

## **SUPPORT BROKERAGE (SB) SERVICES**

**Effective January 1, 2020**

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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.

**Note:**

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.

<b>1.</b>	<b>Missing Record</b>
<b>OPWDD Audit Criteria</b>	If no record is available for review, claims for all dates of service associated with the individual will be disallowed.
<b>Regulatory References</b>	18 NYCRR Section 504.3(a) 18 NYCRR Section 540.7(a)(8)
<b>2.</b>	<b>No Documentation of Service</b>
<b>OPWDD Audit Criteria</b>	If the record does not document that a Support Brokerage service was provided, the claim will be disallowed.
<b>Regulatory References</b>	18 NYCRR Section 504.3(a) 18 NYCRR Section 517.3(b)
<b>3.</b>	<b>No Determination of a Developmental Disability</b>
<b>OPWDD Audit Criteria</b>	The claim for services provided in the absence of a clinical assessment substantiating a specific determination of developmental disability will be disallowed.
<b>Regulatory References</b>	14 NYCRR Section 635-10.3(a) and (b)(1) 14 NYCRR Section 671.4(b)(1)(i)
<b>4.</b>	<b>Missing or Inadequate Life Plan (LP)</b>
<b>OPWDD Audit Criteria</b>	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.
<b>Regulatory References</b>	14 NYCRR 635-10.2(a) OPWDD ADM #2018-06R, pp. 1-2 OPWDD ADM #2019-06, pp. 7-8
<b>5.</b>	<b>Unauthorized Support Broker Services Provider</b>
<b>OPWDD Audit Criteria</b>	The claim will be disallowed if the Life Plan (LP) does not: <ul style="list-style-type: none"> <li>• Identify Support Brokerage as the service to be provided.</li> <li>• List the provider as the authorized provider for a specific service.</li> <li>• Have an effective date for Support Brokerage services that is on or before the first day of service for which the agency bills for services.</li> <li>• Identify the fiscal intermediary agency that is billing for the support brokerage services.</li> </ul>
<b>Regulatory References</b>	14 NYCRR Section 635-10.2(a) OPWDD ADM #2018-06R, pp. 3-4,7 OPWDD ADM #2019-06, pp. 7-8
<b>6.</b>	<b>Identification of Frequency and Duration of Service</b>
<b>OPWDD Audit Criteria</b>	The claim will be disallowed if the Life Plan (LP) does not: <ul style="list-style-type: none"> <li>• Specify that the frequency for Support Broker is "hourly".</li> <li>• Specify the duration for Support Broker is "ongoing".</li> </ul>
<b>Regulatory References</b>	OPWDD ADM #2018-06R, pp. 3-4,7 OPWDD ADM #2019-06, pp. 7-8

<b>7.</b>	<b>Missing Support Brokerage Agreement</b>
<b>OPWDD Audit Criteria</b>	The claim will be disallowed if the agency does not have a support brokerage agreement.
<b>Regulatory References</b>	OPWDD ADM #2019-06, p. 7
<b>8.</b>	<b>Missing Required Elements of the Support Brokerage Agreement</b>
<b>OPWDD Audit Criteria</b>	The support broker agreement must contain these required elements: the individual's name; the name and authorization number of the support broker providing brokerage services; the name of the agency for which the support broker works, if there is one, otherwise state that the broker is independent; a description of the responsibilities that the support broker is expected to perform; the signature of the support broker; the date that the support broker signed the agreement; the signature of the individual (may be a designee or guardian); the date that the individual (or designee or guardian) signed the agreement.
<b>Regulatory References</b>	OPWDD ADM #2019-06, p. 7
<b>9.</b>	<b>Missing Support Brokerage Service Documentation</b>
<b>OPWDD Audit Criteria</b>	The claim will be disallowed in the absence of contemporaneously completed documentation of the services and supports provided by the support broker.
<b>Regulatory References</b>	18 NYCRR 504.3 OPWDD ADM #2019-06, p. 6
<b>10.</b>	<b>Missing Required Elements of Service Documentation</b>
<b>OPWDD Audit Criteria</b>	The SB service documentation must contain the following required elements: the individual's name and CIN; the name and authorization number of the support broker providing the brokerage services; identification of the category of waiver services being provided (e.g. support broker or support brokerage); a description of support brokerage services provided during each "session" (continuous period of support broker services provision) that are drawn from the support broker agreement; documentation of start and stop times for each continuous period of service provision or "session"; the date the service was provided; the signature of the support broker delivering and documenting the service; the date the service was documented and signed by the support broker.  The claim will be disallowed if one or more of the required elements are missing.
<b>Regulatory References</b>	18 NYCRR 504.3 OPWDD ADM #2019-06, pp. 6-7
<b>11.</b>	<b>Missing Team Planning Meeting Documentation</b>
<b>OPWDD Audit Criteria</b>	The claim will be disallowed in the absence of evidence that the required number of team planning meetings occurred per year.
<b>Regulatory References</b>	18 NYCRR 504.3 OPWDD ADM #2019-06, pp. 4, 6-7

<b>12.</b>	<b>Missing Required Elements of Team Planning Meeting Documentation</b>
<b>OPWDD Audit Criteria</b>	<p>The agency must have evidence of the team planning meeting including: the individual's name; the name and authorization number of the support broker providing the brokerage service; identification of the category of waiver services being provided (e.g. support broker or support brokerage); identification of attendees; a description of the discussion and results of the meeting (e.g. topics discussed, and changes that need to occur to the individual's plan and budget); the date the meeting took place; the signature of the support broker; the date the documentation was signed by the support broker.</p> <p>The claim will be disallowed if one or more of the required elements are missing.</p>
<b>Regulatory References</b>	<p>18 NYCRR 504.3 OPWDD ADM #2019-06, pp. 6-7</p>
<b>13.</b>	<b>Services Performed by Unqualified Support Brokers</b>
<b>OPWDD Audit Criteria</b>	<p>Support Brokers are required to successfully complete OPWDD approved trainings (Broker Training Institute, Person Centered Planning – Introduction and Advanced, Developing a Self-Directed Budget, and Self-Advocacy/Self-Determination) prior to delivering brokerage services.</p> <p>The claim will be disallowed if the broker did not complete the required training prior to delivering services.</p>
<b>Regulatory References</b>	<p>OPWDD ADM #2019-05R, pp. 2-4</p>
<b>14.</b>	<b>Annual Training Requirement Not Met</b>
<b>OPWDD Audit Criteria</b>	<p>Support Brokers must attend professional development trainings annually. The claim will be disallowed if the support broker does not obtain 12 hours of professional development annually.</p>
<b>Regulatory References</b>	<p>OPWDD ADM #2019-05R, pp. 4-5</p>
<b>15.</b>	<b>Billing for Services by Ineligible Support Broker</b>
<b>OPWDD Audit Criteria</b>	<p>The support broker is not permitted to provide Care Management or HCBS waiver services to an individual he or she provides support broker services for. The claim will be disallowed if the support broker also provided Care Management or other HCBS waiver services to the individual.</p> <p>The claim will be disallowed if the agency does not have an operating certificate identifying certification for Fiscal Intermediary services.</p>
<b>Regulatory References</b>	<p>New York State Mental Hygiene Law, Section 16.03(a)(4) 14 NYCRR Sections 619.2(d) 14 NYCRR Sections 619.3 OPWDD ADM #2019-06, p. 6</p>