

**Amendment of 14 NYCRR Subparts 635-10.5
Service Duration Regulations
EMERGENCY/PROPOSED REGULATIONS**

Effective Date: Upon Filing

- Addition of a new clause (c) to Subpart 635-10.5(c)(6)(i) to read as follows:

(c) During the period beginning on July 22, 2020 and ending on October 14, 2020, due to the COVID-19 Public Health Emergency, group day habilitation and supplemental group day habilitation services may be delivered, and payment for such services made, for durations set forth in guidance issued by the OPWDD Commissioner.

- Addition of a new clause (e) to Subpart 635-10.5(c)(6)(ii) to read as follows:

(e) [During the period b] Beginning on July 22, 2020 and ending [on October 14, 2020, due to] upon termination of the COVID-19 Public Health Emergency, as determined by Executive Order, group day habilitation and supplemental group day habilitation services may be delivered, and payment for such services made, during mealtimes.

- Addition of a new paragraph (18) to Subpart 635-10.5(c) to read as follows:

(18) During the period beginning on July 22, 2020 and ending on October 14, 2020, due to the COVID-19 Public Health Emergency, providers billing for services rendered using the flexible definitions of the program day duration for day habilitation authorized by subpart 635-10.5(c)(6)(i)(c) are subject to all the following conditions:

(i) The total monthly number of day habilitation units claimed during the COVID-19 Public Health Emergency do not exceed the average monthly units for each service claimed from the period of July 1, 2019 through December 31, 2019;

- (ii) The combined average monthly revenue for day habilitation, site based prevocational services, community-based prevocational services, and community habilitation during the COVID-19 Public Health Emergency claimed by the provider may not exceed the provider's combined average monthly revenue for those services for the period of July 1, 2019 through December 31, 2019;
 - (iii) Any claims in excess of the monthly averages from this period will be subject to immediate recoupment if the agency has submitted any claims during the month that do not meet the full program day duration requirements; and
 - (iv) Providers will continue to work in partnership with OPWDD to make more available non-center-based and telehealth modalities in an effort to increase community involvement of waiver enrollees and to protect the delivery of services during future emergencies.
- Addition of a new clause (d) to Subpart 635-10.5(ag)(4)(iii) to read as follows:
 - (d) [During the period b] Beginning on July 22, 2020 and ending [on October 14, 2020, due to] upon termination of the COVID-19 Public Health Emergency, as determined by Executive Order, site-based prevocational services may be delivered, and payment for such services made, during mealtimes.
- Addition of a new subparagraph (iv) to Subpart 635-10.5(ag)(4) to read as follows:
 - (iv) During the period beginning on July 22, 2020 and ending on October 14, 2020, due to the COVID-19 Public Health Emergency, site-based prevocational services may be delivered, and payment for such services made, for durations set forth in guidance issued by the OPWDD Commissioner.
- Addition of a new paragraph (7) to Subpart 635-10.5(ag) to read as follows:
 - (7) During the period beginning on July 22, 2020 and ending on October 14, 2020, due to the COVID-19 Public Health Emergency, providers billing for
Note: New material is underlined and deleted material is in [brackets].

services rendered using the flexible definitions of the program day duration for site-based prevocational services authorized by subpart 635-10.5(ag)(4)(iv) are subject to all the following conditions:

- (i) The total monthly number of site-based prevocational services units claimed during the COVID-19 Public Health Emergency do not exceed the average monthly units for each service claimed from the period of July 1, 2019 through December 31, 2019;
- (ii) The combined average monthly revenue for day habilitation, site based prevocational services, community-based prevocational services, and community habilitation during the COVID-19 Public Health Emergency claimed by the provider may not exceed the provider's combined average monthly revenue for those services for the period of July 1, 2019 through December 31, 2019;
- (iii) Any claims in excess of the monthly averages from this period will be subject to immediate recoupment if the agency has submitted any claims during the month that do not meet the full program day duration requirements; and
- (iv) Providers will continue to work in partnership with OPWDD to make more available non-center-based and telehealth modalities in an effort to increase community involvement of waiver enrollees and to protect the delivery of services during future emergencies.

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