



**To:** Provider Associations  
Voluntary Provider Agency Executive Directors  
DDSO Directors  
IBR Director  
Commissioner's Advisory Council  
DDPC Consumer Caucus  
OPWDD Required Regulations Mailing List

**From:** Barbara Brundage, Director *BB*  
Regulatory Affairs Unit

**Date:** October 3, 2011

**Re:** Proposed Regulations – Monthly Community Habilitation

**Comments Due: Monday, December 5, 2011**

**Suggested distribution:**

Agencies which operate IRAs and/or CRs AND Group Day Habilitation

- Agency Financial Officers
- Agency Administrators – Residential
- Agency Administrators – Day Habilitation

**Purpose:**

OPWDD has proposed regulations to implement a new service, Monthly Community Habilitation, which is available for individuals residing in supervised Individualized Residential Alternatives (IRAs) or supervised Community Residences.

HCBS Waiver Monthly Community Habilitation (MCH) offers another option to individuals who wish to have their habilitation services focus on a variety of everyday community settings. The service, which was approved by the Federal Centers for Medicare and Medicaid Services (CMS) in the HCBS Waiver renewal effective 10/1/09, is designed to promote independence and community integration. An earlier phase of Community Habilitation offered skills training and supports which could take place only in non-certified settings. Maintaining the same focus on meaningful community inclusion, OPWDD is expanding eligibility for this type of service to individuals who reside in supervised residential habilitation settings certified by OPWDD and who are enrolled in the HCBS waiver. Individuals who live in these supervised residential settings typically receive group day habilitation services. Individuals who elect to participate in MCH will continue to reside in their residential settings but will receive MCH rather than discrete residential habilitation and day habilitation services. The program is not designed to be

compatible with Supported Employment, Prevocational services, blended services, comprehensive services or Consolidated Supports and Services.

MCH promises enhanced flexibility and a more individualized approach than was possible under the parameters of existing services. It is anticipated that these changes will offer participants increased flexibility in service design, will encourage increased community interaction, and will promote cost effective community integration.

Finally, to promote individual choice and greater flexibility, these regulations include a self-directed and family-directed option within MCH for those individuals who want to choose and manage MCH staff (either personally or through a parent, guardian, family member or other adult).

Elements of the proposed regulations were developed in response to recommendations that were made by provider representatives who were members of the OPWDD Fiscal Sustainability Team.

Please note that MCH is an option for individuals who live in supervised IRAs or CRs and providers which operate those facilities. There is no requirement that providers or particular individuals participate in MCH. Not all individuals who live in supervised IRAs or CRs will be eligible to receive MCH.

Please refer to the text of the proposed regulations for more detail on the requirements applicable to the provision of MCH. OPWDD is also planning to issue an Administrative Memorandum on MCH before its implementation which will include further information on the new requirements.

The text the proposed regulations can be accessed on the OPWDD website at [www.opwdd.ny.gov](http://www.opwdd.ny.gov). Look under "Regulations."

OPWDD expects to finalize these regulations and begin implementation of MCH effective January 1, 2012.

**Public comments:**

The deadline for public comment for these regulations is the close of business on Monday, December 5, 2011.

Written comments should be addressed to:

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**Public hearings:**

Public hearings will be held on the proposed regulations as follows:

Tuesday, November 29, 2011 – 10:30 AM  
OPWDD  
Counsel's Office Conference Room, 3<sup>rd</sup> Floor  
44 Holland Avenue  
Albany, NY

Wednesday, November 30, 2011 – 10:30 AM  
OPWDD  
Counsel's Office Conference Room, 3<sup>rd</sup> Floor  
44 Holland Avenue  
Albany, NY

Persons who wish to present testimony at the public hearings must pre-register no later than Friday, November 18, 2011. Individuals who do not pre-register may not be able to present testimony. Individuals who want to attend the hearing but are not planning to present testimony do not need to pre-register. Attendees or presenters who need any special accommodations must make a request by the same date. In order to pre-register, to request special accommodations or to ask any questions about hearing logistics contact the Regulatory Affairs Unit at [RAU.UNIT@opwdd.ny.gov](mailto:RAU.UNIT@opwdd.ny.gov) or (518) 474-1830.

For questions regarding this proposed regulation or MCH, please contact Lisa Kennedy by email at [lisa.m.kennedy@opwdd.ny.gov](mailto:lisa.m.kennedy@opwdd.ny.gov) or by telephone at (518) 474-2446.

Thank you.

Attachment

cc: Ms. Haneman  
Ms. Howard  
Ms. Doran  
Ms. Kennedy



## MONTHLY COMMUNITY HABILITATION

AMENDMENTS TO 14 NYCRR SECTIONS 635-10.4 AND 635-10.5 AND SUBPART 635-12  
Comments due: December 5, 2011

- Paragraph 635-10.4(b)(3) is amended as follows:

- (3) Hourly community [Community] habilitation services (CH) are similar in scope to residential habilitation services and day habilitation services, however, the focus of these services is directed towards service delivery occurring largely in community (non-certified) settings to facilitate and promote independence and community integration. (See subdivision 635-10.5(ab) for further requirements related to CH services.)

Note: the rest of the paragraph is unchanged.

- A new paragraph 635-10.4(b)(4) is added as follows:

- (4) Monthly community habilitation services (MCH) are similar in scope to residential habilitation services and day habilitation services. Individuals who receive MCH must be residents of supervised Individual Residential Alternatives or supervised Community Residences who are not receiving residential habilitation or day habilitation services. (See subdivision 635-10.5(ac) for further requirements related to MCH services.)
  - (i) Monthly community habilitation services include all of the types of services specified in paragraphs (1) and (2) of this subdivision.
  - (ii) Allowable activities include all of the allowable activities specified in subparagraphs (1)(i)-(xv) and (2)(i)-(xv) of this subdivision.

- Subdivision 635-10.5(ab) is amended as follows:

- (ab) Hourly community [Community] habilitation (CH) services. The following shall apply to CH services (see section 635-10.4(b)(3) of this Subpart).

Note: the rest of the subdivision is unchanged, except for paragraph (3).

- (3) Reimbursement shall be contingent on documentation that those receiving CH services have received the services in accordance with the person's individualized service plan (ISP) and hourly community habilitation plan (CH plan).

- A new subdivision (ac) is added to section 635-10.5 as follows:

(ac) Monthly community habilitation (MCH) services. The following shall apply to MCH services (see section 635-10.4(b)(4) of this Subpart).

(1) Standards for the reimbursement of MCH. In order for the provider to receive reimbursement for the delivery of MCH the following standards must be met:

(i) OPWDD shall approve the person's need for MCH services prior to the receipt of services. OPWDD shall approve persons for MCH services based on the compatibility of the individual with available MCH services and the potential economy and efficiency of the delivery of MCH compared to residential habilitation and day habilitation services.

(ii) The individual must reside in a supervised IRA or supervised CR.

(2) Payment Standards:

(i) The unit of service is one month. Providers may bill for a full month or for a half month.

(ii) For a full month, the provider must document the delivery of:

(a) at least one individualized face-to-face service in accordance with the individual's ISP and MCH Plan on 22 separate days of the calendar month; and

(b) an additional 22 face-to-face services in accordance with the individual's ISP and MCH Plan that may be delivered anytime during the calendar month (including the same day that a service described in clause (a) of this subparagraph is delivered).

(iii) For a half month, the provider must document the delivery of:

(a) at least one individualized face-to-face service in accordance with the individual's ISP and MCH Plan on 11 separate days of either the first half or the second half of the calendar month; and

(b) an additional 11 face-to-face services in accordance with the individual's ISP and MCH Plan that may be delivered anytime during the same half of the calendar month in which the services described in clause (a) are

delivered (including the same day that a service described in clause (a) of this subparagraph is delivered).

- (iv) MCH services delivered when an individual is admitted to a hospital, nursing home, intermediate care facility for persons with developmental disabilities (ICF/DD) or other certified, licensed or government funded residential setting may not be used to meet the minimum requirements for service delivery established in subparagraphs (ii) or (iii) of this paragraph. MCH services delivered on the day of admission or on the day of discharge may be used to meet the minimum standards if the MCH services are delivered prior to admission or after discharge and the services are not delivered in those settings.
  - (v) During the month or half month that the individual is receiving MCH, no provider will be reimbursed for the delivery of any of the following services to the individual: residential habilitation, group day habilitation, individual day habilitation, prevocational services, supported employment services, blended services (which are a combination of day habilitation, prevocational services and/or supported employment services), comprehensive services (which are a combination of IRA residential habilitation services and day habilitation), and Consolidated Supports and Services.
- (4) A provider is authorized to provide MCH if it:
- (i) operates at least one facility certified by OPWDD which is designated as a supervised IRA or supervised CR; and
  - (ii) is authorized to provide group day habilitation.
- (5) MCH which is self-directed or family-directed. The following requirements apply to MCH services which are self-directed or family-directed.
- (i) The management of self-directed or family-directed services is described in a co-management agreement between the individual, the MCH provider and, if one exists, an identified adult as that term is used in subparagraph (ii) of this paragraph.
  - (ii) MCH services which are self-directed are available when all parties to the co-management agreement concur that the individual receiving the MCH services:

- (a) is an adult who is capable and willing to make informed choices and manage the self-directed services; or
- (b) is an adult who:

  - (1) is capable and willing to make informed choices; and
  - (2) has selected an identified adult who is a family member or other adult, and the identified adult is willing to assist in making informed choices and co-managing the self-directed services; or
- (c) is a minor and there is an identified adult who is either:

  - (1) a parent or legal guardian who is available and willing to make informed choices and co-manage the self-directed services; or
  - (2) a family member or other adult who is available and willing to make informed choices and co-manage the self-directed services.
- (iii) MCH services which are family-directed are available when all parties to the co-management agreement concur that an adult receiving the MCH services does not qualify for self-direction and there is an identified adult who is willing and able to make informed choices and co-manage the family-directed services for the benefit of the person.
- (iv) Eligible individuals and identified adults (if they exist) assume the responsibilities as mutually agreed to by the provider, individual, and identified adult in the co-management agreement. The co-management agreement shall specify the responsibilities of the provider, the individual, and any identified adult who will be managing or assisting in the management of the self-directed or family-directed services. The co-management agreement shall be documented in the individual's record.
- (v) The following responsibilities (except as noted in subparagraph (vi) of this paragraph) shall be the individual's and/or the identified adult's:

  - (a) recruiting staff;
  - (b) making recommendations for staff selection and discharge of staff;
  - (c) managing the staff schedule; and

- (d) identifying when and on what schedule the habilitation activities identified in the individual's MCH plan will be carried out.
- (vi) The provider may agree to assist with one or more of the responsibilities specified in subparagraph (v) of this paragraph. The provider's agreement to assist with those responsibilities shall be documented in the individual's record.
- (vii) The provider's responsibilities shall include:

  - (a) monitoring that services are delivered in accordance with all applicable requirements;
  - (b) monitoring that services are properly documented, and collecting and maintaining all necessary service documentation;
  - (c) submitting requests for reimbursement;
  - (d) providing payroll services, and managing any employee benefits or other compensation for staff;
  - (e) complying with and monitoring staff compliance with the applicable requirements of Parts 624, 633 of this Title, and this Part (e.g., requesting criminal history record checks, training staff, and supervising staff);
  - (f) determining whether any staff training is necessary beyond the training required by Part 633 of this Title and providing the necessary training; and
  - (g) monitoring the individual's continuing ability and willingness to fulfill those responsibilities agreed to and specified in his or her record and/or the identified adult's continuing availability and willingness to fulfill those responsibilities agreed to and specified in the individual's record.
- (viii) The individual receiving the MCH service, any identified adults, and the provider shall review their respective management responsibilities to evaluate whether self-direction or family direction continues to be appropriate at least once every two years.
- (ix) All agencies authorized by OPWDD to provide MCH are authorized to provide self-direction and family direction as an option under MCH.
- (6) Price setting:

- (i) On the effective date of this amendment, for each agency which is authorized to provide monthly community habilitation (see paragraph 635-10.5(c)(4)), OPWDD shall establish an individual MCH price that represents an amalgamation of the provider's IRA price and its group day habilitation price. It shall be calculated as follows:
- (a) The individual monthly price from the IRA price sheet in effect on the day preceding the effective date of this amendment shall be utilized and the split between non-room and board, and room and board, shall be maintained. The individual monthly price shall include all operating cost categories, efficiency adjustments, offsets, miscellaneous items itemized separately in the price, and property. The price shall be expressed in terms of a full month's reimbursement per individual served.
- (b) Total approved costs in the group day habilitation price sheet in effect on the day preceding the effective date of this amendment shall be utilized. Total approved costs shall include all operating cost categories, efficiency adjustments, offsets, miscellaneous items itemized separately in the price, and property. To determine an individual monthly price, total approved annual costs shall be divided by capacity and divided by 12. The capacity shall be established as the authorized units reflected on the price sheet on the day preceding the effective date of this amendment divided by 215. The result shall be multiplied by a statewide average group day habilitation occupancy factor. The individual monthly price shall be expressed in terms of a full month's reimbursement per individual.
- (c) The non-room and board component of the individual MCH price shall be the sum of:
- (1) the non-room and board component of the individual monthly price derived from the IRA price sheet as described in clause (a) of this subparagraph; and
- (2) the individual monthly price derived from the group day habilitation price sheet as described in clause (b) of this subparagraph.
- (d) The room and board component of the MCH price shall be the room and board component of the individual monthly price from the IRA price sheet in effect on the day preceding the effective date of this amendment.
- (e) The non-room and board component and the room and board component summed together yield the individual MCH price.

- (f) For a half month reimbursement, the individual MCH price shall be halved.
  - (ii) Subsequent prices. In the event that either the IRA price or the group day habilitation price used to calculate the individual MCH price is revised, the MCH price shall be revised accordingly.
  - (iii) The prices determined in accordance with this paragraph shall not be considered final unless approved by the director of the Division of the Budget.
  - (iv) The individual MCH price determined through the application of this paragraph may be corrected or appealed pursuant to either section 681.13(h) or (i) of this Title, except that the determination following a first level appeal process shall be the commissioner's final decision.
- **A new subparagraph 635-12.1(h)(1)(iv) is added as follows:**
  - (iv) residential habilitation and/or group day habilitation which is received by an individual who formerly received monthly community habilitation in the following circumstances:
    - (a) The individual received residential habilitation and/or group day habilitation prior to the receipt of monthly community habilitation and the services were Preexisting Services, and
    - (b) After the individual stopped receiving monthly community habilitation he or she resumed receipt of the residential habilitation and/or day habilitation services which were formerly provided, and
    - (c) The residential habilitation and/or day habilitation services would have been Preexisting Services except for the intervening receipt of monthly community habilitation.
- **Paragraph 635-12.1(h)(2) is amended as follows:**
  - (2) For Medicaid service coordination; day treatment services; the following HCBS waiver services: at home residential habilitation services, hourly community habilitation services, prevocational services, supported employment services, respite services; and blended services and comprehensive services, preexisting services means:

**Note: rest of the paragraph remains the same except for subparagraph (iv).**

- **Subparagraph 635-12.1(h)(2)(iv) is amended as follows:**

- (iv) hourly community habilitation services which converted on November 1, 2010 from at home residential habilitation services if:

**Note: Clause (a) remains the same.**

- (b) the hourly community habilitation services are delivered by the same provider.

- **Subdivision 635-12.1(j) is amended as follows:**

- (j) Services means ICF/DD services (Intermediate Care Facilities for Persons with Developmental Disabilities, see Part 681 of this Title), Medicaid service coordination, day treatment services, and the following HCBS waiver services: residential habilitation services (community [in a community residence], IRA, family care, and at home), hourly community habilitation services, day habilitation services, prevocational services, supported employment services, [and] respite services, and monthly community habilitation services. Blended services, which are a combination of day habilitation, prevocational services and/or supported employment services, and comprehensive services, which are a combination of IRA residential habilitation services and day habilitation, are also considered services. A limited exception to the applicability of certain sections of this Subpart has been made in the case of some individuals who are applying for or receiving supported employment services or respite services (see section 635-12.12 of this Subpart).

- **A new subdivision 635-12.3(g) is added as follows:**

- (g) Monthly community habilitation services are "other than Preexisting Services."

- **Subdivision 635-12.9(n) is amended as follows:**

- (n) For hourly community habilitation services, the fee shall equal the Medicaid fee OPWDD established for the hourly community habilitation services for the dates [of] the services were provided.

- **A new subdivision 635-12.9(o) is added as follows:**

- (o) For monthly community habilitation services, the price shall equal the Medicaid fee OPWDD established for monthly community habilitation services for the dates the services were provided.