer durations of the flexibilities (beyond fourteen days) would occur only where there is a subsequent designation of the region as being subject to closure or another period of quarantine is determined to be necessary. The agency must report the closure to OPWDD and demonstrate the need for the closure based on Incident Reporting Management Application (IRMA) reporting of positive COVID-19 cases among individuals and staff at the affected sites; and
- (iii) Providers will continue to work in partnership with OPWDD to make more available non-center-based and telehealth modalities in an effort to increase community involvement of waiver enrollees and to protect the delivery of services during future emergencies.

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