INTENSIVE BEHAVIORAL SERVICES (IBS)

Effective January 1, 2020

Audit protocols assist the Medicaid provider community in developing programs to evaluate compliance with Medicaid requirements under federal and state statutory and regulatory law, and administrative procedures issued by the New York State Office for People with Developmental Disabilities (OPWDD). The protocols listed are intended solely as guidance in this effort. This guidance does not constitute rulemaking by OPWDD and may not be relied on to create a substantive or procedural right or benefit enforceable, at law or in equity, by any person. Furthermore, nothing in the protocols alters any statutory, regulatory or administrative requirement and the absence of any statutory, regulatory or administrative citation from a protocol does not preclude OPWDD from enforcing a statutory, regulatory or administrative requirement. In the event of a conflict between statements in the protocols and statutory, regulatory or administrative requirements; the requirements of the statutes, regulations and administrative procedures govern.

A Medicaid provider's legal obligations are determined by the applicable federal and state statutory and regulatory law. Audit protocols do not encompass all the current requirements for payment of Medicaid claims for a particular category of service or provider type and therefore are not a substitute for a review of the statutory and regulatory law or administrative procedures.

Audit protocols are applied to a specific provider or category of service(s) in the course of an audit and involve OPWDD's application of articulated Medicaid agency policy and the exercise of agency discretion. Audit protocols are used as a guide in the course of an audit to evaluate a provider's compliance with Medicaid requirements and to determine the propriety of Medicaid expended funds. In this effort, OPWDD will review and consider any relevant contemporaneous documentation maintained and available in the provider's records to substantiate a claim.

New York State, consistent with state and federal law, can pursue civil and administrative enforcement actions against any individual or entity that engages in fraud, abuse, or illegal or improper acts or unacceptable practices perpetrated within the medical assistance program. Furthermore, audit protocols do not limit or diminish OPWDD's authority to recover improperly expended Medicaid funds and OPWDD may amend audit protocols as necessary to address identified issues of non-compliance. Additional reasons for amending protocols include, but are not limited to, responding to a hearing decision, litigation decision, or statutory or regulatory change.

The audit protocol criteria listed below are the **standard audit protocols**. "Appendix" contains flexibilities enacted during the COVID public health emergency."

1.	Missing Record
OPWDD Audit Criteria	If no record is available for review, claims for all dates of service associated with the individual will be disallowed.
Regulatory References	18 NYCRR Section 504.3(a) 18 NYCRR Section 540.7(a)(8)

2.	No Documentation of Service
OPWDD Audit Criteria	If the record does not document that a Intensive Behavioral Service was provided, the claim will be disallowed.
Regulatory References	18 NYCRR Section 504.3(a) 18 NYCRR Section 517.3(b)

3.	No Determination of a Developmental Disability
OPWDD Audit Criteria	The claim for services provided in the absence of a clinical assessment substantiating a specific determination of developmental disability will be disallowed.
Regulatory References	14 NYCRR Section 635-10.3(a) and (b)(1) 14 NYCRR Section 671.4(b)(1)(i)

4.	Missing or Inadequate Life Plan (LP)
OPWDD Audit Criteria	A copy of the individual's Life Plan (LP), covering the time period of the claim, must be maintained by the agency. The claim will be disallowed in the absence of a Life Plan (LP). If the Life Plan (LP) is not in place prior to the service date and in effect for the service date, the claim will be disallowed.
Regulatory References	14 NYCRR 635-10.2(a) OPWDD ADM #2013-03, pp. 11-12 OPWDD ADM #2018-06R, pp. 1-2

5.	Unauthorized Intensive Behavioral Services Provider
OPWDD Audit Criteria	The claim will be disallowed if the Life Plan (LP) does not: • Identify Intensive Behavioral Services as the service to be provided. • List the provider as the authorized provider for a specific service. • Have an effective date for Intensive Behavioral Services that is on or before the first day of service for which the agency bills for services.
Regulatory References	14 NYCRR Section 635-10.2(a) OPWDD ADM #2013-03, pp. 11-12 OPWDD ADM #2018-06R, pp. 3-4,7

6.	Identification of Frequency and Duration of Service
OPWDD Audit Criteria	The claim will be disallowed if the Life Plan (LP) does not: • Specify that the frequency for Intensive Behavioral Services is “Plan/Hourly”. • Specify the duration for Intensive Behavioral Services is “time limited”.
Regulatory References	OPWDD ADM #2013-03, pp. 11-12 OPWDD ADM #2018-06R, pp. 3-4,7

7.	Plan Fee Reimbursement Exceeded Period Limits
OPWDD Audit Criteria	The one-time Plan Fee for the IB Services covers the time that the clinician(s) spend developing the Functional Behavioral Assessment (FBA) and Behavior Support Plan (BSP). Agencies may only be paid once for the one-time Plan Fee for an individual. A claim for more than the one-time Plan Fee will be disallowed.
Regulatory References	OPWDD ADM #2013-03, p. 9

8.	Missing Functional Behavioral Assessment or Individualized Behavior Support Plan
OPWDD Audit Criteria	The claim will be disallowed if the Functional Behavioral Assessment (FBA) or the individualized Behavior Support Plan (BSP) is unavailable or does not cover the period of the claim.
Regulatory References	OPWDD ADM #2013-03, p. 10

9.	Missing Required Elements in the Functional Behavioral Assessment (FBA)- Plan Fee only
OPWDD Audit Criteria	The claim will be disallowed if the FBA does not include: 1. The individual's name. 2. The individual's Medicaid Client Identification Number (CIN). 3. The category of waiver service provided (e.g. Intensive Behavioral Services or IB Services). 4. Identification of the agency providing IB Services as the provider of the service. 5. Date on which the Assessment was completed. 6. Name, signature and title of the Intensive Behavioral staff person completing the FBA, and the date the FBA was completed (i.e. the signature date). 7. Co-signature of the licensed supervisor (if applicable) and signature date.
Regulatory References	OPWDD ADM #2013-03, p. 12

10.	Missing Required Elements in the Behavioral Support Plan (BSP)
OPWDD Audit Criteria	The claim will be disallowed if the BSP does not include: 1. The individual's name. 2. The individual's Medicaid Client Identification Number (CIN). 3. The category of waiver service provided (e.g. Intensive Behavioral Services or IB Services). 4. Identification of the agency providing IB Services as the provider of the service. 5. Name, signature and title of the Intensive Behavioral staff person writing the BSP and the date the BSP was completed (i.e. the signature date). 6. Co-signature of the licensed supervisor (if applicable) and signature date. 7. Evidence of when the BSP was last reviewed which must occur at minimum every 60 days. On an immediate reauthorization or at a reauthorization that occurs later, it is expected that a review will occur immediately and then subsequent reviews will occur again no less frequently than every 60 days. Evidence that a review was conducted includes the name, signature and title of

	the Intensive Behavioral staff who conducted the review and the date of the review and a summary of any changes in the BSP.
Regulatory References	OPWDD ADM #2013-03, pp. 12-13

11.	**Missing IB Service Documentation-Hourly Fee**
OPWDD Audit Criteria	The claim will be disallowed in the absence of documentation to support each day IB services were provided.
Regulatory References	OPWDD ADM #2013-03, p. 13

12.	**Billing for Non-reimbursable Service Time**
OPWDD Audit Criteria	The claim will be disallowed if the delivery of face to face services with the individual occurred when the individual is at another Medicaid service. This period cannot count toward the billing time for the Intensive Behavioral Hourly Fee with the following exceptions: • Time when the individual is receiving Family Care or Community Habilitation for purposes of training Family Care and Community Habilitation staff in implementing the BSP and for monitoring implementation of the BSP. • Time when the individual is receiving respite for purposes of training respite staff. Respite staff may only be trained, as clinically necessary, in those positive behavioral approaches, strategies and supports detailed in an individual's BSP to better support that individual during delivery of respite services. • The BSP must also clearly indicate the need for training of these direct support professionals. • Time when the MSC Service Coordinator is conducting the face-to-face MSC visit with the individual as long as the IB Services staff person is present.
Regulatory References	OPWDD ADM #2013-03, pp. 10-11

13.	**Missing Required Elements in the Service Documentation**
OPWDD Audit Criteria	For each day where hourly IB Services are billed the documentation must include: 1. Individual's name. 2. Identification of category of waiver service 3. A daily description of all of the services provided for the day. 4. Documentation of start and stop times for each "session." The provider must document the service start time and service stop time for each continuous period of Intensive Behavioral service provisions or "session." 5. The individual's response to the service.(Note: The response to service does not have to be recorded for every service session as long as the individual response is summarized at least monthly on one of the narrative notes). 6. The date the service was provided. 7. The primary service location 8. The name, signature and title of the Intensive Behavioral staff person documenting the service. 9. The date the service was documented (completed contemporaneously).

	The claim will be disallowed if any of the required elements are missing.
Regulatory References	18 NYCRR 504.3 OPWDD ADM #2013-03, p. 13

14.	**Improper Countable Service Units Billed**
OPWDD Audit Criteria	The claim will be disallowed if the number of 15-minute increments billed exceeded the number of 15-minute increments documented for IB services.
Regulatory References	OPWDD ADM #2013-03, p. 10

15.	**Hourly Fee Reimbursements Exceeded Period Limits**
OPWDD Audit Criteria	For the Hourly Fee, providers may only be reimbursed up to 25 hours in a six-month period (180 calendar days). Claims for hourly fee reimbursement in excess of 25 hours in a six-month period (180 calendar days) will be disallowed.
Regulatory References	OPWDD ADM #2013-03, p. 9

16.	**Billing for Services Not Authorized by Operating Certificate**
OPWDD Audit Criteria	The claim will be disallowed if the agency does not have an operating certificate identifying certification for Intensive Behavioral Services.
Regulatory References	New York State Mental Hygiene Law, Section 16.03(a)(4) 14 NYCRR Sections 619.2(d) 14 NYCRR Sections 619.3

APPENDIX

Per ADM 2018-06R, As of July 1, 2018, individuals new to the OPWDD system (i.e., on or after July 1, 2018), will have Life plans developed and finalized in accordance with the CCO/HH Manual. Finalized Life Plans for newly enrolled CCO members (i.e., members enrolled after 10/1/2018) are due no later than 90 days after CCO enrollment or HCBS waiver enrollment, whichever comes first.

Per ADM 2018-06R, For Life Plans finalized on or before December 31, 2019 (i.e., the transition period), OPWDD is suspending service documentation requirements for documenting the Waiver service name, frequency, duration, and effective date in the Life Plan. Instead, only the name of the service provider and the service name must be identified in the Life Plan.

Service providers are responsible for reviewing the finalized, acknowledged and agreed to Life Plan. Providers may occasionally find inaccuracies in the finalized, acknowledged and agreed to Life Plan. Providers should demonstrate due diligence in working with the Care Manager, CCOs, OPWDD and/or others to correct the Life Plan as soon as possible. Service providers should document their timely efforts to correct any errors in the Life Plan. Examples of this documentation may include notes in the individual's monthly summary, e-mails, phone calls, etc.

All Life Plans created or amended after the transition period must comply with all regulatory and policy standards.

Per ADM 2018-09R, As of March 1, 2020, At the time of transition to the Life Plan, Habilitation Plans must transition to Staff Action Plans. All individuals transitioning from an ISP to a Life Plan who receive habilitation services must have a staff Action Plan no later than March 1, 2020.

COVID PUBLIC HEALTH EMERGENCY FLEXIBILITIES:

The chart below contains flexibilities enacted during the COVID-19 Public Health Emergency. The chart below may **NOT** be comprehensive. Please see the OPWDD "Regulations & Guidance" landing page for a comprehensive listing (https://opwdd.ny.gov/regulations-guidance).

Policy Area	Flexibility that is Ending	Start Date of Flexibility	End Date of Flexibility	Where to find Post-PHE Policy & Resources
In-person Face-to-Face requirements	Face-to-Face requirements, beyond those deemed medically necessary are waived.	April 17, 2020	May 11, 2023	Interim Care Planning and Related Activities Guidance Under COVID-19 OPWDD Care Management Remote Technology Service Delivery Policy

Level of Care Eligibility Determination (LCED) Annual Redetermination	The annual LCED redeterminations are deferred for no more than six (6) months from the original due date	April 17, 2020	May 11, 2023	Interim Care Planning and Related Activities Guidance Under COVID-19 Public Health Emergency (PHE) Flexibilities Unwinding ADM #2020-02 Revised Intermediate Care Facilities for Individuals with Intellectual Disabilities ICF/IDD Level of Eligibility Determination (LCED)
Life Plan Signatures	Verbal or email approval of proposed changes and additions to the Life Plan are acceptable.	April 17, 2020	May 11, 2023	Interim Care Planning and Related Activities Guidance Under COVID-19 Public Health Emergency (PHE) Flexibilities Unwinding ADM #2018-06R2 Transition to People First Care Coordination
Timeframes for Finalization of Non-COVID 19 Related Life Plan Changes and corresponding changes to the Staff Action Plan	Timeframes for finalization of non-COVID-19 related Life Plan changes that were in-process prior to March 7, 2020, or which result from any Life Plan meetings or reviews held during the PHE, are waived. The corresponding changes to the Staff Action Plans can similarly be deferred.	April 17, 2020	May 11, 2023	Public Health Emergency (PHE) Flexibilities Unwinding CCO Provider Guidance and Manual ADM #2018-09R Staff Action Plan Program and Billing Requirements ADM #2018-06R2 Transition to People First Care Coordination
Life Plan Annual Meetings	• Ability to hold the annual Life Plan meeting	April 17, 2020	May 11, 2023	Interim Care Planning and Related Activities Guidance Under COVID-

	remotely versus face-to-face. • The annual Life Plan review date may be extended if the Care Manager made reasonable efforts to hold the meeting on time, and the reason for the delay is well documented in the Care Management Record.			19 Public Health Emergency (PHE) Flexibilities Unwinding CCO Provider Guidance and Manual ADM #2018-06R2 Transition to People First Care Coordination OPWDD Care Management Remote Technology Service Delivery Policy
Immediate Life Plan/Staff Action Plan Changes related to COVID- 19	The COVID-19 Life Plan/Staff Action Plan Addendum may be used to describe any needed updates per the addendum instructions.	April 17, 2020	November 11, 2023	Interim Care Planning and Related Activities Guidance Under COVID-19 Public Health Emergency (PHE) Flexibilities Unwinding Care Planning Post PHE Service Options Memo August 2021 Willowbrook Class Member Request to Return to Day Service ADM #2021-02 Requirements for Com Hab-Res (CH-R) Services ADM#2021-03 Ability to use Technology to Remotely Deliver HCBS | OPWDD ADM #2018-09R Staff Action Plan Program and Billing Requirements

Life Plans and Service Authorizations and Amendments	Requirement for a Life Plan or in-process Life Plan to justify the need for service authorization or amendment are waived.	April 17, 2020	November 11, 2023	Interim Care Planning and Related Activities Guidance Under COVID-19 Public Health Emergency (PHE) Flexibilities Unwinding In process Life Plan requirements: Life Plans and Service Authorization Memo 3.15.22 HCBS Waiver Application Requirements for Parental Deeming
Request for Service Authorization (RSAs) and Service Amendment Request Forms (SARFs) Signature	• Electronic signatures on the RSA and SARF are allowed. • Individual/family/ representative signature is not required.	April 17, 2020	N/A Adopted as OPWDD Policy on March 15, 2022, requiring only one signature from a CCO staff.	Interim Care Planning and Related Activities Guidance Under COVID-19 Public Health Emergency (PHE) Flexibilities Unwinding Updated Request for Service Authorization Form, 3-15-2022 Service_Amendment_Request_Form.pdf (ny.gov)