

## RESPITE SERVICES

**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."

<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) 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 Respite service was provided, the claim will be disallowed.
<b>Regulatory References</b>	18 NYCRR Section 504.3(a) 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) 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) OPWDD ADM #2005-02, p. 4 OPWDD ADM #2018-06R, pp. 1-2
<b>5.</b>	<b>Unauthorized Respite 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 Respite 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 Respite 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) OPWDD ADM #2005-02, p. 4 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 Respite is "an hour".</li> <li>• Specify the duration for Respite is "ongoing".</li> </ul>
<b>Regulatory References</b>	OPWDD ADM #2005-02, p. 4 OPWDD ADM #2018-06R, pp. 3-4,7

<b>7.</b>	<b>Missing Required Elements for Respite Service Note Documentation</b>	
<b>OPWDD Audit Criteria</b>		The claim will be disallowed in the absence of one or more of the required elements: <ol style="list-style-type: none"> <li>1. Individual's name, TABS ID and if applicable, the Medicaid ID (CIN);</li> <li>2. Identification of the category of waiver service provided which, in this case, is "respite";</li> <li>3. Name of the agency providing the respite service; (that is, your agency)</li> <li>4. The date the service was provided;</li> <li>5. The start time and stop time for each continuous period of respite service;</li> <li>6. Verification of provision by the respite staff person who delivered the service (this is accomplished with a staff signature and title); and</li> <li>7. The date the service was documented (that is, the date must be "contemporaneous" with service provision).</li> </ol>
<b>Regulatory References</b>		18 NYCRR 504.3 OPWDD ADM #2005-02, p. 3
<b>8.</b>	<b>Units of Service Billed Exceed Units of Service Documented</b>	
<b>OPWDD Audit Criteria</b>		The claim will be disallowed if the number of 15-minute increments billed exceeded the number of 15-minute increments documented for respite services. <ul style="list-style-type: none"> <li>• The unit of service shall be one hour equaling 60 minutes. The provider may claim reimbursement in 15-minute increments, as the service is documented.</li> </ul>
<b>Regulatory References</b>		14 NYCRR sections 635-10.4 (g) and 635-10.5 (h) OPWDD ADM #2005-02, pp. 2-3
<b>9.</b>	<b>Billing for Non-Reimbursable Service Time</b>	
<b>OPWDD Audit Criteria</b>		If non-reimbursable activities were included in the Respite billable service time, a portion of the claim will be disallowed. <ul style="list-style-type: none"> <li>• Individual travel time to receive respite at the start of the respite service <b>does not</b> count as billable time nor does travel home from a respite program.</li> <li>• Where respite services are provided at various community sites, the time an individual spends traveling with respite staff to these sites may be counted as billable respite time.</li> <li>• Time the individual spends at his/her day program(s), <b>does not</b> count as billable respite time.</li> <li>• <b>Billable respite service time requires in-person or "face-to-face" service provision by respite staff.</b></li> </ul>
<b>Regulatory References</b>		14 NYCRR Sections 635-10.5 (h)(5) and (8) OPWDD ADM #2005-02, pp. 2-3
<b>10.</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 Respite services.
<b>Regulatory References</b>		New York State Mental Hygiene Law, Section 16.03(a)(4) 14 NYCRR Sections 619.2(d) 14 NYCRR Sections 619.3

**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>  <a href="#">OPWDD Care Management Remote Technology Service Delivery Policy</a>

<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>

	<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>

<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</a></p> <p><a href="#">Service Amendment Request Form.pdf (ny.gov)</a></p>