RESPITE SERVICES

Effective January 1, 2020

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.

Note:
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.

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1.	Missing Record
OPWDD Audit Criteria	If no record is available for review, claims for all dates of service associated with the individual will be disallowed.
Regulatory References	18 NYCRR Section 504.3(a) 18 NYCRR Section 540.7(a)(8)

2.	No Documentation of Service
OPWDD Audit Criteria	If the record does not document that a Respite service was provided, the claim will be disallowed.
Regulatory References	18 NYCRR Section 504.3(a) 18 NYCRR Section 517.3(b)

3.	No Determination of a Developmental Disability
OPWDD Audit Criteria	The claim for services provided in the absence of a clinical assessment substantiating a specific determination of developmental disability will be disallowed.
Regulatory References	14 NYCRR Section 635-10.3(a) and (b)(1) 14 NYCRR Section 671.4(b)(1)(i)

4.	Missing or Inadequate Life Plan (LP)
OPWDD Audit Criteria	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.
Regulatory References	14 NYCRR 635-10.2(a) OPWDD ADM #2005-02, p. 4 OPWDD ADM #2018-06R, pp. 1-2

5.	Unauthorized Respite Services Provider
OPWDD Audit Criteria	The claim will be disallowed if the Life Plan (LP) does not: • Identify Respite as the service to be provided. • List the provider as the authorized provider for a specific service. • Have an effective date for Respite services that is on or before the first day of service for which the agency bills for services.
Regulatory References	14 NYCRR Section 635-10.2(a) OPWDD ADM #2005-02, p. 4 OPWDD ADM #2018-06R, pp. 3-4,7

6.	Identification of Frequency and Duration of Service
OPWDD Audit Criteria	The claim will be disallowed if the Life Plan (LP) does not: • Specify that the frequency for Respite is "an hour". • Specify the duration for Respite is "ongoing".
Regulatory References	OPWDD ADM #2005-02, p. 4 OPWDD ADM #2018-06R, pp. 3-4,7

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7.	Missing Required Elements for Respite Service Note Documentation
OPWDD Audit Criteria	The claim will be disallowed in the absence of one or more of the required elements: 1. Individual's name, TABS ID and if applicable, the Medicaid ID (CIN); 2. Identification of the category of waiver service provided which, in this case, is "respite"; 3. Name of the agency providing the respite service; (that is, your agency) 4. The date the service was provided; 5. The start time and stop time for each continuous period of respite service; 6. Verification of provision by the respite staff person who delivered the service (this is accomplished with a staff signature and title); and 7. The date the service was documented (that is, the date must be "contemporaneous" with service provision).
Regulatory References	18 NYCRR 504.3 OPWDD ADM #2005-02, p. 3

8.	Units of Service Billed Exceed Units of Service Documented
OPWDD Audit Criteria	The claim will be disallowed if non-reimbursable time was counted toward the respite billable service time. • Individual travel time to receive respite at the start of the respite service **does not** count as billable time nor does travel home from a respite program. • 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. • Time the individual spends at his/her day program(s), **does not** count as billable respite time. • **Billable respite service time requires in-person or "face-to-face" service provision by respite staff**. The claim will be disallowed if the number of 15-minute increments billed exceeded the number of 15-minute increments documented for respite services. • 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.
Regulatory References	14 NYCRR sections 635-10.4 (g) and 635-10.5 (h) OPWDD ADM #2005-02, pp. 2-3

9.	Billing for Services Not Authorized by Operating Certificate
OPWDD Audit Criteria	The claim will be disallowed if the agency does not have an operating certificate identifying certification for Respite services.
Regulatory References	New York State Mental Hygiene Law, Section 16.03(a)(4) 14 NYCRR Sections 619.2(d) 14 NYCRR Sections 619.3

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