

Direct Clinical Services - Supervised Individual Residential Alternatives (IRAs), Supervised Community Residences (CRs) and Day Habilitation

Effective date: 3/15/17

Pursuant to the authority vested in the Commissioner of Health by section 363-a of the Social Services Law and section 201(1)(v) of the Public Health Law, section 86-10.5 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective July 1, 2016, to read as follows:

The title of Section 86-10.5 is amended to read as follows:

86-10.5 Trend Factor, [and] Increases to Compensation and Other Adjustments

Section 86-10.5 is amended by adding a new subdivision (c) to read as follows:

(c) Other Adjustments. Effective July 1, 2016, the reimbursement for Supervised Residential Habilitation and Day Habilitation will exclude costs for direct clinical services. Direct clinical services are defined as face-to-face clinical interventions delivered by clinical staff directly to program participants. Direct clinical services include occupational therapy (OT), physical therapy (PT), speech language pathology (SLP), psychology and social work, where OT, PT and SLP direct services are provided by staff who are licensed clinicians, and where psychology and social work services are not related to the provision or oversight of habilitation services and are delivered or supervised by licensed clinical staff.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law (PHL) section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objective:

This amendment furthers the legislative objectives embodied in section 363-a of the Social Services Law, and section 201(1)(v) of the Public Health Law, and in Part I of chapter 60 of the laws of 2014. The amendment excludes the reimbursement of direct clinical services for Supervised Individualized Residential Alternatives (IRAs), Supervised Community Residences (CRs) and Day Habilitation.

Needs and Benefits:

The amendment complies with changes required by the federal Centers for Medicare and Medicaid Services (CMS) subsequent to the adoption of the regulation. Per CMS, effective July 1, 2016, the reimbursement for Supervised Residential Habilitation and Day Habilitation must exclude costs for direct clinical services. Direct clinical services are defined as face-to-face clinical interventions delivered by clinical staff directly to program participants. Direct clinical services include Occupational Therapy (OT), Physical Therapy (PT), Speech Language Pathology (SLP), Psychology and Social Work, where OT, PT and SLP Direct Services are provided by staff who are licensed clinicians, and where Psychology and Social Work services

are not related to the provision or oversight of Habilitation services and are delivered or Supervised by Licensed clinical staff.

Costs:

There are no additional costs associated with this amendment. Providers will have the ability to bill for direct clinical services utilizing a separate fee methodology.

Costs to the Agency and to the State and its Local Governments:

The proposed regulations will result in no additional costs to the State.

The amendment does not apply to the State as a provider of services.

There will be no savings or costs to local governments as a result of this amendment because pursuant to Social Services Law sections 365 and 368-a, either local governments incur no costs for these services or the State reimburses local governments for their share of the cost of Medicaid funded programs and services.

Costs to Private Regulated Parties:

This amendment is not expected to affect costs to private regulated parties. Providers will have the ability to bill for direct clinical services utilizing a separate fee methodology.

Local Government Mandates:

There are no new requirements imposed by the rule on any county, city, town, village, school, fire or other special district.

Paperwork:

The amendment will not increase paperwork to be completed by providers.

Duplication:

The amendment does not duplicate any existing State or federal requirements that are applicable to services for persons with developmental disabilities.

Alternatives:

Since the change is mandated by Federal law, OPWDD and DOH did not consider any alternatives.

Federal Standards:

The amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The amendment to the regulation is effective July 1, 2016. DOH expects to permanently adopt the regulations at the end of the public comments period. DOH expects to revise the rates on July 1, 2016.

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**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS**

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

**STATEMENT IN LIEU OF
RURAL AREA FLEXIBILITY ANALYSIS**

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

JOB IMPACT STATEMENT

A job impact statement is not being submitted for this amendment because this amendment will not have a substantial adverse impact on jobs or employment opportunities.

The amendment excludes direct clinical services from the reimbursement for Supervised Individualized Residential Alternatives, Supervised Community Residences and Day Habilitation programs. The change will not impact the ability to provide these services.

The amendment, therefore, is expected to have no significant adverse impact on jobs and employment opportunities with providers.