

RULE REVIEW

Office for People with Developmental Disabilities

The NYS Office for People With Developmental Disabilities (OPWDD) published in the January 5, 2011 issue of the State Register a Public Notice of the Five-Year Rule in satisfaction of the requirements of the State Administrative Procedure Act (SAPA) section 207. The purpose of this Notice was to identify and discuss OPWDD rule makings finalized during calendar years 2001 and 2006 which are subject to the cited SAPA section 207 five-year review of rules.

During calendar year 2001, OPWDD adopted four rules. These four rule makings finalized during 2001 were identified and described as follows at the time the respective notices were first published in the State Register:

01-1. MRD-03-01-00004 (State Register of 1/17/01). Amendments to Title 14 NYCRR subpart 635-10.5 (home and community based waiver services [HCBS]) and sections 671.7 (HCBS waiver community residential habilitation services), 679.6 (clinic treatment facilities), 680.12 (specialty hospitals), 681.11 (intermediate care facilities for persons with developmental disabilities), and 690.7 (day treatment services for persons with developmental disabilities). All of these amendments, with the exception of amendments to 679.6, establish trend factors to be applied (beginning January 1, 2001) within the context of the various rate/fee setting methodologies. Although specific trend factors are calculated annually, they are cumulative. These amendments, with the exception of 671.7, need to be maintained, without modification, to define how OPWDD establishes current rates/fees of reimbursement for the affected facilities or services. The amendment to 671.7 was revised due to changes in fee setting methodology in 2010. The amendment to 679.6 pertained to requirements related to governing body resolution which were deleted in 2009 as a result of revisions to this section.

01-2. MRD-07-00-00016 (State Register of 2/16/00). Amendments to Title 14 NYCRR subdivisions 635-10.4(d) and 635-10.5(d): Service delivery and reimbursement standards applicable to the HCBS waiver service known as supported employment. The sections, as amended, continue to reflect delivery and reimbursement of supported employment services provided under the auspices of OPWDD, however, 635-10.5(d) has since been further revised.

01-3. MRD-24-01-00015 (State Register of 6/13/01). Amendments to Title 14 NYCRR subpart 635.10 and subdivision 635-10.5(d): Revision of reimbursement standards applicable to HCBS waiver services known as supported employment services. The amendments revise the reimbursement methodology for supported employment services to reflect current reimbursement practice. They are essentially superseded by the rule making summarized in number 01-4 below which contains substantially the same reimbursement provisions but with a different effective date.

01-4. MRD-42-01-00003 (State Register of 10/17/01). Amendments to 14 NYCRR section 635.10 and subdivision 635-10.5(d): Revision of reimbursement standards applicable to HCBS waiver services known as supported employment services. The amendments revise the reimbursement methodology for supported employment services to reflect current reimbursement practice. As stated above,

this rule making readopts the reimbursement provisions (with some minor revisions) which were previously adopted by the rule summarized in number 01-3 above. The different effective date was made necessary by the need to conduct provider training which was delayed due to the tragic events of September 11, 2001. This rule is not duplicative of number 01-3 above, and the reimbursement provisions remain current and need to be maintained without modification.

During calendar year 2006, OPWDD finalized nine rules. Four of these rule makings were proposed and adopted as consensus rule makings. MRD-47-05-00013 (State Register of 11/23/05) amended regulations to delete obsolete cross-references; MRD-49-05-00018 (State Register of 12/07/05) amended regulations on abuse reporting and updated the proper name for the Commission on Quality of Care and Advocacy for Persons with Disabilities; MRD-17-06-00005 (State Register of 4/26/06) amended regulations to revise an incorporation by reference to reflect the 2004 edition of the Estimated Useful Lives of Depreciable Hospital Assets; MRD-39-06-00025 (State Register of 9/27/06) amended personal allowance regulations to increase the amount of cash allowed to be maintained per person at his/her residence. Consensus rule makings are exempted from the review requirements by subdivision (5) of SAPA section 207. The remaining five rule makings finalized during 2006 were identified and described as follows at the time the respective notices were published in the State Register:

06-1. MRD-03-06-00013 (State Register of 1/18/06). Amendments to Title 14 NYCRR subpart 635-10.5, and sections 671.7, 680.12, 681.14 and 690.7: Rate/fee setting in voluntary agency operated individualized residential alternative (IRA) facilities and HCBS waiver services; HCBS waiver community residential habilitation services; specialty hospitals; intermediate care facilities for persons with developmental disabilities; and day treatment facilities serving persons with developmental disabilities. The amendments revise the methodologies used to calculate rates/fees of the referenced facilities or programs and establish trend factors to be applied within the context of the referenced reimbursement methodologies, effective January 1, 2006. Although specific trend factors are calculated annually, they are cumulative. These amendments, with the exception of 671.7, need to be maintained, without modification, to define how OPWDD establishes current rates/fees of reimbursement for the affected facilities or services. The amendment to 671.7 was revised due to changes in fee setting methodology in 2010.

06-2. MRD-07-06-00007 (State Register of 2/15/06) Amendments to Title 14 NYCRR subpart 635-10.5 and section 681.14: Rate/fee setting in voluntary agency operated IRA facilities and HCBS waiver services and intermediate care facilities for persons with developmental disabilities. The amendments revise the methodologies used to calculate rates/fees and establish supplemental trend factors applicable to the referenced facilities and services, effective February 1, 2006, to cover prior period costs not recognized in the previous year. Although specific trend factors are calculated annually, they are cumulative. They need to be maintained, without modification, to define how OPWDD establishes current rates/fees of reimbursement for the affected facilities or services.

06-3. MRD-28-06-00019 (State Register of 7/12/06). Amendments to Title 14 NYCRR sections 671.7, 679.6 and 690.7: Fee setting in HCBS waiver community residential habilitation services, clinic treatment facilities, and day treatment facilities for persons with developmental disabilities. The amendments establish cost of living adjustments (COLA) and trend factors applicable to these facilities and services, effective October 1, 2006. Although specific trend factors are calculated annually, they are cumulative. COLAs are also important elements of the reimbursement methodologies. The amendment to 690.7 needs to be maintained, without modification, to define how OPWDD establishes current rates/fees of reimbursement for the affected facilities or services. The amendment to 671.7 was revised in 2010 due to changes in fee setting methodology. The amendment to 679.6 was deleted as a result of revisions to this section in 2009.

06-4. MRD-42-06-00008 (State Register of 10/18/06). Amendment to Title 14 NYCRR subpart 635-10.5 and sections 671.7 and 679.6: Revision of the reimbursement methodologies for various facilities and services provided under the auspices of OPWDD to include a health care enhancement (HCE II) funding initiative. The regulations implement the second phase of a funding initiative that enables agencies, which operate facilities and provide services under the auspices of OPWDD, to address the health care costs of their employees. OPWDD has been consistently building on this funding initiative so that the regulations remain an indispensable element of the reimbursement methodologies and OPWDD intends to maintain these amendments, with the exception of the amendment to 679.6, without modification. The amendment to 679.6 was deleted as a result of revisions to this section in 2009.

06-5. MRD-42-06-00009 (State Register of 10/18/06). Amendment to Title 14 NYCRR section 635-10.5(b): Revision of the reimbursement methodologies for residential habilitation services provided under the auspices of OPWDD in supervised and supportive IRA facilities. This amendment simplifies price setting and billing procedures for IRAs. The changes to the methodologies remain current and they need to be maintained, without modification, to define how OPWDD establishes current rates/fees of reimbursement for the affected facilities or services.

The mandated five year reviews discussed above concern amendments which revise OPWDD's rate/fee setting methodologies. The legal basis for the adoption of these rules is in sections 13.07, 13.09 and 43.02 of the Mental Hygiene Law. In particular, section 43.02 of the Mental Hygiene Law sets forth OPWDD's responsibility for setting Medicaid rates for services in facilities licensed by OPWDD.

The public was invited to review and comment on OPWDD's proposed disposition regarding these 2001 and 2006 rule makings beginning January 5, 2011. OPWDD received no comment on this Notice of Five-Year Rule Review, so that it will abide by its intended disposition with regard to these regulations.

Any written comments or inquiries for further information may be directed to: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Counsel, Office for People With Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830, e-mail: barbara.brundage@opwdd.ny.gov.