



ADMINISTRATIVE DIRECTIVE MEMORANDUM

Transmittal:	21-ADM-02
To:	Developmental Disabilities Regional Office (DDRO) Directors Developmental Disabilities State Operations Office (DDSOO) Directors Executive Directors of Voluntary Agencies Care Coordination Organization (CCO) Administrators
Issuing OPWDD Office:	Division of Policy and Program Development
Date:	July 28, 2021
Subject:	Requirements for Community Habilitation-Residential (CH-R) services delivered in the Individual's Certified Residence
Suggested Distribution:	Habilitation Program/Service Staff Quality/Compliance Staff Billing Department Staff CCO and Basic HCBS Plan Support Care Managers and Care Manager Supervisors
Contact:	People First Waiver mailbox at peoplefirstwaiver@opwdd.ny.gov
Attachments:	

Related ADMs/INFs	Releases Cancelled	Regulatory Authority	MHL & Other Statutory Authority	Records Retention
ADM#2006-01 ADM#2015-07 ADM#2020-01R ADM#2016-01 ADM#2017-01	Responding to the Day Service Needs of the Elderly, Medically Frail, and People with Complex Behavioral Needs Enrolled in the Home and Community Based Services (HCBS) Waiver	14 NYCRR§§635-10.4, 635-10.5 42 CFR§441.301	MHL§13.07, 13.09(b), 33.13, 43.02 OPWDD's Comprehensive HCBS Waiver -§1915(c) of Social Security Act, 42 USC§1396n(c)	18 NYCRR§504.3(a) 18 NYCRR§517.3 14 NYCRR§655-4.5 New York False Claim Act – State Finance Law §192

Purpose:

The purpose of this Administrative Directive Memorandum (ADM) is to update existing requirements for Community Habilitation-Residential (CH-R) services delivered in an individual's certified residence so that service delivery responds to the unique needs of the elderly, medically frail, and individuals with complex behavioral needs who are enrolled in the HCBS Waiver, and when transportation and participation in Community Habilitation programming outside of the residence would be contrary to the needs of the individual. In this ADM, the term 'residence' refers to Individualized Residential Alternatives (IRAs), Community Residences (CRs), and Family Care Homes. This ADM supersedes the prior memorandum, "*Responding to the Day Service Needs of the Medically Frail and Elderly Individuals Enrolled in the HCBS Waiver*," dated December 30, 2010.

CH-R services are Community Habilitation services delivered to individuals living in certified residences (IRA, CR, or Family Care Homes). Individuals living in certified residences may receive CH-R services either inside the residence or outside the residence, depending upon the needs of the individual. CH-R services delivered outside of the residence are not governed by this ADM. This ADM addresses only CH-R services being delivered to individuals living in certified residences when the CH-R services are delivered in the certified residential setting.

The provisions in this ADM will take effect upon the conclusion of the COVID-19 Appendix K authority which will be no later than six (6) months following the end of the federal COVID-19 Public Health Emergency. The requirements described in this ADM apply to in-residence CH-R services that are intended to be a long-term service delivery option for an individual. For the purpose of this ADM, a long-term service delivery option is defined as the need for services that are not being provided on an emergent basis and are anticipated to last more than thirty (30) service days.

The flexibility to provide Day Habilitation in a certified residence will sunset with the end of the COVID-19 Appendix K authority (six (6) months following the end of the Federal COVID-19 Public Health Emergency). Prior to the end of the Appendix K authority, individuals who receive in-residence Day Habilitation will need to transition to in-residence CH-R services or any appropriate service that is delivered outside the residence.

Background:

In an effort to enhance the appropriateness of day services for individuals with intellectual and developmental disabilities (I/DD) who are elderly, medically frail or present with complex behavioral needs, the Office for People With Developmental Disabilities (OPWDD) will permit the delivery of CH-R services within a certified residence. In-residence CH-R services were temporarily being authorized within OPWDD's 1915 (c) HCBS Waiver through the federal COVID-19 Public Health Emergency and will now be permanently available for those considered elderly, medically frail, or who present with complex behavioral needs as described in this ADM.

The delivery of CH-R services in a certified residential setting must comply with applicable federal requirements for HCBS settings. These services must promote the development and maintenance of independent living skills that increase opportunities for community integration.

When evaluating the appropriateness of delivering CH-R services within an individual's certified residence, the provider must plan for the delivery of in-residence CH-R services in a manner that supports the individual's:

- full access to the greater community;
- choice to receive CH-R services in a variety of settings that reflect the individual's needs and preferences, including within their residence;
- rights of privacy, dignity and respect, and freedom from coercion and restraint;
- autonomy in making life choices including activities of daily living, physical environment, and with whom they interact; and
- choice in services and providers.

Discussion:

Individuals Who Qualify for In-Residence CH-R Services

To qualify for a long-term in-residence CH-R service delivery, the individual must be elderly, medically frail, or present with complex behavioral needs as described in this ADM. There must be an individualized justification for the provision of in-residence CH-R services including a description of how the individual will benefit from the delivery of in-residence CH-R services and maintain and improve his/her/their health and safety.

For the purpose of this ADM, elderly is defined as an individual who is sixty-five (65) years or older. An elderly individual who qualifies for Community Habilitation may receive in-residence CH-R as an alternative to other forms of habilitative services if they choose. If an individual is medically frail, documentation supporting the delivery of in-residence CH-R services from the individual's physician or other health care professional is required to document that the individual would benefit from in-residence services because of his/her/their health status. For individuals with complex behavioral needs, a Behavior Support Plan is required to support the delivery of in-residence CH-R services.

Care Planning and the Individual's Choice to Receive In-Residence CH-R Services

Through the person-centered planning process, the individual and/or the family/representative when appropriate, the Care Manager, the provider, and care planning team, must evaluate the advantages and disadvantages of in-residence CH-R services versus habilitative services delivered in other settings and should incorporate as many opportunities for community integration as safely possible. In-residence CH-R services should not be scheduled for reasons related to staff or programmatic

convenience or due to external barriers that can be addressed with adequate support and planning.

The appropriateness of in-residence CH-R services will be determined through the person-centered planning process. The individual and/or the family/representative when appropriate, must affirmatively request to have services delivered in the residence and provide their written informed consent. The care planning team will establish an agreed upon schedule for in-residence CH-R services. The Care Manager must document that the individual and/or the family/representative when appropriate, have chosen to receive in-residence CH-R services and confirm that the provider's Staff Action Plan allows for safe and effective delivery of in-residence CH-R services. The individual and/or the family/representative when appropriate, the provider, and the Care Manager will each have a role in planning for the provision of in-residence CH-R services as described below.

Role of the Individual and/or the Family/Representative

- 1) The individual and/or the family/representative when appropriate, must express an informed choice and consent to receive in-residence CH-R services as outlined in the schedule agreed upon by the care planning team.
- 2) The individual and/or the family/representative when appropriate, must reaffirm their choice to continue receiving in-residence CH-R services at least every six (6) months or with each semi-annual Life Plan review.
- 3) The individual and/or the family/representative when appropriate, have the right to discontinue in-residence CH-R services at any time. If the individual and/or the family/representative when appropriate, wish to discontinue in-residence CH-R, they must inform the Care Manager of this desire.

Role of the Provider Delivering In-Residence CH-R Services

- 1) The provider explains to the individual and/or the family/representative when appropriate, that CH-R may occur at a variety of sites, including but not limited to the residence.
- 2) The provider explains to the individual and/or the family/representative when appropriate, how community integration opportunities will be incorporated if the individual chooses to receive in-residence CH-R services.
- 3) The provider must appropriately document in the individual's clinical record, that the individual and/or the family/representative when appropriate, have affirmatively requested and provided their written informed consent to have services delivered in the residence.
- 4) The provider ensures that in-residence CH-R services will include strategies and activities that align with the individual's habilitative plans and Life Plan outcomes.
- 5) The provider ensures that in-residence CH-R services will meet the individual's habilitative needs and provide comparable benefits to delivery in other settings.

- 6) The provider ensures that the residence offers an environment appropriate for learning and there is adequate space for the successful delivery of CH-R services in the residence (e.g., privacy, staffing).
- 7) The provider ensures that all necessary materials needed for any activities are provided during the scheduled in-residence service delivery sessions.
- 8) The provider ensures that the individual and/or the family/representative when appropriate, have been informed that the individual has the ability to change from receiving in-residence CH-R services to an alternative form of habilitative services outside the residence at any point in time if they choose.

Role of the Care Manager

- 1) The Care Manager confirms that the individual is elderly, medically frail or presents with complex behavioral needs and that all requirements in this ADM are met so that the provision of in-residence CH-R services do not isolate the individual.
- 2) The Care Manager evaluates the appropriateness for in-residence CH-R services in the specific residence and collaborates with the provider. If the residential provider and the CH-R provider are operated by different agencies, the Care Manager ensures that the residential provider is engaged in the planning process for in-residence CH-R services.
- 3) The Care Manager confirms that the residence offers an environment appropriate for learning and there is adequate space and equipment for the successful delivery of CH-R services in the individual's residence (e.g., privacy, staffing).
- 4) The Care Manager appropriately documents that the individual and/or the family/representative when appropriate, have chosen and consent to receiving in-residence CH-R services. The Care Manager must document this in a separate consent that is incorporated into the Life Plan or in the Life Plan itself, in the narrative in section I, in the special considerations in section II or III, or in the meeting summary in section VI.
- 5) The Care Manager confirms that the provider's Staff Action Plan allows for the safe and effective delivery of services in the residence.
- 6) The Care Manager ensures that the continued provision of in-residence CH-R services is reviewed and reaffirmed by the care planning team at least every six (6) months or with each semi-annual Life Plan review.
- 7) The Care Manager will take necessary action to immediately initiate the process to amend the Life Plan and identify an alternative source of habilitative services and their frequency at any time the individual and/or the family/representative when appropriate, choose to withdraw their consent for in-residence CH-R services.

Documenting In-Residence CH-R Services in the Staff Action Plan

CH-R services are typically provided in a community setting to provide individuals living in certified residential settings with opportunities to acquire and maintain skills for increased independence and community integration. In-residence CH-R services must meet the individual's habilitative needs, Life Plan outcomes, and be of comparable benefit to the delivery of these services in other settings. When habilitative services are provided in a residence in the form of CH-R, the majority of the individual's CH-R services should be provided outside of the residence.

CH-R services must incorporate as many opportunities for community integration as safely possible and in accordance with the individual's interests and abilities. Staff Action Plans for these habilitative services should be crafted within the context of the individual's Life Plan, supportive of individualized valued outcomes, and safeguard the needs of the individual. The Life Plan and CH-R Staff Action Plan must contain a clinical justification of any portion of the individual's CH-R services delivered in the residence.

If the individual and/or the family/representative when appropriate, no longer want to receive in-residence CH-R services, or if any changes to the proportion of in-residence and out-of-residence services are made, the Life Plan and CH-R Staff Action Plan must be amended in accordance with requirements described in the section above titled *Care Planning and the Individual's Choice to Receive In-Residence CH-R Services* and in 18-ADM-09R, *Staff Action Plan Program and Billing Requirements*.

Service Documentation and Billing Modifiers

All service documentation that is part of an individual's record shall be maintained in accordance with New York State Mental Hygiene Law Section 33.13 and all other existing documentation requirements described in 15-ADM-01 *Service Documentation for Community Habilitation Services Provided to Individuals Residing in Certified and Non-Certified Locations*. In addition, service documentation must clearly identify that CH-R services are being delivered in the individual's residence.

When billing for these services, providers should bill for CH-R services using existing processes, except that each claim must be submitted using a unique modifier which identifies that the claim is associated with a service that was delivered in the individual's certified residence. At the time of this ADM's publication, this modifier is under development. This ADM will be updated and redistributed once the billing modifier is available for use in eMedNY.

In-Residence CH-R Services Delivered via Remote Technology

If an individual living in a certified residence is receiving CH-R services in the residence using remote technology, then this ADM and 21-ADM-03 *Ability to use Technology to Remotely Deliver Home and Community-Based Services* both apply. In these instances, the following are also required in addition to the requirements described in this ADM:

- 1) The individual and/or the family/representative when appropriate, must express a desire to receive CH-R in the residence using remote technology and provide written informed consent to receive CH-R services using remote technology.
- 2) The CH-R provider must explain privacy requirements and document in the individual's record that the individual and/or the family/representative when appropriate, have provided written informed consent to the use of remote technology.
- 3) The CH-R provider has adequate equipment and confirms that the individual also has adequate equipment for the successful delivery of CH-R services using remote technology and that the remote technology equipment meets the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and related security standards.
- 4) The Care Manager appropriately documents that the individual and/or the family/representative when appropriate, have expressed a desire and have provided their written informed consent to receive in-residence CH-R services using remote technology. The Care Manager must document this in a separate consent that is incorporated into the Life Plan or in the Life Plan itself, in the narrative in section I, in the special considerations in section II or III, or in the meeting summary in section VI.
- 5) The Care Manager ensures that the continued provision of CH-R services using remote technology is reviewed and reaffirmed by the individual and/or the family/representative when appropriate, through written informed consent and by the care planning team at least every six (6) months or with each semi-annual Life Plan review.

Service documentation must identify that CH-R services were delivered in the residence using remote technology. Documentation must also include references to any instance of disruption to services, including failure to provide services, for any reason including those caused by technology or equipment failure, or other related problems.

When billing for in-residence CH-R services delivered using remote technology, providers must bill as if they were delivering in-person services, except each claim must be submitted using a unique modifier which identifies the service as being delivered using remote technology in the residence. At the time of this ADM's publication, this modifier is under development. This ADM will be updated and redistributed once the billing modifier is available for use in eMedNY.