Corporate Compliance Training

Risk Areas and Organizational Experience

Erroneous Billings

Billing errors resulting from oversight, carelessness or lack of knowledge will be addressed depending on the circumstances of the errors. Corrective action may consist of remedial training, internal reviews, or any type of discipline ranging from counseling, verbal warnings, written warnings, removal from a position or termination of employment. All decisions will be made by management in consultation with the Corporate Compliance Officer in order to maintain consistency. In all cases, all erroneous billings will be refunded and voided or adjusted.

Incorrect Billings Due to Fraudulent Actions

A decision as to the appropriate discipline for fraudulent actions will be made after consultation between the Corporate Compliance Officer, the Executive Director, the Program Director and the Program Manager/Supervisor. Depending upon the egregiousness of a first offense, the discipline may be either a two week suspension without pay, or termination of employment. All second offenses will result in termination of employment. Some examples of fraudulent actions include: certifying performance of actions which were not done; certifying actions done by someone other than the certifier; falsifying dates of certification of services; falsifying dates of monthly notes prepared; duplicate billings for the same services; unqualified personnel performing services; persons performing services who are on the 'excluded provider' lists; up coding - billing for a higher payment than the service warrants; and for billing for MSC, billing at the transition level for longer than warranted.

Medical Necessity and Quality of Care

All individuals receiving services must have a medical necessity. The QA Department, as part of the agency's self-survey process, ensures that all requirements for entitlement to services have been met and continue to be met. They also assess the quality of services provided to ensure that they meet all Federal, State and agency requirements.

All individuals hired by the agency will be given the necessary training in order to properly perform his/her duties. He/she will be given follow-up training periodically both as refresher training and to train them on new policies and procedures.

Other Risk Areas

Controls must be established to ensure that agency funds are not spent on items or services unrelated to agency business. All agency vehicles will have mileage logs, which are regularly reviewed to ensure that they are not used for personal business. The petty cash is audited by the QA department to make sure it is used for the benefit of the service participants and is used for

permissible purposes. Staff in Quality Assurance reviews all requests for reimbursement of travel expenses to make sure they were used for agency business.

Direct Care Staff can report and share any questions /concerns with their supervisor. During business hours, they can reach them @ 718- 252-3365 x 100 and ask to be connected to their supervisor. After hours, staff can contact Michael Horowitz @ 917-353-4635. If they cannot reach their supervisors or if they need additional guidance or information, they can contact Ari Weichselbaum-Clinical Director @ 718-252-3365 x 105.

Policies and Procedures

Written Policies and Procedures

Special Care for Families and Children's Services, Inc. ("Special Care" or "SCFCS") is a professional social service organization providing Community Habilitation, Respite, Day Habilitation, Self-Direction (Brokerage, FI) FSS and Environmental Modifications. We are committed to the philosophy that every person, regardless of his/her personal handicaps or developmental level, must be treated with the utmost dignity and respect for privacy accorded to all. It is our belief that every person with developmental disabilities should be afforded the opportunity to maximize his/her functional, social and intellectual potential through appropriate individualized programming, by living in as normal a home environment as possible, and by living in an atmosphere of acceptance, warmth, understanding, and security which upholds the rights of each individual and provides developmental opportunities on both individual and group bases.

Special Care is committed to complying with all the laws and regulations that govern the federal and state programs that it administers. Policies and procedures for the agency, including this Compliance Plan and the Standard of Conduct, are developed to provide guidance to affected individuals on dealing with potential compliance issues in the course of their day-to-day responsibilities. This Corporate Compliance Policy shall be applicable to billing, payments, medical necessity and quality of care, governance, mandatory reporting, credential and license verification, and any other risk areas that are identified by Special Care.

STANDARD OF CONDUCT

This Standard of Conduct shall serve as a foundational document which describes our fundamental principles and values, and commitment to conduct business in an ethical manner.

Definitions:

"Fraud" means any type of intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him/herself, Special Care for Families, or any other person.

"Abuse" means practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to the State or Federal government or Special Care for Families.

"Affected Individuals" means employees, contracted employees (an outside contractor providing billing/claims services or management/responsibilities of medical care, services, or supplies) home family care providers, and governing board members.

It is expected that all affected individuals will act in accordance with the Standard of Conduct:

Affected individuals shall maintain the highest level of honesty and integrity in all his/her actions performed on behalf of the agency. Affected individuals must refuse to participate in unethical or illegal conduct, and they must report any unethical or illegal conduct to the compliance office. Affected individuals will at all times act in a way to meet the requirements. The following list (which is not all inclusive) lists the expected behavior:

1. **Maintaining the confidentiality of all agency records. These include individual records of the service participants, SCFCS reports, financial records and personnel records.**

2. **Avoid unauthorized use of SCFCS assets, including property, supplies and equipment.**

3. **Maintain the public image of SCFCS.**

   All affected individuals should conduct themselves in a manner which reflects positively on the agency's image both internally and externally.

Everyone should deal fairly and appropriately with SCFCS's service participants, other employees, consultants and vendors.

4. **Each affected individual is expected to perform his/her job responsibly. He/she is expected to know what is required of his/her position and conduct business in a manner that supports integrity in operations.**

5. **Each affected individual has a primary responsibility to SCFCS and is expected to avoid any activity that may interfere or have the appearance of interfering with the performance of his/her job responsibilities.**

6. **Affected individuals shall not engage in any activities that constitute abuse of persons receiving services as defined in the regulations of the Commissioner of OPWDD. Failure to exercise one's duty to intercede or report any activity which may be considered abuse will constitute abuse.**

7. **All affected individuals must maintain a professional relationship with the service participants he/she serves. There should be no financial transactions between affected individuals and service participants. All affected individuals are expected to maintain a professional demeanor with the service participants. All affected individuals are expected to model appropriate and acceptable behavior while in the presence of the service participants.**

8. **As a tax-exempt, non-profit agency, there are several guidelines which must be adhered to. Some of them are:**

    a. **SCFCS's sales tax exemption may be used only for legitimate agency business and service transactions.**

    b. **Personal items cannot be purchased through the agency even if reimbursement is offered.**

    c. **All appropriate withholding taxes must be applied to staff wages.**

9. **All time and attendance records must be accurately entered and recorded. Staff should not be conducting personal business while on the clock. All activities done to justify billing must be accomplished accurately, on a timely basis. Staff should never certify performing services that have not been performed. In addition, he/she should not misrepresent the services which were performed.**

10. **Each employee has a primary business responsibility to SCFCS and is expected to avoid any activity that may interfere or have the appearance of interfering with his/her performance. A conflict of interest exists if an employee's outside business or other interests may affect adversely, or have the potential to affect adversely, his or her motivation, objectivity, loyalty or performance. In addition, a potential conflict of interest occurs when an individual's personal or private interests might lead an independent observer to reasonably question whether the individual's professional actions or decisions are influenced by significant personal interest, financial or otherwise.**

If a relative of a member of the Board of Directors or of a key employee such as the Executive Director wants to be hired by SCFCS, this could be a conflict of interest. Precautions have to be taken to ensure that this person is the most qualified person for the position and his/her salary is commensurate with what others in the same position are receiving. In addition, the member of the Board of Directors or the key employee must recluse himself/herself from any decision to hire or any decision in the future to promote the relative.

Conduct contrary to the above compliance issues will be considered a violation of the compliance program and related policies and procedures. This policy is applicable to all categories of Affected Individuals.

Designate an Employee Vested with Responsibility

Corporate Compliance Officer

The corporate compliance officer is responsible for the oversight and enforcement of the day-to-day operation of the agency's Corporate Compliance Program and has no other duties. He is an employee of the organization.

(1) The compliance officer's primary responsibilities include:

a) overseeing and monitoring the adoption, implementation, and maintenance of the compliance program and evaluating its effectiveness;
b) drafting, implementing, and updating no less frequently than annually or, as otherwise necessary, to conform to changes to Federal and State laws, rules, regulations, policies and standards, a compliance work plan which shall outline Special Care's proposed strategy for meeting the requirements for the coming year;
c) reviewing and revising the compliance program, the written policies and procedures and standards of conduct, to incorporate changes based on Special Care's organizational experience and promptly incorporate changes to Federal and State laws, rules, regulations, policies and standards;
d) reporting directly, on a regular basis, but no less frequently than quarterly, to Special Care's governing body, chief executive, and compliance committee on the progress of adopting, implementing, and maintaining the compliance program;
e) assisting Special Care in establishing methods to improve Special Care's efficiency, quality of services, and reducing Special Care's vulnerability to fraud, waste, and abuse;
f) investigating and independently acting on matters related to the compliance program, including designing and coordinating internal investigations and documenting, reporting, coordinating, and pursuing any resulting corrective action with all internal departments, contractors, agents, subcontractors, independent contractors, and the State;

(2) The compliance officer shall report directly and be accountable to the Special Care chief executive.

(3) Special Care shall ensure that the compliance officer is allocated sufficient staff and resources to satisfactorily perform his responsibilities for the day to day operation of the compliance program based on Special Care's risk areas and organizational experience.

(4) Special Care shall ensure that the compliance officer and appropriate compliance personnel have access to all records, documents, information, facilities and affected individuals that are relevant to carrying out their compliance program responsibilities.

He shall also ensure that any improperly received monies are refunded.

Affected individuals should report any potential issues, questions, and concerns to the Compliance Officer. The Corporate Compliance Officer will promptly investigate any issues and provide a written report and recommendation.

This report will be submitted to the Executive Director. The Executive Director will determine the action to be taken.

The report will be with sufficient detail to identify who the participants are and who may be encouraging, directing or permitting non-compliant behavior.

Compliance training and education will be coordinated by the Quality Assurance Director.

Any material of non-compliance indicating fraud will be immediately reported to the DOH.

To report a compliance concern, contact:

Mr. Irwin Kaufman, CORPORATE COMPLIANCE OFFICER:

917-453-6923

The Role of the Compliance Committee.

The Compliance Committee shall be responsible for coordinating with the Compliance Officer to ensure that the required provider is conducting its business in an ethical and responsible manner, consistent with its compliance program.

The Compliance Committee's responsibilities shall include:

(i) coordinating with the Compliance Officer to ensure that the written policies and procedures, and standards of conduct are current, accurate and complete, and that the training topics required are timely completed;

(ii) coordinating with the Compliance Officer to ensure communication and cooperation by affected individuals on compliance related issues, internal or external audits, or any other function or activity

(iii) ensuring that the Compliance Officer is allocated sufficient funding, resources and staff to fully perform their responsibilities;

(iv) ensuring that the required provider has effective systems and processes in place to identify compliance program risks, overpayments and other issues, and effective policies and procedures for correcting and reporting such issues; and

(v) enacting required modifications to the Compliance Program.

(vi) Membership in the committee shall, at a minimum, be comprised of senior managers. The Compliance Committee shall meet no less frequently than quarterly and shall, no less frequently than annually, review and update the Compliance Committee Charter.

(vii) The Compliance Committee shall report directly and be accountable to the required provider's chief executive and governing body.

Lines of Communication to the Responsible Compliance Personnel

All affected individuals have the responsibility to report the occurrence of improper actions. Information of improper actions can come from various sources: a) staff members noting an issue with another staff member; b) parents or family members of individuals receiving services who have observed or suspect questionable actions on the part of the staff member; c) observation of the clinical coordinator as services are being provided. The success of the Corporate Compliance Plan is contingent on affected individuals being able to report what they see as a violation of the plan without fear of retaliation as long he/she is reporting in good faith. It is an expected good practice for concerns to be raised first with a supervisor. If this is not a viable option, then affected individuals are encouraged to contact the Corporate Compliance Officer, Mr. Irwin Kaufman, directly at the anonymous and confidential hotline 917-453-6923. Callers are urged to leave detailed information so that a full investigation can be made.

Special Care will publicize information concerning the compliance program for staff, including the Standards of Conduct, via email and posting on its website, and will also make the information available to all recipients of service by posting on its website.

The Corporate Compliance Officer can also be contacted for questions, issues or concerns regarding any compliance issue. An action or transaction which seems unethical or illegal should be identified as a compliance issue. If the caller leaves his/her name and telephone number, he/she will receive a response within no more than ten business days.

If an affected individual has a concern about the Executive Director, this should be reported directly to the Corporate Compliance Officer. If the concern is about the Corporate Compliance Officer, this should be reported to the Executive Director.

All affected individuals have the right to report potential or actual compliance issues anonymously directly to the Compliance Officer.

Special Care shall ensure that the confidentiality of persons reporting compliance issues shall be maintained unless the matter is subject to a disciplinary proceeding, referred to, or under investigation by MFCU, OMIG, or law enforcement, or disclosure is required during legal proceeding, and such persons shall be protected under the required provider's policy for non-intimidation and non-retaliation. All reports will be kept in a secure location off site in order to assure confidentiality.

Disciplinary policies related to compliance are detailed in Element 5 of this manual.

A Policy of Non-intimidation and Non-Retaliation

Any form of retaliation against any affected individual who reports a perceived problem or concern in good faith is strictly prohibited. Affected individuals will not be subject to reprisals for

(a) reporting potential compliance issues to appropriate personnel; (b) participating in investigation of potential compliance issues; (c) self-evaluations; (d) audits (e) remedial actions (f) reporting instances of intimidation or retaliation; (g) reporting potential fraud, waste or abuse to the appropriate State or Federal entities; (h)reporting or supplying information about potential violations, except in cases where those affected individuals are responsible for the violation or when deliberate false reporting has occurred.

Questions or concerns about any ethical or legal issue may be raised without concern for disciplinary action as long as they are made in good faith. All affected individuals are expected to cooperate with any investigation of a potential violation.

Any affected individual who commits or condones any form of retaliation will be subject to discipline up to and including termination.

Special Care adopts NYS Labor Law Section 740 and 741 in connection with non-intimidation and non-retaliation expectations.

Disciplinary Policies to Encourage Good Faith Participation

Special Care is committed to encouraging and ensuring ethical and lawful behavior and to discipline affected individuals who violate the Compliance Program, including affected individuals who neglect to report a violation.

All affected individuals must comply with the Compliance Program and immediately report any alleged violations or wrongdoing, and assist management and compliance personnel in investigating allegations of wrongdoing.

Affected individuals are expected to keep management staff informed of what they are doing; to document or record all services or transactions accurately; and to be honest and forthcoming with regulatory agencies, internal and external auditors. No deficiency or error should be ignored or covered up.

Affected individuals must report any actual or suspected violations of the Compliance Program, any applicable law or regulation, or any Special Care policies and procedures to their immediate supervisor or the Compliance Officer.

All affected individuals must cooperate fully and honestly in any investigation into a reported violation of the Compliance Program, any applicable law or regulation, Special Care policies, procedures or practices.

Any affected individual who participates in non-compliance behavior, or knowingly encourages, directs, facilitates, or permits either actively or passively non-compliant behavior, or fails to report any violation of the Compliance Program, or any applicable law or regulation, or Special Care policies, procedures or practices, standards of conduct, State or Federal laws . rules or regulations, is subject to appropriate disciplinary action. Sanctions may include retraining, oral or written warnings, and/or termination. Vendors, contractors, and Board of Director members are subject to sanctions if involved in any scheme to violate the compliance issues of Special Care.

Disciplinary action for intentional or reckless behavior will involve more significant sanctions such as immediate suspension or discharge, depending upon the nature of the incident and the relevant surrounding circumstances.

Disciplinary policies will be fairly and firmly enforced.

A System for Responding to Compliance Issues

As any compliance issues are raised, the Executive Director, and the Corporate Compliance Officer shall determine whether there is any basis to suspect that a violation of the Corporate Compliance Plan has occurred.

If it is determined that a violation may have occurred, the Corporate Compliance Officer, together with any assigned staff, will take any or all of the following steps:

1. If the health and/or safety of anyone is affected, they will take all necessary steps to protect them.

2. A prompt and thorough investigation of all issues reported, or issues and potential issues raised in the course of self-evaluations and audits, will be undertaken. All evidence will be secured and all appropriate parties will be interviewed. A record will be kept of all investigations. This record will be considered confidential and privileged and will not be released without the approval of the Executive Director.

3. All affected individuals are required to cooperate with any staff assisting the Corporate Compliance Officer in an investigation.

4. The Corporate Compliance Officer will review the reported issue and the recommended response with the Executive Director. Together with one or more members of the Board they will decide to accept or modify the recommended response.

5. A final report will be issued to the Executive Director and submitted to the Board of Directors summing up the process and the results. If corrective action is appropriate, the Corporate Compliance Officer will follow up promptly and thoroughly, to ensure that corrective action takes place through monitoring.

6 All reasonable steps will be implemented to prevent and reduce the potential of recurrence of similar violations. This includes adding additional training, checks and balances, and implementing corrective and preventive action plans.

7. The Corporate Compliance Officer will ensure that any erroneous billings are refunded and voided or adjusted.

Requirements specific to the category of services (see attachment #1)

NEW YORK STATE OF OPPORTUNITY | **Office for People With Developmental Disabilities**

ADMINISTRATIVE DIRECTIVE

Transmittal:	Administrative Memorandum (ADM) 2017 – 01R
To:	Executive Directors of Voluntary Provider Agencies Executive Directors of Care Coordination Organizations Developmental Disabilities Regional Office (DDRO) Directors Developmental Disabilities State Operations Office (DDSOO) Directors CSIDD Providers
Issuing OPWDD Office:	Division of Service Delivery, State Operations Offices
Date:	July 1, 2017, **revised March 1, 2021**
Subject:	Home and Community-Based Services (HCBS) Waiver and Non-Waiver Enrolled Respite Services
Suggested Distribution:	HCBS Waiver Administrators and Managers CSIDD Administrators and Managers Residential Administrators and Managers Respite Program Staff Quality Improvement Staff Billing Department Staff Care Managers and Care Manager Supervisors Regional Office Front Door Staff Central Office Leadership Team
Contact:	Waiver Unit, Division of Person-Centered Supports peoplefirstwaiver@opwdd.ny.gov
Attachments:	Respite Documentation Record – Individual Summary

Related ADMs	Releases Cancelled	Regulatory Authority	MHL & Other Statutory Authority	Records Retention
ADM-2005-02	ADM-2005-02	14 NYCRR Parts 635 and 686	MHL §§13.07 and 13.09 (b)	6 Years from Date of Service: 18 NYCRR 504.3(a)

Purpose

The purpose of this Administrative Memorandum (ADM) is to describe the service requirement changes to Respite services effective **July 1, 2017** that delineate program standards or support a provider's claim for reimbursement. These requirements apply to Respite services delivered to individuals who are enrolled in OPWDD's Home and Community Based Services (HCBS) Waiver or to non-waiver enrolled (NWE) individuals. Respite services that are provided by "self-hired" staff as part of a person's self-directed budget are not addressed in this ADM. This memorandum does not affect individuals who receive Respite services through a Family Support Services (FSS) contract; FSS contracts for Respite services remain in effect.

This ADM, ADM #2017-01R, replaces ADM #2017-01 to make certain terminology revisions. Those revisions are bolded/underlined in red below.

Background

The regulatory basis for HCBS Respite is found in 14 NYCRR Sections 635-10.4, 635-10.5, and 686.15.

Respite services are provided to individuals unable to care for themselves and are furnished on a short-term basis because of the absence of or need for relief of the individual's unpaid primary caregiver (e.g., those persons who normally provide carefor the individual).

Respite services can be provided in the home or out of the home, during the day, evening, or overnight. Respite can be delivered in the following locations: individual's home or place of residence; non-certified community location; certified residential setting where the individual does not permanently reside (i.e., Family Care Home; Intermediate Care Facility for Individuals with Intellectual and Developmental Disabilities (ICF/IIDD); Individualized Residential Alternative (IRA) or Community Residence (CR)); or Free-Standing Respite facility under the auspices of OPWDD. Respite care is not furnished or provided for the purpose of compensating relief or substitute staff in certified community residences. Respite services may not be separately billed to Medicaid for individuals living in certified residences. A Family Care Home is a setting where Respite services can be provided, however, an individual receiving Residential Habilitation services in a Family Care Home is not eligible to receive HCBS Waiver Respiteservices.

Categories of Respite Services

Effective July 1, 2017, Respite services may be delivered and billed under the following categories:

1. **In-Home Respite Services** – Day or overnight services provided in a person's family home or in another non-certified/non-licensed home that is not the person's own family home. In-Home Respite activities may also include staff accompanying the person to community (non-certified) settings.

2. **Site-Based Respite Services** – Day or overnight services provided in a) a Free Standing Respite site (the operating certificate identifies a Respite opportunity in the home), including **Crisis Services for Individuals with Intellectual and/or Developmental Disabilities (CSIDD)** Resource Centers; b) a Certified Residence; or c) a Community Setting (whether certified or not) that the provider owns, leases, or pays property costs or

usage fees for a room, building or portion thereof (including, but not limited to, public library, school or hotel). Services may include daytime or overnight outings in a Community Setting and includes time spent on community trips that start or end at a Community Setting as identified above.

3. **Recreational Respite Services** – Services are provided with a focus on recreational and/or community integration activities and include any programs where routine travel to an outing or event may be involved. These services are provided in locations that are not owned, rented, or leased by the provider (e.g., a mall or movie theater).

4. **Camp Respite Services** – Services delivered at site-based locations that possess a permit under Subpart 7 of the NYS sanitary code.

5. **Intensive Respite** – Services for individuals with high behavioral and/or high medical needs that meet the qualifications for additional staffing supports due to such needs. Intensive Respite services are distinguished from other billing categories of Respite as they are determined by the individual's level of need, rather than the location of service. Individuals will be authorized to receive Intensive Respite services by OPWDD Regional Offices.

   a) High Behavioral Needs

      i. Services provided to individuals with high behavioral needs that meet the qualifications for additional staffing supports and are overseen by 1) a Licensed Psychologist and/or a Licensed Clinical Social Worker (LCSW) as defined under New York State Education Law; or 2) a Behavioral Intervention Specialist (BIS) as defined in regulation by 14 NYCRR 633.16(b)(32); or 3) a **CSIDD** Clinical Team Member.

      ii. An individual receiving Intensive Respite services for individuals with high behavioral needs must have a Plan that is developed by the licensed professional, **CSIDD** Team Member, or BIS that instructs Respite staff on the implementation of Respite staff actions to address the individual's high behavioral needs.

      iii. Respite staff must be trained in the implementation of the Plan by the licensed professional, **CSIDD** Team Member, or BIS and the Plan must be reviewed by the licensed professional, **CSIDD** Team Member, or BIS every six (6) months at a minimum, or as needed based on the individual's changing needs or schedule for service use.

      iv. The agency delivering the Intensive Respite services for individuals with high behavioral needs directly employs or contracts with an agency or a licensed professional, **CSIDD** Team Member and/or BIS who is assigned to the Intensive Respite services program, directly oversees and/or provides Respite services and whose appropriate staffing costs are assigned to the Respite program for cost reporting purposes.

   b) High Medical Needs

      i. Services provided to individuals with high medical needs that meet the

qualifications for additional staffing supports and are overseen by licensed clinical professionals including, but not limited to: a Physician, Physician Assistant (PA); Special Assistant; Registered Professional Nurse (RN); Nurse Practitioner; Clinical Nurse Specialist; and/or Licensed Practical Nurse.

ii. An individual authorized for Intensive Respite with high medical needs must have a Plan of Nursing Services (PONS) that is developed by an RN. The PONS instructs Respite staff on the implementation of Respite staff actions to address the individual's high medical needs.

iii. Respite staff must be trained in the implementation of the PONS by the RN. The PONS must be reviewed by the RN annually at a minimum, or as needed based on the individual's changing needs or schedule for service use.

iv. The agency delivering the Intensive Respite services for individuals with high medical needs must directly employ or contract with an agency or with an RN who is assigned to the Intensive Respite services program. The RN must directly provide services described in the PONS or may delegate these tasks to Respite staff. In cases where PONS are delegated to Respite staff, the RN must oversee the care being provided by Respite staff. The term "oversee" in this context means that the RN must be available, either by telephone or in person, when the delegated tasks are being performed by Respite staff. The RN staffing costs are assigned to the Respite program for cost reporting purposes.

Authorization Processes

Site-Based, Recreational, In-Home and Camp Respite

The DDRO shall authorize units of Respite based upon a needs-based assessment of the individual. Authorized Respite units may be used for any of the following categories of Respite: Site-Based, Recreational, In-Home, and Camp Respite. It is the responsibility of the provider to ensure that the appropriate category of Respite is billed for the Respite service delivered.

Intensive Respite

OPWDD Regional Offices shall authorize units of Respite based upon an individual's documented behavioral support and/or medical support needs in order to maintain the health and safety of the individual or others while Respite is being provided. Intensive Respite services for individuals with high behavioral or high medical needs must have a Plan to address their behavior needs or a PONS created and implemented prior to delivery of Intensive Respite services. Provider agencies must meet the criteria described in the Categories and Service Limits sections of this ADM in order to deliver Intensive Respite services.

Billing and Service Limits

Billing

All categories of Respite services are billed in 15-minute increments (billing units), with a full 15 minutes of service required to bill a single unit (i.e., there is no "rounding up"). For each continuous period of service delivery (or "session"), the provider must also document the service start time and service stop time for each Respite "session." For example, where Respite service is provided

to an individual from 3:00 p.m. to 4:30 p.m., the provider may claim six 15-minute billing units if all other documentation requirements are met. Respite services require in-person or "face-to-face" service provision by Respite staff.

Respite services are not always provided for a continuous time period on a given day. For example, an individual may receive Respite services at a Free-Standing Respite Site from 9:00 a.m. to 10:00 a.m. and then leave to attend a Day Habilitation program. After the Day Habilitation service, the individual may again receive Respite services at the Free-Standing Respite Site from 3:00 p.m. to 5:00 p.m. that afternoon. In this case, the total billable units for Respite services for the day would be twelve 15-minute billing units (four billing units in the morning plus eight in the afternoon).

An individual may also receive multiple types of Respite services during any given day. For example, an individual may receive Respite Services at a Free-Standing Respite Site from 10:00 a.m. to 11:30 a.m. and then receive two hours of In-Home Respite services in the afternoon from 3:00 p.m. to 5:00 p.m. In this case, the total billable units for Site-Based Respite Services would be six 15-minute billing units and the total billable units for In-Home Respite Services would be eight 15-minute billing units. Respite service billing must be done in accordance with billing limitations specified in this ADM for each Respite category.

Service Limits

Respite services are authorized by OPWDD Developmental Disabilities Regional Offices (DDROs) via a needs-based assessment. Authorized Respite units may be utilized as non-overnight hours, overnight hours, or a combination of thereof.

1. Non-Overnight Respite
    a) Non-overnight Respite services are those an individual receives for a portion of the day but not overnight.
    b) Billing for Site-Based, Recreational, Camp, and Intensive non-overnight Respite services is limited to no more than ten (10) hours of service provision per calendar day.
    c) In-Home non-overnight Respite services do not have a calendar day limit on service provision.

2. Overnight Respite
    a) Overnight Respite is defined as Respite services provided to a person on two (2) consecutive days when Respite staff are providing oversight to a person during nighttime hours.
    b) Overnight Respite services may be billed for the following Respite categories: In-Home, Site-Based, Camp, and Intensive.
    c) Overnight Respite billing for In-Home, Site-Based and Intensive Respite is limited to no more than forty-two (42) overnight stays in a one-hundred-eighty (180) day period across all overnight Respite categories per individual. Overnight Respite billing for Camp Respite is limited to fourteen (14) days per calendar year per individual. The fourteen (14) days of overnight Camp Respite apply against an individual's overall forty-two (42) day in a one-hundred-eighty (180) day period limit.
    d) Billing for Overnight Respite services at the full hourly fee is limited to no more than forty-two (42) days in a one-hundred-eighty (180) day period per individual across all overnight Respite service categories (In-Home, Site-Based Camp and Intensive). After the forty-two (42) day limit has been reached, any continued

overnight billing will be limited to the regional average daily rate paid for Supervised IRA services on a Per Diem basis. The one-hundred-eighty (180) day periods are as follows:

- January 1 – June 30
- July 1 – December 31

3. Intensive Respite services can be provided to individuals with high behavioral or medical needs in any Respite setting. As such, Intensive Respite services for individuals with high behavioral or high medical needs remain subject to the service limits in place for the other four billing categories of Respite. For example, a person who has high behavioral support needs is authorized for Intensive Respite and attends a Site-Based program. Provided the individual has Regional Office authorization and a Plan in place, the Respite agency bills Intensive Respite for the time he/she attends the Site-Based program. There is no billing under the Site-Based category for this situation.

Same Day Service Delivery for Respite and Other Services

1. Time spent receiving another Medicaid service cannot be counted toward Respite billable service time, except for services such as Supported Employment or Pathways to Employment where non-direct/non-face-to-face may be billable. In addition, Respite services cannot be duplicative or delivered at the same time as services otherwise available to the individual through a local educational agency under the Individuals with Disabilities Education Act (IDEA) or the Rehabilitation Act of 1973. For individuals who participate in educational services (including home schooling), Respite hours needed should be determined based upon an individual's daily schedule and activities.

2. The schedule for Respite service delivery for children and young adults who attend school must be outside of regular school hours. For students who are home schooled or receiving homebound instruction, Respite services can be delivered during traditional school hours, but the Respite services must be outside the scheduled time for educational instruction provided to the child.

Transportation

Effective with the date of this memorandum, to and from transportation time will be included in a provider's billable time for Respite services if a provider is responsible for directly providing or contracting with a vendor that provides transportation. Transportation time does not include staff travel time when staff are traveling to and from the service delivery location without the accompaniment of the individual receiving the Respite services. In instances where an individual travels from a Day Habilitation service to a Respite service, the travel time may be counted as Respite billable time **only when the following is true:**

1. Respite staff provides the transportation or the Respite provider contracts with a vendor to provide the transportation; and

2. These transportation costs are reported in the Respite providers' Consolidated Fiscal Report (CFR) associated with its Respite program and not associated with the Day Habilitation program.

If the Day Habilitation program provides the transportation to the Respite service, the time is not considered billable Respite time unless 1 and 2 above is followed. Unless 1 and 2 are followed, failure to accurately report transportation costs can lead to a disallowance, given that a Day Habilitation provider's to and from transportation costs are included in its Day Habilitation reimbursement.

Service Documentation

Service documentation must be contemporaneous with Respite service provision. Required service documentation elements are:

1. Individual's name, and if applicable, the Medicaid ID (CIN).
2. Identification of the category of waiver service provided, in this case, "Respite."
3. Identification of the category of Respite service, i.e. In-Home, Camp, Site-Based, Recreational, or Intensive Respite.
4. Name of the agency providing the Respite service.
5. The date the service was provided.
6. The start time and stop time for each continuous period of Respite service.
7. Verification of service provision by the Respite staff person who delivered the service (this is accomplished with a staff signature and title). Initials are permitted if a "key" is provided which identifies the title, signature, and full name associated with the staff initials.
8. The date the service was documented (the date must be "contemporaneous" with service provision).

Respite Documentation Record

It is the responsibility of the provider to ensure that the appropriate fee is billed for the category of Respite delivered. Therefore, providers must maintain service documentation that supports the category of Respite billed. This documentation must indicate the appropriate billing category (i.e., Site-Based, In-Home, Camp, Recreational or Intensive). A provider may develop such a checklist/documentation or use the Respite Documentation Record – Individual Summary checklist template attached to this ADM.

Life Plan (LP)

The Respite provider must have a copy of the individual's current Life Plan (LP) on file. The LP for individuals enrolled in the HCBS Waiver is developed by the individual's **Care Coordination Organization (CCO) care manager**, Plan of Care Support Services (PCSS) service coordinator or Managed Care Organization (MCO) case manager. The LP must include the following elements related to the Respite service:

1. Identification of Respite as the category of service.

2. Identification of the agency providing Respite service.
3. Specification of the Frequency is "hourly" or "hour."
4. Specification of the Duration as "ongoing."
5. Specification of an effective date that is on or before the first date of service for which the agency bills Respite services for the individual.

Respite services would be documented as follows:

Name of Provider: Agency Name **Type of Service:** Respite **Frequency:** Hourly **Duration:** Ongoing **Effective Date:** Date prior to first day of Respite billing

Since Respite is not a habilitation service under the HCBS waiver, a Habilitation Plan is not required.

Self-Direction

The requirements for self-directed Respite services delivered by self-hired staff are not described in this Memorandum. However, the requirements of this Memorandum do pertain to Agency Supported Self-Directed Respite services. An individual may choose to self-direct Agency Supported Respite services for In-Home Respite services and the Respite provider will bill eMedNY in accordance with the billing requirements described in this Memorandum. Please see the Self-Direction Guide for Providers for additional information.

Liability for Services

Respite services are covered by the Liability for Services regulations (14 NYCRR Part 635-12). An individual must have Medicaid coverage that will pay for his/her Respite services and be enrolled in the HCBS Waiver or pay for the cost of their services. Certain individuals may qualify for a limited exception. The limited exception means that persons can continue to receive Respite services without applying for Medicaid and the HCBS Waiver and without paying for their services. To qualify for the limited exception, an individual must meet the following criteria:

1. Receive Respite services;

2. Not live in a residence certified by OPWDD (Intermediate Care Facilities for individuals with developmental disabilities (ICF/IDD), Individualized Residential Alternatives (IRAs), Community Residences (CRs), or Family Care Homes;

3. Not receive any of the following OPWDD provided or certified services: **Care Coordination Organization Care Management**, Day Treatment, Community Habilitation, Day Habilitation, Prevocational Services, or Supported Employment services; and

4. Not have been enrolled in the HCBS Waiver at any time after March 14, 2010.

Information on the limited exception can be found in the OPWDD LIAB 10 Information about the Limited Exception notice available on the OPWDD website at the following link: https://opwdd.ny.gov/sites/default/files/documents/OPWDD-LIAB-10.pdf

Activity Fees Associated with Respite Services

Eligible Activities:

Respite providers may arrange for special activities or outings as part of the Respite service delivery (i.e., Respite staff take the individual to a movie while providing Respite). In keeping with personal allowance guidance, it is appropriate that an individual or his or her family use personal resources for admission/entrance fees or Camp activity fees associated with such events, when the following criteria are met:

1. The expense supports the individual's community involvement and inclusion;
2. The individual willingly chooses to spend his/her money in this manner;
3. The individual directly benefits from the expenditure; and
4. Individual operating expenditures are not a routine/regular expectation of the program.

An individual receiving Respite services should not pay for a Respite-related activity unless all four criteria listed above are met. The expectation in those cases is that fees or costs associated with an activity would be incurred by the provider as part of the service. The HCBS Waiver does not allow charging individuals a "co-payment" for Waiver services or for establishing cost sharing arrangements, such as premiums or enrollment fees. In general, a co-payment is an amount that is charged to the participant each time he/she receives a service. A cost sharing arrangement requires the individual to make a fixed, periodic payment to the provider.

Records Retention

New York State regulations require each Medicaid provider to prepare records to demonstrate the provider's right to receive Medicaid payment for a service. These records must be prepared "contemporaneously" with the service and kept for six years. 18 NYCRR 504.3(a).

All documentation specified above must be retained for a period of at least six years from the date the service was delivered or when the service was billed, whichever is later.

Technical Assistance

For additional information on the requirements and standards described in this memorandum, contact the Division of **Policy and Program Development** Waiver Unit at: peoplefirstwaiver@opwdd.ny.gov.