

ADMINISTRATIVE DIRECTIVE MEMORANDUM

Transmittal:	24-ADM-02
To:	Developmental Disabilities State Operations Office (DDSOO) Directors Developmental Disabilities Regional Field Office (DDRFO) Directors Care Coordination Organization (CCO) CEOs Voluntary Provider Executive Directors
Issuing OPWDD Office:	Division of Policy and Program Development
Date:	November 21, 2024
Subject:	Service Documentation and Requirements for Home-Enabling Supports Provided to People Enrolled in the Office for People With Developmental Disabilities (OPWDD) Home and Community-Based Services (HCBS) 1915c Waiver
Suggested Distribution:	Central Office Leadership OPWDD State Operated and Voluntary Operated Provider Staff Quality Improvement Staff OPWDD Regional Field Office Front Door Staff OPWDD Regional Field Office Coordinators of Assistive Technology, Environmental Modification, and Vehicle Modification services Assistive Technology, Environmental Modification, and Vehicle Modification Provider Agencies Care Managers and Care Manager Supervisors
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Attachments:	Attachment 1: Glossary Attachment 2: HES Overview

Related ADMs/INFs	Releases Cancelled	Regulatory Authority	MHL & Other Statutory Authority	Records Retention
ADM #2021-04		14 NYCRR 636-1.2 14 NYCRR 636-2.4 14 NYCRR 633.4	MHL §§ 13.07;13.09(b); 43.02 OPWDD's Comprehensive Waiver under §1915c of the Social Security Act 42 U.S.C. § 1396(n)(c) 42 CFR § 441.301	18 NYCRR § 504.3(a) 18 NYCRR § 517.3 14 NYCRR § 635-4.5 New York False Claims Act (State Finance Law §192)

PURPOSE

The purpose of this Administrative Directive Memorandum (ADM) is to describe the requirements and necessary service documentation for Home-Enabling Supports (HES). HES provides funding for devices and supports/services for people who do not live in certified settings to address an identified goal in their Life Plan and decrease or minimize the need for other Medicaid services. HES promote inclusion in the community and/or increase the person's safety and independence in the home. HES empower a person to live in the most integrated setting possible with less reliance on or the deferral of paid staff for supervision and/or assistance. These supports promote access to the opportunities and benefits available to everyone else in the community.

APPLICABILITY

The requirements to receive HES apply to people who are enrolled in the Office for People With Developmental Disabilities (OPWDD) Home and Community Based Services (HCBS) 1915(c) Waiver and who also live in non-certified settings. HES are not habilitative services – they are a sub-component of the Assistive Technology (AT) category of OPWDD HCBS Waiver service, intended to support a person to live more independently and safely in their home environment or in the community. HES fund items and services not otherwise provided through the Medicaid State Plan or the Waiver. This guidance does not pertain to services delivered to children enrolled in the Children's HCBS Waiver or Traumatic Brain Injury (TBI) operated by the Department of Health (DOH).

GLOSSARY

For a glossary of terms related to HES and this ADM, please see Attachment 1: Glossary.

DISCUSSION

Background

Effective on 10/1/2023, OPWDD added HES as a sub-component to the Assistive Technology benefit for people enrolled in the OPWDD HCBS Waiver. HES is intended to address an individual's assessed needs in a manner that promotes autonomy, maintains or improves a person's functional abilities, enhances interactions, supports meaningful relationships, and promotes their ability to live independently and meaningfully participate in their community. HES do not isolate the person from the community or from interacting with people without disabilities. Rather, HES enable a person to be more independent and less reliant on physically present support staff. A person will be able to use technology, purchased by non-profit agencies on their behalf, to achieve the goals they have outlined in their Life Plan.

HES may include, but are not limited to:

- Assistive Devices/Technology;

- Remote Supports; and
- Health Assessment and Coordination Services (HACS).

Eligibility

People must meet certain eligibility criteria to access HES.

HES Devices, Technology, and HACS Eligibility

HES devices, technology, and HACS are available to people of all ages. A person is eligible for HES devices, technology, and HACS if they:

- Have OPWDD HCBS Waiver eligibility and enrollment; and
- Live in the community in a non-certified residence.

HES Remote Supports Eligibility

Remote HES supports are limited to people ages 15 and older. Therefore, to be eligible for Remote HES supports, the person must:

- Have OPWDD HCBS Waiver eligibility and enrollment;
- Live in the community in a non-certified residence; and
- Be age 15 or older.

Authorization of Services

HES require prior authorization by the Developmental Disabilities Regional Field Office (DDRFO). Prior authorization is requested by the person's Care Manager through the submission of a Request for Service Authorization (RSA) or Service Amendment Request Tool (SART). A Notice of Decision (NOD) will be issued by the DDRFO regarding the approval or denial of a request for HES services.

Projects or purchases initiated or completed before DDRFO or OPWDD prior authorization are not reimbursable by Medicaid and will not be retroactively approved as HES.

Service Limits

The maximum expenditure for acquisitions of Remote Supports, HACS, and/or assistive devices for the benefit of a Medicaid beneficiary must not exceed \$5,000 per calendar year.

The costs incurred by the HES Provider for the development of the HES Plan which includes the outcome of the assessment process, acquisition, delivery and set-up of devices/equipment, and training in the use of the HES will be offset within the broader annual funding threshold of a person's AT benefit. See section *Billing and Claiming and Cost Limits* for additional information (pg. 19).

HES and Reasonable Indication of Need

The receipt of HES alone is not sufficient to demonstrate the person's reasonable indication of need for a monthly HCBS waiver service. In addition to HES, a person must receive at least one (1) monthly HCBS waiver service or monthly monitoring of health and safety (e.g. care management) to meet the reasonable indication of need requirement for HCBS waiver enrollment as defined in 42 CFR §441.302(c). See 23-ADM-06:

https://opwdd.ny.gov/system/files/documents/2023/07/final-waiver-enrollment-and-eligibility-adm_7.17.pdf

HES and Self-Direction

For people who are enrolled in Self-Direction, the cost of the acquisition of devices, or cost related to Remote Support or HACCS Vendors must be accommodated within their Personal Resource Account (PRA).

Identification of HES Provider and Home-Enabling Supports in the Person's Life Plan

HES services must be related to an assessed need, with specific outcomes to be achieved, as documented in the person's Life Plan. Care Managers must identify a reasonable expectation that access to the HES service(s) will increase, maintain, or improve the person's safety, health outcomes, meaningful participation in the community, and/or increase the individual's safety and independence in the home environment with less reliance on or the deferral of paid staff for supervision and/or assistance.

Care Managers must help the person identify goals through the person-centered planning process that relate to increased independence, safety, and meaningful community participation that can be met through HES. These goals must be included in the person's Life Plan. The Life Plan must also include the:

- **Authorized Service:** Home-Enabling Supports
- **Provider/Facility:** Name of HES Provider
- **Effective Dates:** Date of Approval by the DDRFO
- **Duration:** One Time Expenditure or Monthly
- **Unit:** One-Time Expenditure or Monthly
- **Comments/Special Considerations:** Brief description of the device(s) and/or service(s)

HES and Person-Centered Planning

After a person is authorized for HES by OPWDD, the care planning team must follow a person-centered planning process for appropriate implementation of HES technologies. The care planning team should include the person and/or their advocate(s), HES Provider, and their Care Manager. An effective person-centered planning process involves knowing a person, their goals, conditions, needs, and history and using this knowledge to create strategies (including HES technology) to ensure that a person is

free to interact with others and the community in the most integrated way, while enabling additional supports where needed to maintain community living.

Remote Supports and Person-Centered Planning

The care planning team must consider whether Remote Support is an appropriate support for the person. The care planning team must assess whether Remote Support can be delivered in a person-centered manner and ensures the person's health and welfare.

Annual Review

The person's HES must have a person-centered review no later than one-year from the acquisition of the HES. The review must be facilitated by the Care Manager as part of the either the semi-annual or annual Life Plan review process. This review must assess:

- If the person is using the acquired technology; and
- Whether the technology is supporting a valued outcome related to independence and/or safety in the home environment, empowering the person to live in the most integrated setting possible, and/or reducing or minimizing the need for on-site staff.

Review data must be provided by the HES Provider and uploaded to CHOICES for the Care Manager to access.

Cultural and Linguistic Competency

Providers must be culturally and linguistically competent when serving people. Cultural and linguistic competency is the ability to understand and respond to the cultural and linguistic needs of others. It involves having the knowledge, skills, and attitudes to promote effective cross-cultural communication and practice. Care Coordination Organization (CCOs), Care Managers, Providers, and Vendors must consider, respect, and be responsive to a person's cultural needs and preferences. They must also communicate with the person in a way that is meaningful to the person. For example, this may include using translating services, pictures/visuals for education, and plain language.

Responsibilities of the Home-Enabling Supports Provider

HES Providers purchase the HES goods and services needed to achieve the person's goals as specified in their Life Plan. These agencies are the provider of record for billing purposes. HES Providers must also contract with Remote Support and HACS Vendors. (See Section **Vendor Qualification and Requirements** on pg. 15 for more information). Remote Supports and HACS are billed by the HES Provider and are responsible for the contract arrangement with Remote Supports and HACS vendors. There is no bidding requirement for HES provider subcontracts.

Providers of HES must:

- **Provide HES to any person authorized for HES within their catchment area.** HES Providers must not give preference to persons receiving other Waiver services from their agency or limit access for those who do not receive other Waiver services from their agency;
- **Assess the needs of the person** in consultation with the Care Manager, care planning team, and vendor (if applicable), through the person-centered planning process. The outcome of this assessment must be documented in the HES plan. Documentation must include: basic service information; identification of person's valued outcomes; HES technology to be acquired; privacy, health, and safety assurances; and informed consent; (see section *Assessment and HES Plan Development*, page 6)
- **Purchase, lease, or otherwise provide for the acquisition of devices** from online or other sources;
- **Subcontract** with Remote Support and HACS Vendors;
- **Ensure a warranty program** (break/fix and/or device replacement) is available and used for certain services;
- **Assist with assembly and set up** of the device/equipment;
- **Provide education and technical assistance** to the person and anyone who helps the person use the device or service or ensure that Remote Support or HACS Vendor educates and provides technical assistance to the person and anyone who helps the person use the device/service; and
- **Review** the use of the service as part of the person-centered planning process and **report** outcomes data.

Assessment and HES Plan Development

The HES Provider must assess the person to evaluate their needs and goals. The HES Provider then develops a plan based on information learned during their assessment. The assessment must occur within 30 days of the person being enrolled with an HES Provider. Assessment of the person must include, but is not limited to, conducting an in-home visit to identify areas where personal safety and/or goals of increased independence in activities of daily living can be addressed using HES. The assessment will determine the type of HES to be acquired.

Based on the preference of the person, the in-home visit may occur remotely with the use of face-to-face technology, in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The HES Provider must work with the Care Planning Team and Vendor (if applicable) to create the HES Plan. No Staff Action Plan is required. The HES Plan development must be person-centered and follow the Person-Centered Planning standards described in 14 NYCRR §§ 636-1.2.

The completed HES Plan must include:

- Basic service information;
- Identification of the person's valued outcome(s) or goal(s) that will be supported with HES;
- If receiving remote supports, identification of at least one additional measurable valued outcome related to Remote Support service;
- privacy, health, and safety assurance;
- informed consent;
- Vendor and the Vendor information (if the person will receive Remote Support services and/or HACS); and
- If receiving Remote Supports, an addendum that addresses plans for delivery of Remote Supports.

Remote Support Addendum to the HES Plan

The HES Plan must integrate planning information developed by the Vendor that subcontracts for the Remote Support. Therefore, a Remote Support Addendum must be created by the Remote Support Vendor for people receiving Remote Supports. To create this addendum, the Vendor must perform work with the person, their Care Manager, and the HES Provider and complete an in-home assessment. The addendum must include a:

- Justification statement that explains how Remote Supports benefit the person, promote independence, assist in outcome achievement, and assure health and safety. Description of the person's personal preferences and how the delivery of Remote Supports will reflect them. This must reflect the utilization of person-centered tools and exhibit how support strategies have been developed to meet the summarized preferences;
- Verification that a risk assessment was completed and reviewed through the utilization of the person's person-centered tools and other assessment results by the support team to ensure the appropriate technology solutions and/or support strategies have been identified to address any risk areas;
- Description of the required Remote Support equipment function, purpose, features, general location in home, person and family's knowledge of and how to use the equipment (e.g., turn on and off, how to request assistance remotely, etc.);

- Description of initial and ongoing training strategies for the person supported, support staff, and family members/natural supports, if applicable;
- Schedule for when Remote Supports will be provided and type of Remote Supports (e.g., Active Support, Active On-Demand, Check-in Scheduled, Check-in Random) provided;
- Detailed back-up plan description in the event of system failure (e.g., equipment malfunction, power outage).
- Detailed emergency/on-call responder plan in the event the person needs a paid in-person response to their residence. The emergency response plan can include natural supports or paid supports. The detailed plan for response at the person's residence or location covered by Remote Supports should include, at a minimum, a description of:
 - Response time as per requirements defined by the team. In situations requiring a person to respond to the person's residence, the response time must not exceed 30 minutes;
 - Response type includes face-to-face and/or telephone, depending on how to optimally respond to the person's particular need at that time, to ensure health and safety;
 - In emergency situations, the Remote Support Vendor shall have an effective procedure for notifying emergency personnel such as police, fire, emergency medical services, and psychiatric crisis response entities; and
 - Documentation of the event as required by OPWDD Incident Management regulation and policy.

Distributing the HES Plan

The HES Provider must provide a copy of the completed HES Plan 10 business days from submission of their assessment claim to the person and their Care Manager.

Acquisition

The HES Provider must purchase, lease, or otherwise provide for the acquisition of assistive devices/technology, and will assist with the set-up of the device/equipment. For Remote Supports and HACS, the procurement and set up of equipment may be provided by either the Vendor or the HES Provider. The following applies to the acquisition of all HES technology:

- Medicaid prohibits the direct billing of Internet services and access as part of this program. Where applicable, the individual, homeowner, and/or family must provide internet access to enable the use of these Home-Enabling devices. This includes WiFi routers and repeaters to ensure that a stable internet connection is available throughout the home if the Home-Enabling service requires such a connection.
- The HES Provider must ensure that all devices and supplies meet standards established by Underwriters Laboratory and/or comply with Federal Communications Commission regulations, if applicable.
- No bids are required for the HES Provider to engage with a Remote Support or HACS Vendor. Remote Support and HACS subscription services are paid by the HES Provider and directly billed by the HES Provider to eMedNY.
- Electronic Devices that are integrated into a Remote Support service or HACS may be leased from the Remote Support or HACS Vendor. In these instances, the lease payments must be issued to the Vendor by the HES Provider, who subsequently must appropriately claim for reimbursement to eMedNY.
- Stationary devices (i.e., devices that reside in the individual's home) have a one-time purchase and installation fee. The HES provider must maintain documentation showing the stationary device was installed according to the manufacturer's recommendations and is working. Stationary devices may need or may not need a home-based internet connection.
- Non-Stationary Devices are devices that do not exclusively reside in the person's home (e.g., laptops and tablets). Non-stationary devices that are internet/cellular enabled to work must be billed as a Managed Service. This includes cellular-enabled tablets where applications and their associated services are used to help the person meet their goals.
- Cell phones must not be purchased or leased with HES funds. However, HES services may be provided through a cell phone the person already owns.
- The Provider must confirm that the cost of any item or technology acquired is related to the person's needs and is eligible for Medicaid funding.
- All claims must be supported by evidence documented by the HES provider that the technology is not eligible for Durable Medical Equipment (DME) benefit, or from other payors or sources of reimbursement such as Medicare.
- The HES Provider must ensure the project is completed according to the scope of work and/or the project specifications.
- Devices that are lost, damaged or become obsolete must be replaced by the HES Provider. The cost of the replacement may be billed to Medicaid if the

device was initially purchased outright and is not part of a managed service arrangement or part of a contract with a Vendor. The cost of the replacement device may be billed to Medicaid within the \$5,000 annual limit for HES.

- HES must only be billed to Medicaid when the device is delivered, installed, or the work is verified as complete. The amount billed is equal to the contract or final vendor invoice. All reimbursements must be completed through eMedNY, not via the contract.

Training for Assistive Devices

The HES Provider must teach the person and any informal or formal supports who will be assisting the person how to use the assistive device. The HES Provider must help teach the person training and help with troubleshooting for devices for at least three months following installation of the device. After three months, the person and/or their supports should work with the device manufacturer for any additional needs.

Service Exclusions

The HCBS Waiver cannot fund HES that are funded by the Medicaid State Plan under the Durable Medical Equipment benefit (DME) or from other sources such as Medicare. HES are for the exclusive use and benefit of the person. This means HES and not for the general use of the person's family or other roommates. Similarly, HES must not be used for a Provider's convenience.

Service exclusions related to HES include, but are not limited to:

- Remote Silent Monitoring Video Devices – these devices are not permitted in bedrooms or bathrooms. The use of remote audio devices that have a continuous feed will not be permitted in bedrooms or bathrooms. However, remote audio devices may be triggered in the event of an emergency or otherwise activated by the person. See discussion below regarding the provider's responsibility to ensure privacy.
- Items of General Utility – these are items that are useful to everyone. For example: utilities, cell phone service charges, television subscription costs, monthly Wi-Fi and/or internet connection charges, and unmodified kitchen or laundry appliances.
- Therapy/Emotional Support Animals – the cost of acquisition and ongoing care of therapy/emotional support animals used for any purpose, including medical alert purposes, are excluded.
- Experimental Devices, Equipment, and Services

- Entertainment and Recreational Equipment
- Phones, Laptops, Tablets, and Non-Specialized Watches – except for laptops or tablets that are part of a package of technology services. These may be leased or the HES Provider may provide a laptop or tablet as part of a managed service with the lease costs of the equipment billed to Medicaid.
- One-Way Cameras
- Remote Supports for Children Ages 14 and Under.

HES Provider Qualifications

HES Providers are chosen by a selective procurement process. To be considered for HES Provider certification, the provider must:

- Be certified by OPWDD as an Assistive Technology (AT) Provider;
- have a demonstrated understanding of the rights of people served by OPWDD as described in OPWDD regulations 14 NYCRR §§ 633.4, 636-1.2, and 636-2.4., and have the capacity to ensure that the person provides informed consent for any technology funded under HES. and
- Have qualified staff as defined in *HES Provider Employment of Qualified Staff* below.

HES providers must be certified by the OPWDD Division of Quality Improvement and receive an operating certificate for the provision of HES.

There will only be two AT Providers designated to provide HES in each region unless an exception is granted by the Commissioner or their designee to ensure support access. For example, the Commissioner or Commissioner's designee may consider adding additional HES provider to a region based on its population size and/or geographical factors to meet accessibility needs.

HES Provider Employment of Qualified Staff

The HES Provider must employ or contract with qualified staff that:

- Have at least one year of experience in conducting technology assessments; **and**
- Either:
 - Have a credential in enabling technology (i.e., Enabling Technology Integration Specialist (ETIS) (<https://www.techfirstshift.com/credentials-and-certifications>) or Assistive Technology Professional (ATP) (<https://www.resna.org/Certification/Assistive-Technology-Professional-ATP>); **or**

- Are clinicians with at least two years of experience working with people with intellectual and/or developmental disabilities in a related field (e.g., Occupational Therapy, Physical Therapy, Speech Therapy, Rehabilitation Counselor, Social Work).

HES Provider Policies

The HES Provider must develop, maintain, and enforce written policies approved by OPWDD. These policies must address how:

- (a) The Provider will ensure the person's right of privacy, dignity and respect, and freedom from coercion.
- (b) The decided upon HES device, technology or support was explained to the person and/or a representative that assists them with informed decision making.
- (c) The Provider will ensure the HES meets applicable information security standards; and
- (d) The Provider will ensure its provision of Remote Supports complies with applicable laws governing individuals' right to privacy.

HES Provider Compliance with Federal and State Requirements

The HES Provider must ensure that the remote technology acquired or used by the Provider and/or Vendor meets the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act, and their applicable regulations, as well as applicable state law. Failure of the HES Provider to comply with the requirements of these acts, and their applicable regulations to protect the privacy and security of the participant's protected health information, may result in denial, suspension, or revocation of the Provider's certification.

All technology funded through HES must comply with Health and Human Services (HHS) policies and other requirements as well as documents referenced within those policies at: [The Security Rule | HHS.gov](#)

Individual Health and Safety

The HES Provider and Remote Support or HACS Vendor must have a backup plan to ensure a person's health and safety needs if the device/system is turned off (e.g., system failure, prolonged power outage, fire or weather emergency, person's medical issues, personal emergency). These back-up procedures must be described in the person's HES Plan. For Remote Supports, this must include an in-person backup plan based on the needs of the person.

A person's Care Manager, in consultation with the person supported and their team, must assess whether Remote Supports and/or HACS is sufficiently delivered in a person-centered manner and ensures their health and welfare.

Remote Home Enabling Supports and HACS

Remote support is provided by a Vendor that subcontracts with the HES Provider. This remote support vendor is located at a remote location and uses an electronic method (i.e., report support device) to engage with person(s) through equipment with the capability for live, two-way communication. The remote support vendor must be able to interact remotely with family members or other natural supports, paid staff, or first responders, if necessary to ensure the person's safety.

Remote Support shall be provided in real-time, not via a recording, by awake staff at a Remote Support Base, using the appropriate connection. While Remote Support is being provided, Remote Support Professionals must not have duties other than Remote Support.

Life Plan and HES Plans

Remote support must be provided pursuant to a Life Plan and the HES Plan. The HES Plan must integrate planning information developed by the Vendor that subcontracts for the Remote Support.

Staff Training

Remote Support and HACS Vendors must provide initial and ongoing training to their staff to ensure they know how to use the Remote Support/HACS Base systems.

Placement

The placement of Remote Support devices must be considered based on the individual's assessed need, privacy, rights considerations, and informed consent of the person and others who live in the home.

Inward-Facing Audio and/or Visual Enabled Devices

Inward facing audio/video enabled devices within the home must have two-way communication capability, with the sole primary purpose of providing Remote Support. One-way cameras and audio devices for general surveillance within the home are not permitted.

Remote Silent Monitoring video devices are prohibited in bedrooms or bathrooms. Remote support video and audio devices that have a continuous feed are prohibited bedrooms or bathrooms. However, remote audio devices that may be triggered in the event of an emergency or otherwise activated by the person are allowed.

Indicators of Remote Support Devices

The Remote Support system must have visual, audio, or other appropriate indicators that inform the person when the system is activated.

Time Restrictions

The use of Remote Support systems may be restricted to certain hours based on the person's choice.

Teaching the Person to Use Remote Support Devices

The person must be taught how to turn on and off their Remote Support device(s). Depending on the type of remote device and the person's abilities, they may be able to turn off the remote device independently. If they are unable to do so, they must be taught who to contact for assistance in turning off the device.

The HES Provider and/or Remote Support and/or HACS Vendor must provide initial training to the person and any informal or formal supports who will be assisting the person in using the service and equipment. Ongoing troubleshooting must be provided by the Vendor as part of the subscription cost.

Emergency Solutions

The Remote Support and HACS Vendors must have emergency solutions in place if the Remote Support/HACS Base stops working for any reason. This must include an in-person backup plan based on the needs of the person.

Vendors must have an effective procedure for notifying emergency personnel such as police, fire, emergency medical services, and psychiatric crisis response entities.

If a known or reported emergency arises involving an individual receiving Remote Support services, the Remote Support Professional must immediately assess the situation. If determined necessary, they must and call emergency personnel first, if that is deemed necessary, and then contact the on-call support person. The Remote Support Professional shall stay engaged with the individual during an emergency until emergency personnel or the on-call support person arrives.

Upon arrival, the on-call support person must acknowledge to the Remote Support Professional that they have arrived on-site and are with the person (at which point, the Remote Support Professional can disengage with the person). The objective is that the on-call support person shall arrive at the individual's location as soon as possible, but no later than thirty (30) minutes from the time of the emergency call.

Responding to Individual Needs

When an individual needs assistance but the situation is not an emergency, the Remote Support Professional shall address the situation as specified in the HES Plan and/or contact on-call support.

The Remote Support Professional staff must have detailed and current written protocols for responding to an individual's needs as specified in the HES Plan.

Remote Support/HACS Base

A Remote Support/HACS Base must not be located at the residence of an individual who receives Remote Support or HACS.

Secure Network Systems

The HES provider and Remote Support/HACS Vendors must use a secure network system requiring authentication, authorization, and encryption of data that complies with 45 C.F.R. section 164.102 to section 164.534. The provider must ensure that access to computer, video, audio, sensor, and written information is limited to authorized persons.

Incident Reporting Evidence

If evidence of a reportable incident or notable occurrence (as defined in the Reportable Incidents Definition as referenced in 14 NYCRR Part 624) occurs while an individual is receiving Remote Support services or HACS, the Remote Support or HACS Provider must retain or ensure the retention of any video recordings, audio recordings, sensors, or other information pertaining to the incident for at least ten years from the date of the incident. The HES provider must have a written policy or agreement with the Remote Support or HACS Provider regarding notification of reportable incidents or notable occurrences to the HES Provider. The HES Provider must use this information to comply with OPWDD's incident reporting requirements.

Vendor Qualifications and Requirements

HES Providers must subcontract with Remote Support and HACS Vendors to deliver remote supports. Vendor contracting is the responsibility of the HES Provider and may include additional stipulations. However, the following minimum qualifications are required. It is the HES Provider's responsibility to ensure the Vendor meets the requirements outlined below.

1. Remote Support Vendor Qualifications

- (a) Remote Support Vendors must have at least three-years of operating experience.
- (b) Remote Support services must only be provided by a Remote Support Vendor that contracts with the appropriately certified HES Provider.

2. Remote Support Vendors and HACS Vendors Requirements

- (a) Remote Support Professionals and HACS staff who engage with the person from the Remote Support/HACS Bases must be

trained to provide high-quality Remote Support services. Understanding that Vendors may interact within several States, the vendor may establish their own training programs. These training programs must address:

- Abuse/neglect and incident reporting requirements in New York State;
 - Confidentiality and HIPAA;
 - Communications skills in understanding and respecting; individual choice and self-determination; and
 - Diversity, Equity, and Inclusion.
- (b) Remote Support Vendors and HACS Vendors must comply with all policies, guidance, federal, state, and local regulations that apply to the operation of its business or trade, including but not limited to, 18 U.S.C. section 2510 to section 2522 as in effect on the effective date of this rule and section 2933.52 of the Revised Code.

3. Health Assessment and Coordination Services (HACS) Vendors

(a) Qualifications:

- (i) HACS Vendors must have at least three years' experience providing remote medical care to individuals with developmental disabilities and have capability to address, and as necessary triage, acute behavioral issues.
- (ii) HACS Vendors must have achieved positive outcomes for individuals with developmental disabilities served (e.g., reducing emergency room visits or individual/caregiver satisfaction with services provided).
- (iii) HACS Vendors must have a certificate of a continuing policy of professional liability insurance in an amount of at least one million dollars.

(b) Responsibilities:

- (i) HACS Vendors must ensure the person providing healthcare assessment and coordination is a physician, a physician assistant, or an advanced practice nurse who:
 - Is properly credentialed and in good standing in accordance with New York State law or laws of other states that govern the person's practice;

- Is specially trained in serving individuals with I/DD, having completed at least 25 hours of initial training before delivering services and at least 10 hours annually thereafter; and
 - Has completed basic training in management of behavioral health crises including de-escalation techniques and implementation of psychiatry crisis care management plans when available.
- (ii) HACS Vendors must use technology to facilitate real-time consultation and support provided by a physician, a physician assistant, or an advanced practice nurse to assist an individual and/or the individual's authorized caregivers to understand the individual's presenting health symptoms and identify appropriate next steps.
- (iii) HACS Vendors must provide HACS that:
- Are consultative in nature, provided to individuals who have a developmental disability, reflects the presentations and treatments unique to individuals with developmental disabilities, and provides disability-specific guidance on when best to seek additional or in-person medical treatment;
 - Include support and consultation, which is based on expertise in developmental disabilities, to an individual and/or the individual's paid and unpaid caregivers and seeks to empower the individual and build the capacity of caregivers to better understand the best approach for supporting the individual based on the individual's symptom presentation;
 - Include follow-up or after care, as needed, via a follow-up consultation with the treated individual and/or caregivers, typically a day or two after the initial consultation;
 - Do not duplicate or replace other home and community-based services or medical services available to an individual through the Medicaid state plan, including in-person examinations as needed; and
 - Include a “warm handoff”, conducted immediately after

the conclusion of the consultation, from the HACS Vendor to the receiving provider to help guide care and provider coordination, when the patient is recommended to go to the emergency department or urgent care provider.

Individual Privacy

Federal and state HCBS regulations protect a person's right to privacy, dignity, autonomy, control, independence, choice, respect, and freedom from coercion and restraint. In some cases, the HES could impact these rights (e.g., remote technology, two-way audio/visual technology, video cameras as a component feature of HES technology or for other assistive purposes). The use of video cameras is limited to certain placements, which will be identified and agreed upon during the informed consent process (see Remote Home Enabling Supports, pg. 8), must be controllable by the person, and cannot be used for a provider's convenience or for general surveillance.

Written Informed Consent is Required When Privacy Rights are Limited

If a person's right to privacy is impacted by HES (e.g., through remote technology and/or GPS tracking devices), the HES Provider must ensure that the person provides written informed consent before the HES is used. This includes being fully informed of what the device/service/support entails. These details may include, but are not limited to:

- the Remote Supports staff's ability to observe the person's activities and/or listen to their conversations in the residence;
- the location in the residence that the remote device(s) will be placed; and
- whether or not recordings will be made. Informed consent(s) will be obtained initially, prior to the person receiving HES, and as needed (e.g., a new service/support/device is obtained which impacts privacy).

If the HES impacts the privacy of anyone else living in the residence, they must also provide written informed consent before the HES is used. Written informed consent must also be updated as needed (e.g., when a new support/service/device is used). People may revoke their consent to the HES at any time.

Rights Limitations Documentation

Rights limitation(s) must be appropriately documented in the person's HES Plan (See Rights and Privacy Requirements section) and other applicable person-centered service plan(s) (e.g., Life Plan, or other planning/service document(s) such as Staff Action Plans, Behavior Support Plans, Plans of Nursing Services). The documentation requirements may vary depending on the person's specific medical or behavioral needs. Documentation must comply with federal and state regulations (e.g., 14 NYCRR §§ 633.4, 636-1.2 and 636-2.4).

Privacy and Placement of Remote Technology

The placement of Remote Support devices will be considered based on assessed need, privacy, rights considerations, and informed consent of the person and others who live in the home. If the remote technology impacts the person's privacy, providers must comply with OPWDD regulations 14 NYCRR §§ 633.4; 636-1.2, and 636-2.4.

Privacy and GPS-Tracking Devices/Systems

A GPS-tracking system might be considered to address health and safety concerns for people who elope or leave areas where appropriate supervision can be provided. However, GPS-tracking is a rights restriction and must comply with 14 NYCRR §§ 633.4 and 636-2.4. These regulations require, among other things: justification based on the person's behavioral and medical needs; using least restrictive forms of intervention; and obtaining informed consent from the person.

Discontinuance of Home Enabling Supports

If the person no longer wants HES, or the service no longer meets the person's needs, appropriate changes in service provision must be addressed on a timely basis through the person-centered planning process in the same manner as other services.

Billing and Claiming and Cost Limits

The billing and claiming of HES will have two different approaches for:

- 1) the acquisition cost for devices, technology, and subscription services; and
- 2) the HES Providers' cost for planning, conducting assessment, and providing necessary training.

The cost for the acquisition of technology, services, and/or devices is limited to no more than \$5,000 per year for each person and must be funded within applicable thresholds and limits of the Assistive Technology category of service. As such, the total cost of HES (both the direct reimbursement to the HES Provider and the acquisition costs), is an offset to any Assistive Technology costs that are funded outside the HES service.

The current limit for Assistive Technology is described in ADM #2021-04

<https://opwdd.ny.gov/adm2021-04-service-documentation-assistive-technology-e-mod-and-v-mod-services-provided-individuals>.

1. Acquisition Cost and Monthly Subscription Cost

Acquisition cost and monthly subscription cost fees are billed within the \$5,000 annual HES limit and are an offset within the broader annual funding threshold of a person's AT benefit. The HES Provider will bill Medicaid for the total as follows:

- (a) Submit the appropriate number of units associated with each of the following dollar values: \$1 Units, \$10 Units, \$100 Units, and \$1,000 Units;

- (b) The amount claimed to eMedNY must match the cost of acquiring the technology, service, or device. For example, a piece of technology that costs \$350 would be claimed to eMedNY as: 3 Units (\$100) and 5 Units (\$10).

2. Provider Payment

The Provider is qualified to bill the following fees upon the completion of the deliverable or delivery of the service described below. These are administrative type fees to the HES Provider and are not billed within the \$5,000 annual HES limit. They will be offset within the broader annual funding threshold of a person's AT benefit:

- (a) One Time Assessment Fee - of \$189 for the first month for completion of the HES Plan (maximum of one payment per year, per person). This fee is for initial assessment. It is not an annual expenditure and generally should not be billed in subsequent years. Exceptions to this may occur if the person's needs change substantially or the HES technology the person is using has significant changes or updates requiring a new assessment.
- (b) One Time Start Up / Set Up / Fostering Technology Uptake Fee - of \$315 which can occur in the first or second month for Start-up/Set-up/Fostering Technology Uptake (maximum of one payment per year, per person). This fee is for start-up activities. It is not an annual expenditure and generally should not be billed in subsequent years. Exceptions to this may occur if the HES technology the person is using has significant changes or updates requiring new equipment.
- (c) Monthly Troubleshooting and Support Fee - of \$63/month for troubleshooting and/or additional training. This fee may be billed by the HES Provider once per month for up to three (3) months in the twelve (12) month period following acquisition of the device. Billing of this fee is limited to months where there is an interaction with and/or for the person to support the use of the technology. Billing for this service cannot occur in the same month where the One Time Assessment Fee, One Time Start Up / Set Up / Fostering Technology Uptake Fee, or Ongoing Subscription Management Fee are billed.
- If troubleshooting is needed beyond three months, for devices that do not include a subscription service, the person (and/or those who support them) should seek assistance from the device manufacturer.
 - If troubleshooting is needed beyond three months, for subscription services, the person (and/or those who support them) should seek assistance from the subscription (i.e., Remote Support or HACS) Vendor.
- (d) Ongoing Subscription Management Fee - of \$63/month may be billed by the Provider. This fee is paid to the HES Provider for administrative activities related to subscription management; this fee is not used to pay for the cost of the subscription service. Billing for this service cannot occur in the same month where the One Time Assessment Fee, One Time Start Up / Set Up /

Fostering Technology Uptake Fee, or the Monthly Troubleshooting and Support Fee are billed.

Service Documentation

The HES Provider is responsible for maintaining documentation of service delivery. Service documentation for all HES must include the following to validate payment for services:

1. Documentation that validates the claim submitted to eMedNY. This must include the receipt or paid invoice for any acquired technology or devices. For the payment to a Vendor for the delivery of Remote Support or HACS, the Vendor must maintain a receipt or paid invoice and ensure that the additional documentation (below) is maintained by the Vendor.
2. A copy of the person's Life Plan, which must include Home Enabling Supports as a support/service and identify the HES Provider
3. A copy of the person's completed HES Plan which meets the requirements of section Assessment and HES Plan Development (pg. 6)
4. Any other applicable planning/service document(s) that substantiate eMedNY claims.

Service Reporting

Additional service documentation is required for HES that are Remote Support services and/or HACS. Vendors must provide service reports to the HES Provider. The HES Provider must maintain service report documentation.

Remote Support Services and/or HACS service documentation must include 1-4 above and include:

1. Type of service (i.e., Remote Support, or HACS)
2. Date and time(s) of service
3. Medicaid Client Identification Number (CIN) of individual receiving service
4. Name of the Vendor and Staff Person's name
5. Number of units of the delivered service per calendar day OR description of the services delivered that directly relate to the services

specified in the approved HES Plan. If, for example, a sensor alerts a remote caregiver, describe the occurrence that activated the sensor, when it happened, who was involved, response, and outcome.

Records Retention

All documentation specified above, including the Life Plan, HES Plan, and service documentation, must be retained for a period of at least ten (10) years from the date the service was completed to protect against potential false or fraudulent Medicaid claims under the New York False Claims Act. The date of issuance of the final payment through the State Financial System (SFS) to the HES Provider is the date used to establish the start of the ten (10) year retention period.