

March 21 OPWDD and Provider Association Meeting Summary

During today's call, OPWDD provided updates on the status of the Appendix K and 1135 Waivers. OPWDD is awaiting approval from the Centers for Medicare and Medicaid (CMS). Pending CMS approval, OPWDD has committed to implementing several provisions aimed at provider sustainability and service delivery and operational flexibility. The goal is to provide financial support for providers and to enable them to retain day program staff on payroll who can be redeployed to assist in the residences.

OPWDD is conducting webinars on the following guidance on Monday. Registration information can be found [here](#).

Provider Sustainability and Service Delivery

OPWDD discussed interim guidance for day service providers. Two billing constructs have been developed. The first involves the use of retainer days and the second involves an enhanced Residential Habilitation rate.

- A time-limited approval for "retainer day payments" (paying programs when services can't be provided due to closure) will be effective for the period of March 18 through March 31. OPWDD will work with CMS to get an extension of the approval beyond the 14 days. This billing construct applies to Group Day Habilitation, Supplemental Group Day Habilitation, Site-Based Prevocational Services, Community Prevocational Services and Day Treatment. This does not apply to any other service. Providers with suspended day services will be eligible to submit claims to Medicaid with existing identifiers and paid their service rate for those days that a person would typically receive the service (i.e., the provider can only bill for active, enrolled individuals based on the individual's typical program schedule). As an example, if someone was attending the day program 5 days per week, the provider would bill for 5 days. If someone was attending for 3 days, they would bill for 3 days. OPWDD advised that Day Habilitation providers with no residences should enter into arrangement with IRA programs for staff to work in an IRA unless day habilitation staff can be redeployed elsewhere. A new billing code is being established for these "retainer day payments."
- To address the individuals who reside in a provider's Supervised Individualized Residential Alternative (IRA) and attend a day program operated by a different provider, OPWDD is working with the New York State Department of Health (DOH) on an enhanced Supervised IRA provider rate. (i.e., The enhanced rate will only be used for IRA residents who were NOT receiving day habilitation services from their IRA provider.) The construct of the rate increase is based on the time that the individual would spend away from the home at the external provider's Day Habilitation program. OPWDD is still determining the start date of the retroactive period of the IRA rate enhancement. However, OPWDD shared that it will continue through the duration of the crisis. We will seek clarification on upcoming calls with OPWDD.
- Individuals residing in the provider's IRA and typically receiving day services from that same provider would be covered using the "retainer day" billing construct.
- OPWDD is discussing approaches for the Supportive IRAs, as these are not a 24/7 staffing model, so the enhanced rate construct may not work.

- OPWDD is currently developing similar guidance on billing for day services provided to individuals within Intermediate Care Facilities (ICFs).
- OPWDD is also requesting CMS approval to adjust rates as necessary based upon utilization, which may provide a vehicle to address ongoing DH billing issue if an extension of retainer days beyond the initial 14 is not approved.
- OPWDD has requested that all recoupments be suspended, including the retroactive overpayments for the 7/1/19 rebased rates. We expect an update on this on tomorrow's 4:00 PM call.
- Providers of Self-Directed Community Habilitation for individuals under quarantine will also be able to bill for retainer days. OPWDD is still exploring an approach for cases in which the self-hired staff is under quarantine.
- Providers will have more flexibility in accounting for non-face-to-face time, such as travel start time. For example, if a staff person leaves their home, goes to the grocery store to purchase and drop off groceries to the family of an individual served, the provider could bill for the entire round trip. This flexibility applies to day services, community habilitation and respite. Expect to document what you do if delivering a service, including start and stop time, even though these activities may not necessarily appear in the person's Staff Action Plan.
- The Provider Associations also have submitted a proposal for far greater billing flexibility for CH and Respite, which we will continue to push for approval.

Additional Operational Flexibility

OPWDD has notified CMS of their intentions to waive several existing operational requirements. These include, but are not limited to;

- Service location: Services will be able to be delivered at a variety of locations during the COVID-19 public health emergency (e.g., hotels, out-of-state).
- Face-to-face service requirements are being waived for Day Habilitation, Community Habilitation, Prevocational Services, Supported Employment, Pathway to Employment, Intensive Behavioral Services and Support Brokerage. This waiver aims to increase the use of telehealth modalities. No prior approval will be required, nor will changes in the Life Plan or Staff Action Plan be required at this time. Providers will be expected to use good clinical judgement in determining if the service can be delivered remotely. This waiver does not include Respite services, as the purpose of the service is relief for caregivers and remote service delivery is not authorized.
- Direct Support Professionals (DSPs) will be able to deliver Home and Community Based Services (HCBS) even if not current in their required trainings. This will also improve the provider's ability to onboard new DSPs during the period of the COVID-19 public health crisis.
- Limited exemptions from certain criminal background checks (CBCs) will be included. For example, an employee may start working while their CBC is pending. There may be an expectation that the provisional employee will be supervised during the period they are working with a pending CBC.

- OPWDD is still working on addressing background checks for employees with a completed CBC that want to work at another provider agency.
- OPWDD is also working on the reopening of companies that are conducting the CBCs.
- Required staffing ratios may be modified.
- The current Life Plan and Staff Action Plan of an individual will remain in effect through the duration of the COVID-19 public health emergency and there is no need for immediate changes.
 - Addendums can be completed after the public health emergency subsides.
 - As new goals and supports are implemented in relation to addressing the COVID-19 crisis, habilitation providers are not expected to update the current SAP.
- The Division of Quality Improvement's Bureau of Program Certification (BPC) will not be conducting Site, Person-Centered or Agency Reviews at this time.
- The deadline to submit the Consolidated Financial Report has been extended

OPWDD has not yet discussed their proposal with the Office of the Medicaid Inspector General (OMIG) but intends to do so. OPWDD stressed that the Appendix K Waiver is intended to formally put this in front of the feds. Any lookback on claims during that period must be reflective of the rules in effect as established by K Waiver during that period.

OPWDD also briefly addressed their continued work on personal protective equipment (PPE) supply challenges, questions received regarding individuals going home for visits with families from the IRAs, and the New York State “Pause Initiative” enacted by the Governor on Friday. Additional guidance will be forthcoming.

We know that these changes do not resolve all the financial and operating issues caused by this public health crisis, but they represent a huge step forward.