



March 25, 2021

The New York State Office for People With Developmental Disabilities (OPWDD), in conjunction with the New York State Department of Health (DOH), has received approval from the Centers for Medicare and Medicaid Services (CMS) for an update to the Appendix K: Emergency Preparedness and Response Waiver Amendments for the OPWDD HCBS Waiver. This Appendix K contains actions for extending relief to Day Habilitation and Site-Based Prevocational Services providers who have closed programming for any of the following reasons:

1. The program is located in an area of the state with mandated closures due to high rates of COVID-19; or
2. The program has closed under the direction of the local public health agency due to increased rates of COVID-19 cases among individuals and/or staff at the program site; or
3. The program has not been required to close but closes preemptively due to elevated percentages of individuals and/or staff who have either tested positive for COVID-19 or who are required to quarantine because of close contact with a person who has tested positive for COVID-19.

For additional guidance and resources related to the Appendix K flexibilities, please visit the OPWDD website at <https://opwdd.ny.gov/providers/home-and-community-based-services-waiver>. A recording of the March 12, 2021 webinar is also available at this link.

COVID-19 Relief Actions FAQ

1. What is the effective date of the flexibilities included in the recent Appendix K approval?

Effective October 15, 2020, OPWDD authorized the use of the following modified program day duration standards for billing Day Habilitation (including Supplemental Day Habilitation and Day Habilitation Without Walls) and Site-Based Prevocational Services for providers who have closed programming as described above.

- Payment for a full unit of Day Habilitation or Site-Based Prevocational Services requires that the provider deliver and document a program day duration of at least two (2) hours. Payment for a half unit of Day Habilitation or Site-Based Prevocational Services requires that the provider deliver and document a program day duration of at least one (1) hour.
- The temporary program day duration includes face-to-face service time for when services may still be safely delivered in-person at locations other than the closed site-based or Without Walls program (e.g., services provided at an Individualized Residential Alternative (IRA) or the person's home), time where staff are engaged with the person using remote telehealth delivery, in accordance with COVID-19 telehealth guidance, and mealtimes.

2. If my day service program is not subject to a mandated or non-mandated closure, what Appendix K flexibilities remain in place?

All Day Habilitation and Prevocational Services are eligible for the following flexibilities under the approved Appendix K:

- Use of remote telehealth service delivery
- Modified service definition and limits to allow for services in the person's private home, family home, provider-owned or controlled, certified or uncertified residential setting, out-of-state, or any other emergency residential setting (e.g., hotel)
- Life Plan service and support changes prompted by the public health emergency, including changes to the amount, duration, and scope of any service, must be updated in the Life Plan as soon as possible, but no later than 60 days after the approval of the service or change. Corresponding Staff Action Plans must also be updated, but timelines have been waived until 60 days following the cessation of the public health emergency

Services may be provided in out-of-state locations, if necessary, for the safety of the individual and in accordance with the waiver service definition and the person's Life Plan

3. Does the use of the modified program day duration continue to be limited to agency's total monthly revenue from the July 1, 2019 through December 31, 2019 period?

Yes. The requirements in effect through October 14, 2020 continue to apply to the use of the modified program day duration on and after October 15, 2020. Effective October 15, 2020, in order to qualify for the use of this modification the program must be subject to either mandated or pre-emptive COVID-related closures. OPWDD does not intend to modify the existing limits that are based on providers' July 1, 2019 through December 31, 2019 claiming.

The prior guidance can be found at the following link:

<https://opwdd.ny.gov/system/files/documents/2020/08/8.24.2020-billing-flexibility-guidance.pdf>

4. In order to comply with current restrictions on transportation and classroom size, some providers are dividing people into groups and alternating their method of service delivery on a regular schedule. For example, in one week, Group A is receiving services remotely and Group B is receiving in-person services. The following week the two groups alternate. Does this method of service delivery qualify for the reduced program day duration if there is no mandated program closure?

The Appendix K flexibilities would not apply since the agency has not implemented a COVID-related program closure. The Appendix K flexibilities for program day duration only apply when an agency closes its program because of a mandated closure or implements a closure because of the increased frequency of COVID-19.

5. To mitigate the spread of the virus, our agency may place individuals onto a telehealth platform if they have been exposed to COVID-19. Would those individuals qualify under the Appendix K guidelines?

The Appendix K flexibilities would not apply since the agency has not closed its program because of a mandated closure or implemented a closure because of the increased frequency of COVID-19.

6. What if there is a partial temporary closure of any agency that is located outside an area with designated closures? For example, there are two (2) cohorts at a Day Habilitation site and one (1) cohort is closed to in-person services at the site due to COVID-19 cases?

Since the agency is located in an area of the state with no mandated closures, the program day duration modifications would only apply to the cohort of individuals receiving services at locations other than at the day program site for a period of up to fourteen (14) days.

7. Which areas of the State are designated for program closures?

DQI will inform providers of certified programs located in areas of mandated closures. There is also additional information at: <https://www.governor.ny.gov/news/governor-cuomo-announces-updated-covid-19-micro-cluster-focus-zones-0>

8. In order to bill for a full unit, how many services/staff actions must be delivered and documented?

The staff action requirements for minimum services/staff actions, as described in Administrative Memorandum (ADM) #2006-01 for Day Habilitation and #2020-01 for Prevocational Services, **have not changed**. Full units require the documentation of at least two (2) services and half units require the documentation of at least one (1) service in accordance with the person's Staff Action Plan.

9. Do providers have the flexibility to bill some service units under the normal standards and some services using these temporary flexibilities?

Yes. A provider may qualify for the use of the reduced program day duration standards but can meet the 'regular' billing standards for a full unit (minimum four (4) hours) or a half unit (minimum two (2) hours) for some individuals. Claims that meet the regular billing standards should be submitted using normal procedures.

10. Can Day Habilitation and Community Habilitation be billed on the same day?

Yes. Both services may be billed if the person's Life Plan currently identifies both Day Habilitation and Community Habilitation and the services are provided at separate times. It is the responsibility of the provider(s) to comply with the service documentation standards and billing limits described in ADMs #2006-01 for Day Habilitation and #2015-01 for Community Habilitation. Please note: Day Habilitation and Community Habilitation-Residential provided to individuals under the special COVID-related authorization cannot be billed on the same day.

11. When should providers use the revenue code 0249?

Revenue code 0249 is used for full and half units of service billed using the temporary program day duration flexibility for Day Habilitation and Site-Based Prevocational Services (minimum of two (2) hours for a full unit or minimum of one (1) hour for a half unit).

12. Can providers adjust prior paid claims that meet these flexibilities retroactively to October 15, 2020?

Yes. In instances where the defined flexibilities have been met, providers may have circumstances where half units can be adjusted to full units. For any prior paid claims that are over ninety (90) days old, delay reason code fifteen (15) may be used strictly for purposes related to the Appendix K flexibilities. Claim adjustments for prior paid claims must be completed within sixty (60) days from the date of this FAQ document. In circumstances when original claims require resubmission, these must also be addressed within sixty (60) days from the date of this FAQ document.

13. Do the modified program day duration standards for Intermediate Care Facility (ICF) Day Services continue after October 15, 2020?

Yes. These modified billing standards for the program day duration also apply to ICF Day Services delivered as part of an agency's Day Habilitation and/or site-based Prevocational Services program.

14. Can a full unit of Day Habilitation and a half unit of Supplemental Day Habilitation be billed on the same day? Are providers able to bill for a full unit of Supplemental Day Habilitation on a weekday?

A provider can only bill for a full unit of Day Habilitation and a half unit of Supplemental Day Habilitation on the same day if the person is authorized for Supplemental Day Habilitation and the provider meets the standard rules for program day duration for both services. That is, the provider must deliver a minimum of four (4) hours of service for a full unit of Day Habilitation and a minimum of two (2) hours of service for a half unit of Supplemental Day Habilitation. A provider **cannot** deliver three (3) hours of service and bill a full unit for two (2) hours of Day Habilitation and a half unit for one (1) hour of Supplemental Day Habilitation.

In addition, providers must continue to follow the maximum amount of service units that may be billed for Day Habilitation and Supplemental Day Habilitation as described in OPWDD Subpart 635-10.5(c) regulations.

Service Authorization - for Day Habilitation and Prevocational Services Providers that Signed a Day Service Retainer Program Attestation

15. When a Service Amendment Request Form (SARF) is required for changes to Day Habilitation and Prevocational Services, will a Developmental Disabilities Profile – 1 (DDP-1) be required?

The DDP-1 is required if the change being requested is a permanent change. This is needed to ensure that the person is enrolled into the provider's program. If the change is temporary (i.e., related to the public health emergency) the DDP-1 is not required.

16. If a person already receives Community Habilitation from an agency and they are now in need of Day Habilitation from the same agency because of the public health emergency, do we complete the SARF for this request?

Yes. Providers may offer Day Habilitation or Prevocational Services to a person who was receiving Day Habilitation, Prevocational Services, or Community Habilitation prior to the public health emergency. The agency will complete the SARF with a request for "zero (0) units" to request changes to Day Habilitation/Prevocational Services.