

## LIVE-IN CAREGIVER (LIC)

**Effective January 1, 2020**

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Audit protocols assist the Medicaid provider community in developing programs to evaluate compliance with Medicaid requirements under federal and state statutory and regulatory law, and administrative procedures issued by the New York State Office for People with Developmental Disabilities (OPWDD). The protocols listed are intended solely as guidance in this effort. This guidance does not constitute rulemaking by OPWDD and may not be relied on to create a substantive or procedural right or benefit enforceable, at law or in equity, by any person. Furthermore, nothing in the protocols alters any statutory, regulatory or administrative requirement and the absence of any statutory, regulatory or administrative citation from a protocol does not preclude OPWDD from enforcing a statutory, regulatory or administrative requirement. In the event of a conflict between statements in the protocols and statutory, regulatory or administrative requirements; the requirements of the statutes, regulations and administrative procedures govern.

A Medicaid provider's legal obligations are determined by the applicable federal and state statutory and regulatory law. Audit protocols do not encompass all the current requirements for payment of Medicaid claims for a particular category of service or provider type and therefore are not a substitute for a review of the statutory and regulatory law or administrative procedures.

Audit protocols are applied to a specific provider or category of service(s) in the course of an audit and involve OPWDD's application of articulated Medicaid agency policy and the exercise of agency discretion. Audit protocols are used as a guide in the course of an audit to evaluate a provider's compliance with Medicaid requirements and to determine the propriety of Medicaid expended funds. In this effort, OPWDD will review and consider any relevant contemporaneous documentation maintained and available in the provider's records to substantiate a claim.

New York State, consistent with state and federal law, can pursue civil and administrative enforcement actions against any individual or entity that engages in fraud, abuse, or illegal or improper acts or unacceptable practices perpetrated within the medical assistance program. Furthermore, audit protocols do not limit or diminish OPWDD's authority to recover improperly expended Medicaid funds and OPWDD may amend audit protocols as necessary to address identified issues of non-compliance. Additional reasons for amending protocols include, but are not limited to, responding to a hearing decision, litigation decision, or statutory or regulatory change.

The audit protocol criteria listed below are the **standard audit protocols**. "Appendix" contains flexibilities enacted during the COVID public health emergency."

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| <b>1.</b>                    | <b>Missing Record</b>  |
| <b>OPWDD Audit Criteria</b>  | If no record is available for review, claims for all dates of service associated with the individual will be disallowed.   |
| <b>Regulatory References</b> | 18 NYCRR Section 504.3(a)<br>18 NYCRR Section 540.7(a)(8)  |
| <b>2.</b>                    | <b>No Documentation of Service</b>   |
| <b>OPWDD Audit Criteria</b>  | If the record does not document that a Live-in Caregiver service was provided, the claim will be disallowed.   |
| <b>Regulatory References</b> | 18 NYCRR Section 504.3(a)<br>18 NYCRR Section 517.3(b)   |
| <b>3.</b>                    | <b>No Determination of a Developmental Disability</b>  |
| <b>OPWDD Audit Criteria</b>  | The claim for services provided in the absence of a clinical assessment substantiating a specific determination of developmental disability will be disallowed.  |
| <b>Regulatory References</b> | 14 NYCRR Section 635-10.3(a) and (b)(1)<br>14 NYCRR Section 671.4(b)(1)(i)   |
| <b>4.</b>                    | <b>Missing or Inadequate Life Plan (LP)</b>  |
| <b>OPWDD Audit Criteria</b>  | A copy of the individual's Life Plan (LP), covering the time period of the claim, must be maintained by the agency. The claim will be disallowed in the absence of a Life Plan (LP). If the Life Plan (LP) is not in place prior to the service date and in effect for the service date, the claim will be disallowed.   |
| <b>Regulatory References</b> | 14 NYCRR 635-10.2(a)<br>OPWDD ADM #2016-03, p. 6<br>OPWDD ADM #2018-06R, pp. 1-2   |
| <b>5.</b>                    | <b>Unauthorized Live-in Caregiver Services Provider</b>  |
| <b>OPWDD Audit Criteria</b>  | The claim will be disallowed if the Life Plan (LP) does not: <ul style="list-style-type: none"> <li>• Identify Live-in Caregiver as the service to be provided.</li> <li>• List the provider as the authorized provider for a specific service.</li> <li>• Have an effective date for Live-in Caregiver services that is on or before the first day of service for which the agency bills for services.</li> </ul> |
| <b>Regulatory References</b> | 14 NYCRR Section 635-10.2(a)<br>OPWDD ADM #2016-03, p. 6<br>OPWDD ADM #2018-06R, pp. 3-4,7   |
| <b>6.</b>                    | <b>Identification of Frequency and Duration of Service</b>   |
| <b>OPWDD Audit Criteria</b>  | The claim will be disallowed if the Life Plan (LP) does not: <ul style="list-style-type: none"> <li>• Specify that the frequency for LIC is "monthly."</li> <li>• Specify the duration for LIC is "ongoing."</li> </ul>  |
| <b>Regulatory References</b> | OPWDD ADM #2016-03, p. 6<br>OPWDD ADM #2018-06R, pp. 3-4,7   |

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| <b>7.</b>                    | <b>Missing Agreement - Individual and Live-in Caregiver</b>  |
| <b>OPWDD Audit Criteria</b>  | The claim will be disallowed if there is no signed agreement between the individual and the Live-in Caregiver (LIC). |
| <b>Regulatory References</b> | OPWDD ADM #2016-03, p. 3   |

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| <b>8.</b>                    | <b>Missing Required Elements - Agreement Between Individual and Live-in Caregiver</b>  |
| <b>OPWDD Audit Criteria</b>  | <p>The agreement between the individual and the LIC must contain these required elements:</p> <ol style="list-style-type: none"> <li>1. The individual's name and Medicaid number (CIN);</li> <li>2. Identification of the category of waiver service provided (e.g., Live-in Caregiver, LIC);</li> <li>3. The LIC's name and an acknowledgement that room and board are being provided to the LIC free of charge;</li> <li>4. The times when the LIC is expected to be available to act in the LIC capacity;</li> <li>5. The expectations on the level of companionship service provided by the LIC including specific activities associated with fellowship and protection;</li> <li>6. The date at which the agreement between the individual and the LIC begins. This date must be on or prior to the day that the LIC services began;</li> <li>7. The date at which the agreement between the individual and the LIC will end or need to be reviewed and renewed;</li> <li>8. The contingency plan/back up plan for the individual should the LIC be unable to perform fellowship and protection activities as described in this agreement;</li> <li>9. A provision outlining the process to end the agreement early, including when there is a concern regarding the individual's health and safety;</li> <li>10. An agreement establishing responsibility for the LIC's room and board costs in situations where the costs cannot be reimbursed by the FI;</li> <li>11. Signature and date of the individual;</li> <li>12. Signature and date of the LIC.</li> </ol> <p>The claim will be disallowed if one or more of the required elements are missing.</p> |
| <b>Regulatory References</b> | OPWDD ADM #2016-03, p. 4   |

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| <b>9.</b>                    | <b>Missing Agreement - Individual and Fiscal Intermediary (FI)</b>   |
| <b>OPWDD Audit Criteria</b>  | The claim will be disallowed if there is no signed agreement between the individual and the Fiscal Intermediary. |
| <b>Regulatory References</b> | OPWDD ADM #2016-03, p. 3   |

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| <b>10.</b>                  | <b>Missing Required Elements - Agreement Between Individual and Fiscal Intermediary (FI)</b>  |
| <b>OPWDD Audit Criteria</b> | <p>The agreement between the individual and the FI must contain these required elements:</p> <ol style="list-style-type: none"> <li>1. Affirmation that the FI is not a party to agreement between the individual and the LIC.</li> <li>2. Description of the individual's obligation to inform the FI if the agreement between the individual and the LIC is ended early.</li> </ol> |

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|                              | <ol style="list-style-type: none"> <li>3. Outline of the individual's responsibility to cover costs formerly reimbursed for the LIC's room and board if the agreement between the individual and the LIC is ended.</li> <li>4. The FI's responsibility to inform the individual of situations (such as hospitalization) which may cause the individual to lose eligibility for LIC reimbursement.</li> <li>5. The FI's policy and procedures for reimbursing room and board, including which party is responsible for making payments to the landlord, utility companies, etc. and what, if any, documentation is required to reimburse room and board.</li> <li>6. Signature and date of the individual.</li> <li>7. Signature and date of the FI.</li> </ol> <p>The claim will be disallowed if one or more of the required elements are missing.</p> |
| <b>Regulatory References</b> | OPWDD ADM #2016-03, p. 5  |
| <b>11.</b>                   | <b>Evidence of the Fiscal Intermediary's Payment of the Live-in Caregiver Room and Board</b>  |
| <b>OPWDD Audit Criteria</b>  | There must be evidence that payment was made for the LIC room and board supplement. The claim will be disallowed in the absence of such evidence.   |
| <b>Regulatory References</b> | OPWDD ADM #2016-03, pp. 3, 5  |
| <b>12.</b>                   | <b>Missing Required Elements – Evidence of Payment</b>  |
| <b>OPWDD Audit Criteria</b>  | <p>Evidence supporting the FI's payment of the LIC room and board supplement, must include these required elements:</p> <ol style="list-style-type: none"> <li>1. The individual's name and Medicaid number (CIN).</li> <li>2. Name of the FI agency reimbursing the LIC room and board supplement.</li> <li>3. The date that payment for the LIC room and board supplement was made by the FI.</li> <li>4. The amount paid.</li> </ol> <p>The claim will be disallowed if one or more of the required elements are missing.</p>  |
| <b>Regulatory References</b> | OPWDD ADM #2016-03, pp. 5-6   |
| <b>13.</b>                   | <b>Live-in Caregiver – Unit of Service</b>  |
| <b>OPWDD Audit Criteria</b>  | The unit of service for Live-in Caregiver is a month. To bill for a month of LIC, the individual must have been living at home for all or some portion of the month. The claim will be disallowed if the individual was not living at home for all or some portion of the month.  |
| <b>Regulatory References</b> | OPWDD ADM #2016-03, pp. 3, 6  |
| <b>14.</b>                   | <b>Billing for Services Not Authorized by Operating Certificate</b>   |
| <b>OPWDD Audit Criteria</b>  | The claim will be disallowed if the agency does not have an operating certificate identifying certification for Fiscal Intermediary services.   |
| <b>Regulatory References</b> | <p>New York State Mental Hygiene Law, Section 16.03(a)(4)</p> <p>14 NYCRR Sections 619.2(d)</p> <p>14 NYCRR Sections 619.3</p>  |

**APPENDIX**

Per ADM 2018-06R, As of July 1, 2018, individuals new to the OPWDD system (i.e., on or after July 1, 2018), will have Life plans developed and finalized in accordance with the CCO/HH Manual. Finalized Life Plans for newly enrolled CCO members (i.e., members enrolled after 10/1/2018) are due no later than 90 days after CCO enrollment or HCBS waiver enrollment, whichever comes first.

Per ADM 2018-06R, For Life Plans finalized on or before December 31, 2019 (i.e., the transition period), OPWDD is suspending service documentation requirements for documenting the Waiver service name, frequency, duration, and effective date in the Life Plan. Instead, only the name of the service provider and the service name must be identified in the Life Plan.

Service providers are responsible for reviewing the finalized, acknowledged and agreed to Life Plan. Providers may occasionally find inaccuracies in the finalized, acknowledged and agreed to Life Plan. Providers should demonstrate due diligence in working with the Care Manager, CCOs, OPWDD and/or others to correct the Life Plan as soon as possible. Service providers should document their timely efforts to correct any errors in the Life Plan. Examples of this documentation may include notes in the individual’s monthly summary, e-mails, phone calls, etc.

All Life Plans created or amended after the transition period must comply with all regulatory and policy standards.

Per ADM 2018-09R, As of March 1, 2020, At the time of transition to the Life Plan, Habilitation Plans must transition to Staff Action Plans. All individuals transitioning from an ISP to a Life Plan who receive habilitation services must have a staff Action Plan no later than March 1, 2020.

**COVID PUBLIC HEALTH EMERGENCY FLEXIBILITIES:**

The chart below contains flexibilities enacted during the COVID-19 Public Health Emergency. The chart below may **NOT** be comprehensive. Please see the OPWDD “Regulations & Guidance” landing page for a comprehensive listing (<https://opwdd.ny.gov/regulations-guidance>).

| Policy Area                                | Flexibility that is Ending   | Start Date of Flexibility | End Date of Flexibility | Where to find Post-PHE Policy & Resources   |
|--|--|---------------------------|-------------------------|---|
| <b>In-person Face-to-Face requirements</b> | Face-to-Face requirements, beyond those deemed medically necessary are waived. | April 17, 2020            | May 11, 2023            | <a href="#">Interim Care Planning and Related Activities Guidance Under COVID-19</a><br><br><a href="#">OPWDD Care Management Remote Technology Service Delivery Policy</a> |

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| <p><b>Level of Care Eligibility Determination (LCED) Annual Redetermination</b></p>  | <p>The annual LCED redeterminations are deferred for no more than six (6) months from the original due date</p>  | <p>April 17, 2020</p> | <p>May 11, 2023</p> | <p><a href="#">Interim Care Planning and Related Activities Guidance Under COVID-19</a></p> <p><a href="#">Public Health Emergency (PHE) Flexibilities Unwinding</a></p> <p><a href="#">ADM #2020-02 Revised Intermediate Care Facilities for Individuals with Intellectual Disabilities ICF/IDD Level of Eligibility Determination (LCED)</a></p> |
| <p><b>Life Plan Signatures</b></p>   | <p>Verbal or email approval of proposed changes and additions to the Life Plan are acceptable.</p>   | <p>April 17, 2020</p> | <p>May 11, 2023</p> | <p><a href="#">Interim Care Planning and Related Activities Guidance Under COVID-19</a></p> <p><a href="#">Public Health Emergency (PHE) Flexibilities Unwinding</a></p> <p><a href="#">ADM #2018-06R2 Transition to People First Care Coordination</a></p>  |
| <p><b>Timeframes for Finalization of Non-COVID 19 Related Life Plan Changes and corresponding changes to the Staff Action Plan</b></p> | <p>Timeframes for finalization of non-COVID-19 related Life Plan changes that were in-process prior to March 7, 2020, or which result from any Life Plan meetings or reviews held during the PHE, are waived. The corresponding changes to the Staff Action Plans can similarly be deferred.</p> | <p>April 17, 2020</p> | <p>May 11, 2023</p> | <p><a href="#">Public Health Emergency (PHE) Flexibilities Unwinding</a></p> <p><a href="#">CCO Provider Guidance and Manual</a></p> <p><a href="#">ADM #2018-09R Staff Action Plan Program and Billing Requirements</a></p> <p><a href="#">ADM #2018-06R2 Transition to People First Care Coordination</a></p>                                    |
| <p><b>Life Plan Annual Meetings</b></p>  | <ul style="list-style-type: none"> <li>Ability to hold the annual Life Plan meeting</li> </ul>   | <p>April 17, 2020</p> | <p>May 11, 2023</p> | <p><a href="#">Interim Care Planning and Related Activities Guidance Under COVID-</a></p>  |



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|  | <p>remotely versus face-to-face.</p> <ul style="list-style-type: none"> <li>The annual Life Plan review date may be extended if the Care Manager made reasonable efforts to hold the meeting on time, and the reason for the delay is well documented in the Care Management Record.</li> </ul> |                       |                          | <p><a href="#">19</a></p> <p><a href="#">Public Health Emergency (PHE) Flexibilities Unwinding</a></p> <p><a href="#">CCO Provider Guidance and Manual</a></p> <p><a href="#">ADM #2018-06R2 Transition to People First Care Coordination</a></p> <p><a href="#">OPWDD Care Management Remote Technology Service Delivery Policy</a></p>   |
| <p><b>Immediate Life Plan/Staff Action Plan Changes related to COVID- 19</b></p> | <p>The COVID-19 Life Plan/Staff Action Plan Addendum may be used to describe any needed updates per the addendum instructions.</p>  | <p>April 17, 2020</p> | <p>November 11, 2023</p> | <p><a href="#">Interim Care Planning and Related Activities Guidance Under COVID-19</a></p> <p><a href="#">Public Health Emergency (PHE) Flexibilities Unwinding</a></p> <p><a href="#">Care Planning Post PHE Service Options Memo August 2021</a></p> <p><a href="#">Willowbrook Class Member Request to Return to Day Service ADM #2021-02 Requirements for Com Hab-Res (CH-R) Services</a></p> <p><a href="#">ADM#2021-03 Ability to use Technology to Remotely Deliver HCBS   OPWDD</a></p> <p><a href="#">ADM #2018-09R Staff Action Plan Program and Billing Requirements</a></p> |

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| <p><b>Life Plans and Service Authorizations and Amendments</b></p>   | <p>Requirement for a Life Plan or in-process Life Plan to justify the need for service authorization or amendment are waived.</p>   | <p>April 17, 2020</p> | <p>November 11, 2023</p>   | <p><a href="#">Interim Care Planning and Related Activities Guidance Under COVID-19</a></p> <p><a href="#">Public Health Emergency (PHE) Flexibilities Unwinding</a></p> <p>In process Life Plan requirements: <a href="#">Life Plans and Service Authorization Memo 3.15.22</a></p> <p><a href="#">HCBS Waiver Application Requirements for Parental Deeming</a></p> |
| <p><b>Request for Service Authorization (RSAs) and Service Amendment Request Forms (SARFs) Signature</b></p> | <ul style="list-style-type: none"> <li>• Electronic signatures on the RSA and SARF are allowed.</li> <li>• Individual/family/representative signature is not required.</li> </ul> | <p>April 17, 2020</p> | <p>N/A Adopted as OPWDD Policy on March 15, 2022, requiring only one signature from a CCO staff.</p> | <p><a href="#">Interim Care Planning and Related Activities Guidance Under COVID-19</a></p> <p><a href="#">Public Health Emergency (PHE) Flexibilities Unwinding</a></p> <p><a href="#">Updated Request for Service Authorization Form, 3-15-2022 Service Amendment Request_Form.pdf (ny.gov)</a></p>   |