



# Liability for Services Regulations

## Quick Reference Guide Appendix 1

### Rules for Determining Waived or Reduced Fees for OPWDD Preexisting Services

All individuals are fully liable for the full cost of services rendered unless Medicaid is paying for their services. For individuals receiving HCBS Waiver services, the individual must also be enrolled in the HCBS Waiver. An individual's liability is the same amount that Medicaid reimburses for the service.

A service provider may submit the [Fee Reduction/Waiver For Preexisting Services Request For Approval \(OPWDD LIAB 04\)](#) form to their local Revenue Support Field Office (RSFO) as a request for a fee reduction or fee waiver. All relevant documentation, such as a Medicaid denial notice or HCBS Waiver Notice of Decision, and financial information must be included with the request form. Fee reductions/waivers for preexisting services are only considered for individuals who have fully cooperated in the Medicaid, and if necessary, HCBS Waiver enrollment processes, but have failed to qualify.

**Approval:** If the RSFO approves a waiver of the fees, OPWDD will pay the service provider the full fee. If the RSFO approves a reduction in the fee, OPWDD will pay the difference between the full fee for the service and the reduced fee being billed to the individual. If it is determined that the individual is eligible for a waiver or reduction of the fee, this waiver or reduction does not legally release the individual from liability for the full cost of services. Fees charged to the individual will offset State funding to the individual's certified residential service provider or other service provider.<sup>1</sup>

The authorization dates will be noted on the form. Prior to the "apply by" date noted on the form, the service provider must submit a new form and provide updated information as requested to extend the approval of a reduction or waiver of fees after the expiration date. If a new request is not submitted, the service provider should start billing the individual or liable party for the full cost of the services being provided.

**Denial:** If a Fee Reduction/Waiver request is denied, the reason will be indicated in the response to the service provider. Reasons for the denial may include:

- The service provider submitted an incomplete form.
- The service provider did not provide sufficient documentation to justify the request.

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<sup>1</sup> The offset is applied first to the residential provider (IRA, Family Care, ICF or CR). If the individual does not reside in a certified residence, the offset will be applied to the non-residential services providers. The provider responsible for collecting the liability amount shall be the provider with the highest Medicaid fee for the services the person is receiving followed by other providers, in descending order, if the individual's liability exceeds the Medicaid fee of an individual provider.

- The individual, family and/or liable parties have not fully cooperated in the Medicaid and/or HCBS Waiver enrollment processes.

## Charges

An individual will be charged at the service provider's full Medicaid reimbursement rate for services received or the amount of the individual's financial responsibility, whichever is less. Charges must be determined by the same monthly budgeting methodology used to establish an individual's eligibility for Medicaid.

- If an individual's income and resources are at or below the Medicaid eligibility level, the individual will not be required to pay for services received.
- If an individual's income or resources exceed the eligibility level for Medicaid, the individual will be required to pay for all or part of the cost of services received.

## Determining Fees by Living Situation

### A. Individuals Living In Certified Residential Programs

Countable income, personal allowance, charges for residential care, and excess resources are defined in 14NYCRR sections §633.15, §686.13 and §635-9.1. These regulations are the basis for determining financial liability for residential services.

#### FC/CR/IRA

**Income:** Excess income is the amount of monthly countable income over the Medicaid income level. This amount must be used to pay for the cost of residential services covered under the liability for services regulations and is equivalent to a Medicaid eligible individual's monthly "spenddown" amount. Room and board or "rent" is not covered under the regulations.

**Resources:** Resources greater than the SSI eligibility level for an individual must be used to pay for the cost of Residential Habilitation services in a congregate care residential program (FC, CR, IRA). OPWDD allows the same resource exclusions as the Medicaid Program (i.e., up to \$1,500 for a burial fund or any amount placed into an irrevocable burial agreement).

#### ICF

**Income:** For individuals residing in an ICF, countable income in excess of the \$35 personal allowance is determined to be Net Available Monthly Income (NAMI) and must be used to pay for the cost of the ICF services.

**Resources:** Resources in excess of the Medicaid eligibility level for an individual must be used to pay for ICF residential services and all non-residential services. OPWDD allows the same resource exclusions as the Medicaid Program (i.e., up to \$1,500 for a burial fund or any amount placed into an irrevocable burial agreement).

### B. Individuals Age 21 or Older Who Live on their Own or Who Live With Their Parents or Someone Else

**Income:** Countable monthly income in an amount which exceeds the Medicaid eligibility level for an individual must be used to pay for the cost of services and is equivalent to a Medicaid eligible individual's monthly "spenddown" amount.

**Resources:** Resources in excess of the Medicaid eligibility level for an individual must be used to pay for the cost of services that the individual receives. OPWDD will allow the same resource exclusions as the Medicaid Program (e.g., up to \$1,500 for a burial fund or any amount placed into an irrevocable burial agreement).

**C. Individuals Under 21 Years Old Who Are Living with Their Parents**

For individuals under the age of 21 living with their parents, both the individual and their parents may be charged for the cost of services received.

**Individual**

**Income:** Countable monthly income which exceeds the Medicaid eligibility level for an individual must be used to pay for the cost of services and is equivalent to a Medicaid eligible individual’s monthly “spenddown” amount.

**Resources:** Resources in excess of the Medicaid eligibility level for an individual must be used to pay for the cost of services. OPWDD will allow the same resource exclusions as the Medicaid Program (i.e., up to \$1,500 in a burial fund or any amount placed into an irrevocable burial agreement).

**Parental Fees:** In addition to the individual’s fees, the parent(s)<sup>2</sup> of an individual with developmental disabilities who is not eligible for Medicaid, who is under 21 years old, and who resides in their parent’s household will be charged for the cost of services based on the federal taxable income of the parent(s) in accordance with the “Parental Fee Schedule for Medicaid Funded OPWDD Services” below. The parental fee schedule is only applicable to individuals who have fully cooperated in the Medicaid and HCBS Waiver application processes.

| <b>Annual Taxable Family Income</b> | <b>Fee Per Service</b> | <b>Monthly Family Maximum*</b> |
|-------------------------------------|------------------------|--------------------------------|
| \$1 - \$100,000                     | \$ 0                   | \$ 0                           |
| \$100,001 - \$125,000               | \$ 9                   | \$ 27                          |
| \$125,001 - \$150,000               | \$ 15                  | \$ 45                          |
| \$150,001 - \$175,000               | \$ 20                  | \$ 60                          |
| \$175,001 - \$200,000               | \$ 30                  | \$ 90                          |
| \$200,001 - \$225,000               | \$ 40                  | \$ 120                         |
| \$225,001 - \$250,000               | \$ 50                  | \$ 150                         |
| \$250,001 and above                 | \$ 100                 | \$ 300                         |

*\*Monthly Family Maximum is for all OPWDD services, not per individual service provider.*

Examples for calculating countable income and resources can be found in the [Benefit Development Resource Guide](#) at [www.opwdd.ny.gov](http://www.opwdd.ny.gov).

<sup>2</sup> A liable parent is the natural or adoptive parent of the individual with developmental disabilities. It does not include brothers, sisters, grandparents or other relatives.