STATE OF NEW YORK
OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES
44 Holland Avenue
Albany, New York 12229

ANDREW M. CUOMO
GOVERNOR

KERRY A. DELANEY
ACTING COMMISSIONER

OPWDD AUDIT PROTOCOL — Community Habilitation (CH)

For service dates 11/01/10 and prior to January 1, 2014

Effective April 1, 2014

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.

OPWDD AUDIT PROTOCOL – Community Habilitation (CH)
Effective April 1, 2014

1.	Missing Recipient 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 517.3(b)(2)

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

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 (DD) will be disallowed.
Regulatory References	14 NYCRR Section 635-10.3(a) and (b)(1)

4.	Missing Copy of Individualized Service Plan (ISP)
OPWDD Audit Criteria	A copy of the individual's ISP, covering the time period of the claim, must be maintained by the agency. The claim will be disallowed in the absence of an ISP. If the ISP 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 § 635-99.1(bk) OPWDD Administrative Memorandum #2010-05, p. 6

5.	Unauthorized CH Service Provider
OPWDD Audit Criteria	The claim will be disallowed if the ISP does not specify the category of waiver service that the agency is providing (i.e. community habilitation) or does not designate the agency as the provider of the service.
Regulatory References	OPWDD Administrative Memorandum #2010-05, p. 6

6.	Missing CH Habilitation Plan
OPWDD Audit Criteria	The claim will be disallowed in the absence of a habilitation plan covering the time period of the claim. The habilitation plan must be in place prior to the service date and in effect for the service date.
Regulatory References	14 NYCRR Section 635-99.1(bk); OPWDD Administrative Memorandum #2010-05, p. 6

7.	Missing Required Elements of CH Habilitation Plan
OPWDD Audit Criteria	The claim will be disallowed if any of the required elements are missing in the habilitation plan: • Person's name and Medicaid identification number (CIN); • The habilitation service provider agency name and type of habilitation service provided; • Date the habilitation plan was last reviewed; • The person's valued outcome(s); o Identification of at least one valued outcome that is derived from the individual's ISP (valued outcomes do not need to be verbatim from the ISP); • A description of the services and supports the Habilitation Service Provider staff will provide to the person; • Safeguards that will be provided by the habilitation service provider; • Printed name, signature and title of the person who wrote the habilitation plan and the date it was written or revised. Effective for dates of service after 3/31/12, the claim will be disallowed if the habilitation plan is missing the required four sections: • Identifying information; • Valued Outcomes; • Staff Services and Supports; • Safeguards.
Regulatory References	14 NYCRR Section 635-99.1(bk); OPWDD Administrative Memorandum #2003-03, pp. 2-4 OPWDD Administrative Memorandum #2012-01, p. 4 (Effective 4/1/12)

8.	Missing CH Habilitation Plan Review
OPWDD Audit Criteria	Effective for dates of service after 3/31/12, the claim will be disallowed if the CH Habilitation Plan review was not: • developed, reviewed or revised *as necessary or at a minimum standard of at least twice annually;* • conducted at the time of the ISP meeting at least annually. The claim will be disallowed if it does not include the following elements: • The individual's name; • The habilitation service(s) under review; • The staff's signature(s) from the habilitation service; • The date of the staff's signature;

	• Date of the review. The claim will be disallowed if one or more of the required elements are missing
Regulatory References	For services 06/01/10 to 01/24/12, 14 NYCRR Section 635-99.1(bj); For services 01/25/12 and after, 14 NYCRR Section 635-99.1(bk); OPWDD Administrative Memorandum #2003-03, p. 3 OPWDD Administrative Memorandum #2012-01, p. 7 (Effective 04/01/12)

9.	**Failure to Write Initial CH Habilitation Plan Within 60 Days**
OPWDD Audit Criteria	Effective for dates of service after 3/31/12, the initial habilitation plan must be written by the habilitation service provider within 60 days of the start of the CH. The claim will be disallowed if the plan is not written within 60 days of the start of the habilitation service.
Regulatory References	For services 06/01/10 to 01/24/12, 14 NYCRR Section 635-99.1(bj); For services 01/25/12 and after, 14 NYCRR Section 635-99.1(bk); OPWDD Administrative Memorandum #2012-01, p. 2

10.	**Missing Required Elements for CH Service Documentation**
OPWDD Audit Criteria	The claim will be disallowed in the absence of one or more of the following required elements in the CH daily service note: • Individual's name and Medicaid Number; • Identification of waiver service provided; • A daily description of at least one face-to-face service provided by staff during each "session" (or continuous period of Community Habilitation service provision) as prescribed in the person's habilitation plan; • Documentation of start and stop times; • Documentation of the staff-to-individual ratio; • Individual's response to the service (unless this in noted in the monthly note); • Date the service was provided; • The primary service location; • Verification of service provision by the CH staff person delivering the service; • The signature and title of the CH staff person documenting the service; • The date the service was documented and signed by the Community Habilitation staff person.
Regulatory References	OPWDD Administrative Memorandum #2010-05, pp. 4-5

11.	**Missing CH Daily Service Note or Monthly Summary Note**
OPWDD Audit Criteria	The daily checklist format is selected (or if the daily service note does not include the individual's response to service), a monthly summary note is required.

	The monthly summary must summarize the implementation of the individual's Community Habilitation plan, and address the individual's response to services provided as well as any issues or concerns regarding the plan or the individual receiving services. The claim will be disallowed if the required CH monthly summary note is missing.
Regulatory References	OPWDD Administrative Memorandum #2010-05, pp. 5-6

12.	**Improper Number of CH Service Increments Billed**
OPWDD Audit Criteria	The provider must document the service start time and service stop time for each Community Habilitation "session." The unit of service for Community Habilitation services is an hour. Services are billed in 15-minute increments, with a full 15 minutes of service required to bill a single increment. The claim will be disallowed if the number of 15 minute increments billed are <u>not supported</u> by the number of 15 minute increments documented for CH services. When there is a break in the service delivery during a single day, the provider may combine, for billing purposes, the duration of each continuous period of service provision (or session) ***that is provided during the day that has the same individual to staff ratio.*** The billable service time for Community Habilitation is the time when CH staff is providing face-to-face CH services to an individual. Time spent receiving another Medicaid service cannot be counted toward the Community Habilitation billable service time, ***except as follows:*** • The individual may receive Hospice at the same time as CH services; • The individual may receive Personal Care, Home Health Aide, or nursing services at the same time as CH services when the Community Habilitation Plan describes supports and services that are distinct and separate from the supports and services being provided by the Personal Care, Home Health Aide, or nursing staff; • Time that the individual spends with his/her MSC Service Coordinator during face-to-face visits as long as Community Habilitation staff is present; • Time that the individual is at a medical appointment with a physician (including a psychiatrist), a nurse practitioner, or physician assistant, or at a dental appointment as long as CH staff is with the individual at these appointments. Transportation to and from the medical appointment may also be counted as

	long as staff accompany the individual and Medicaid is not being charged separately for a transportation attendant for the trip; • Time that the individual is at an appointment for a clinical service of the type described below and staff is with the individual in order to facilitate the implementation of therapeutic methods and treatments; or • Day of admission and day of discharge to a hospital, nursing home, rehabilitation facility or ICF/DD if CH Services are delivered prior to admission or after discharge and the services are not delivered in the hospital, nursing home, rehabilitation facility or ICF/DD.
Regulatory References	14 NYCRR Section 635-10.5(ab) OPWDD Administrative Memorandum #2010-05, pps. 3-4

13.	**Incorrect Staff to Individual Ratio**
OPWDD Audit Criteria	CH shall be paid for services based on four different fee structures based on the staff to individual ratio at the time of service delivery. These fee structures are: • one staff to one individual, • one staff to two individuals, • one staff to three individuals, and • one staff to four individuals. The claim will be disallowed if the requirement of a continuous face-to-face documented session was billed based on an incorrect staff to individual ratio.
Regulatory References	14 NYCRR Section 635-10.5(ab) OPWDD Administrative Memorandum #2010-05, p. 2

14.	**CH Service Delivered by Unauthorized Provider**
OPWDD Audit Criteria	Only the claim from the DDSO/DDRO authorized provider of services in a given calendar month will be allowed. The claim by the unauthorized provider will be disallowed.
Regulatory References	18 NYCRR Section 504.1(c)

15.	**Billing for CH services by Ineligible Provider**
OPWDD Audit Criteria	The claim will be disallowed if the agency does not have a community habilitation Medicaid Provider Agreement.
Regulatory References	14 NYCRR Part 635-10.1(b)