



Seeking over \$179 million in cost saving measures, New York proposes reduced reimbursement for multiple OPWDD services

By Jena Grady, Jennifer Greco, and Meredith LaMaster

On Wednesday, May 27, 2020, the New York State Department of Health (“DOH”) issued two (2) public notices proposing to amend the New York Medicaid State Plan and 1915(c) Home and Community-Based Services Comprehensive Waiver (“HCBS Waiver”) to effectuate certain rate setting provisions in the approved 2020–2021 New York State Budget. If submitted and approved by the Centers for Medicare and Medicaid Services (“CMS”), such amendments will in part significantly affect OPWDD provider agency reimbursement for Intermediate Care Facilities (“ICFs”) and Supervised Residential Habilitation services. New York seeks to annually save for Medicaid expenditures around \$75.2 million for the adjustments to intermediate care facilities and other OPWDD services (e.g., health home reimbursement) and \$103.8 million for adjustments under the HCBS Waiver.

Proposed reimbursement cuts and rate-setting changes

Under the current proposed HCBS Waiver application, DOH and OPWDD will amend the HCBS Waiver to provide rate-setting changes that either reduce or eliminate the “occupancy adjustment” for Supervised Residential services and implement other limits to reimbursement when an OPWDD member is not in residence. Occupancy Adjustments permit an adjustment to the calculated daily rate of an OPWDD provider agency that provides Supervised Residential services to account for days when Medicaid billing cannot occur (e.g., an OPWDD member is absent due to hospitalization). Nonetheless, DOH and OPWDD proposed in the HCBS Waiver application that effective on or after October 1, 2020, the occupancy adjustment shall be 0%.

Additionally, during the COVID-19 pandemic, OPWDD provider agencies have relied on reimbursement for “retainer days.” Retainer days are days of medical leave or an associated day where other in-patient Medicaid payment is made for providing services to an OPWDD member. DOH and OPWDD propose that effective on or after October 1, 2020, retainer days will be reimbursed at a rate of fifty percent (50%) of the provider’s established rate. DOH and OPWDD also propose that reimbursement for “therapy days,” where an OPWDD member is away from the supervised residence for the purpose of visiting with family or friends, will be reimbursed at a rate

of fifty percent (50%) of the agency's established rate and that such agency will also be limited to only ninety-six (96) therapy days per rate year per person.

DOH and OPWDD also intend for the New York State Medicaid State Plan to address the rate setting methodology for calculating occupancy adjustments for ICFs by either completely removing or reducing any adjustment to address vacancies effective on or after October 1, 2020. The agencies also propose to "impose a limit on the amount of administration that is recognized in the rate methodology, as well as consider other actions to limit reimbursement where individuals are not in residence." Further details on the proposed amendment to the State Plan are not yet publically available.

The above proposed rate adjustments under the HCBS Waiver and the Medicaid State Plan will have a significant impact in reimbursement for OPWDD provider agencies that have already faced substantial vacancies and lack of provided services in their facilities during the COVID-19 pandemic.

Next steps

DOH and OPWDD are seeking public comments on these proposed changes. More information can be found in the [New York State Register](#).

Public comments for the amendment to the HCBS Waiver must be submitted by July 1, 2020. Once DOH and OPWDD review the comments, DOH will submit the amended HCBS Waiver to CMS for approval.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Jena Grady, 212-940-3114, jgrady@nixonpeabody.com
- Jennifer Greco, 516-832-7641, jgreco@nixonpeabody.com
- Peter Armstrong Egan, 516-832-7633, pegan@nixonpeabody.com