



May 20, 2020

On March 7, 2020, Governor Andrew M. Cuomo declared a state of emergency through Executive Order 202 to respond to the COVID-19 public health emergency. In response to this emergency, the New York State Office for People With Developmental Disabilities (OPWDD) has developed a Day Service Retainer Program. The Day Service Retainer Program makes retainer payments available to day service provider agencies (hereafter "agency" or "agencies") to maintain staff in circumstances where facility closures, or other actions, are necessary due to COVID-19 containment efforts. The day services eligible for retainer day payments are community habilitation, day habilitation, and prevocational services certified by OPWDD. This guidance only applies to those programs. Each agency wishing to participate in the Day Service Retainer Program must acknowledge and attest that, effective April 16, 2020, it will adhere to the following terms prior to receiving any retainer payments and will participate in the Day Service Retainer Program until its closure by OPWDD:

- The agency's day service utilization, since the date of COVID-19 related facility closure or program reduction, is below eighty percent (80%) of the average monthly day service utilization rate, for the period July 2019 through December 2019. The day service utilization rate and the average monthly utilization will be calculated by OPWDD.
- Provider made best efforts to retain all day service program staff in the 200 and 300 CFR categories, at the levels in effect prior to the March 7, 2020 declaration of emergency and did/will not layoff or furlough staff in those CFR categories. Providers shall use retained day service program staff to provide essential services to individuals previously served within those day programs, and/or to provide staffing assistance to other OPWDD residential providers or emergency "step-down" intensive respite facilities.
- The agency will continue to provide support to the individuals it serves and shall continue to bill for any services rendered, in addition to the agency's Day Service Retainer Program billing, to the greatest extent possible. The agency remains subject to OPWDD and Medicaid billing laws, regulations, and policies, as may be adjusted by relevant guidance updates applicable during the COVID-19 emergency.
- The agency will cooperate with OPWDD, and other OPWDD providers, to address staffing shortages. The agency will enter into a signed cooperative staffing agreement with at least one (1) other provider, demonstrating that the agency will use or provide staff pursuant to that agreement, where needed and available. The agreement must be submitted to OPWDD by June 15, 2020.
- The agency must submit to OPWDD, on a monthly basis, a report of all day service revenues it receives, along with any other revenues (e.g., staff leasing revenue, Recovery Grant revenue, and other COVID-19 related emergency grant or funding revenue). Additionally, the agency must agree that state payments for the Day Service Retainer Program are subject to a regular reconciliation process, and/or state audits, so the State can comply with its obligations to protect the integrity of the Day Service Retainer

Program. If, during any month of participation in the Day Service Retainer Program, the agency's day services revenue exceeds the average monthly day services revenue for the period of July 2019 through December 2019, adjusted as appropriate to reflect the January 1, 2020 and April 1, 2020 statutory compensation increases (hereafter "average monthly revenue"), OPWDD and/or the New York State Department of Health (DOH) will conduct an immediate recoupment or take other action necessary to retrieve 100% of the payments the provider received in excess of the average monthly revenue. At the end of the emergency, or the conclusion of participation in the Day Service Retainer Program, all payments to an agency shall be subject to a final reconciliation. If an agency fails to submit required and requested reporting during the Day Service Retainer Program, OPWDD and/or DOH may take appropriate enforcement actions, including, but not limited to, immediate recapture of any retainer funds paid.

\_\_\_\_ The agency agrees to the terms above and will participate in the OPWDD Day Service Retainer Program. The agency understands that OPWDD reserves the right to request additional information, and your continued participation in the Day Service Retainer Program is subject to ongoing compliance with the above criteria.

\_\_\_\_ The agency will not participate in the Day Service Retainer Program.

Agency Name: \_\_\_\_\_

CEO or Executive Director Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date signed: \_\_\_\_\_

Agency Corporation ID: \_\_\_\_\_

Medicaid Provider ID (Day Services): \_\_\_\_\_