Community Habilitation Service Flexibilities and Appendix K Sunset Frequently Asked Questions (FAQ)

Revised August 18, 2023

This Frequently Asked Questions (FAQ) addresses inquiries submitted to the OPWDD technical assistance email related to Community Habilitation Service Flexibilities and Appendix K Sunset.

Responses to the Frequently Asked Questions include references to telehealth guidance, Administrative Memorandums (ADMs), and other provider resources available on the OPWDD website. The links for these resources are as follows.

- OPWDD's Regulations and Guidance
- COVID-19 Public Health Emergency Unwinding Guidance | Office for People With Developmental Disabilities (ny.gov).
- ADM#2021-02 Requirements for Community Habilitation-Residential (CH-R) services delivered in the Individual's Certified Residence
- ADM#2021-03 Ability to use Technology to Remotely Deliver Home and Community-Based Services (HCBS)
- ADM#2015-01 Service Documentation for Community Habilitation Services Provided to Individuals Residing in Certified and Non-Certified Locations

1. Can you please distinguish the difference between CH and CH-R (including in-residence CH-R)?

Community Habilitation (CH) is a single service in the OPWDD Home and Community Based Service (HCBS Waiver). All CH services must comply with the billing and documentation requirements in ADM#2015-01. For service planning and billing purposes, we distinguish CH services based on whether people live in certified residences and where services occur, as follows:

- Community Habilitation (CH) is delivered to people not living in certified residences and services are delivered outside of certified settings.
- Community Habilitation-Residential (CH-R) is delivered to people living in certified residences, including Individualized Residential Alternative (IRA), Community Residence (CR), or Family Care Home (FCH), and all CH-R services are delivered outside the person's certified residence.
- In-residence CH-R is for people who are elderly, medically frail, or have complex behavioral needs. Individuals who are eligible for in-residence CH-R can receive some of their services in the residence. To qualify for in-residence CH-R, it must be demonstrated that the person has unique needs, specifically people who are elderly, medically frail, or have complex behavioral needs, and those needs are documented in their Life Plan based on an evaluation. Please see #21-ADM-02, *Requirements for Community Habilitation-Residential (CH-R) services delivered in the Individual's Certified Residence* for a complete description of requirements to deliver in-residence CH-R.

2. Is the *Evaluation to Receive Community Habilitation-Residential (CH-R) in a Certified Residence* mandatory or optional? Who should complete this evaluation?

As described in #21-ADM-02, to qualify for any in-residence CH-R service delivery, the Care Manager must evaluate the appropriateness for in-residence CH-R services through a person-centered process with the person and/or the family/representative, when appropriate, and the care planning team. This may also include clinical and medical documentation of the need for in-residence CH-R. Please see ADM section, "Individuals Who Qualify for In-Residence CH-R Services" for specific guidance. The *Evaluation to Receive Community Habilitation-Residential (CH-R) in a Certified Residence* provided by OPWDD is a resource tool to meet this requirement, but other evaluation formats may be used to justify the need for in residence services.

3. **Is it accurate that CH-R services and in-residence CH-R need to start before 3:00 pm on weekdays and that in-residence CH-R services can only be provided between the hours of 9:00 AM-3:00 PM on weekdays?**

   As described in ADM #2015-01*, Service Documentation for Community Habilitation Services Provided to Individuals Residing in Certified and Non-Certified Locations*, Community Habilitation services for people residing in OPWDD-certified settings (including in-residence CH-R) may only be reimbursed if the services are delivered on weekdays and have a service start time prior to 3:00 pm. CH-R may technically begin before 9:00 am on weekdays, and the last continuous period of service (or session) must start prior to 3:00 pm. The service schedule is based on individual preference, skills, and abilities and within daily billing units described below.

4. **Is there a maximum number of daily units that can be requested for in-residence CH-R?**

   ADM #2015-01 states that for people residing in OPWDD-certified settings (including in-residence CH-R), a maximum of the following may be reimbursed: 30 hours per week (M-F) with no more than six hours of CH-R services per day; or the daily combination of: one half unit of group day habilitation, prevocational services; and four hours of CH-R services.

5. **Can a person utilize in-residence CH-R and another day service in the same week?**

   Yes. Please see the daily billing limitations listed above from ADM 2015-01 for Community Habilitation.

6. **What is the DDP2 score range for people to receive in-residence CH-R services?**

   DDP2 scores are not used in the qualification for in-residence CH-R services. As described in 21-ADM-02, the person must be elderly, medically frail, or present with complex behavioral needs to qualify for in-residence CH-R services. The Care Manager must evaluate the appropriateness for in-residence CH-R services through a person-centered planning process with the person and/or the family/representative, when appropriate, and the care planning team. This may also include clinical and medical documentation of the need for in-residence CH-R. Please see ADM section, "Individuals Who Qualify for In-Residence CH-R Services" for specific guidance. The Evaluation to Receive Community Habilitation-Residential (CH-R) in a Certified Residence provided by OPWDD is a resource tool to meet this requirement, but other evaluation formats may be used to justify the need for in residence services.

7. **Can people receive in-residence CH-R via telehealth after the Appendix K sunset?**

   Yes. However, as described in 21-ADM-03, *Ability to use Technology to Remotely Deliver Home and Community-Based Services (HCBS)*, remote technology cannot be an exclusive, long-term service delivery option. Remote technology is available under certain conditions for time-limited periods to allow for continuity of services when in-person service delivery is not possible (e.g.,

during recovery from an accident/illness). Remote service delivery may also be used as part of a person's service delivery plan, along with in-person services, as described in their Life Plan. To receive HCBS services remotely in a certified residence the person must also be eligible for in-residence CH-R as described in 21-ADM-02.

When billing for in-residence CH-R services delivered using remote technology, providers must bill as if they were delivering in-person services, except each claim must be submitted using a unique identifier which distinguishes that the service is being delivered using remote technology in the residence. This identifier is under development and 21-ADM-02 will be updated and redistributed once it is available in eMedNY.

8. Can in-residence CH-R staff be medication certified?

ADM #2015-03, *Registered Professional Nurse Supervision of Unlicensed Direct Support Professionals in Programs Approved by the Office for People With Developmental Disabilities*, states that it is possible to delegate nursing tasks such as basic medication administration, but not all medication, and staff must have nurse oversight. Please refer to this ADM for the exact requirements.

9. Can in-residence CH-R staff provide behavioral interventions?

ADM #2012-03, *Review and Reporting Requirements for use of Strategies for Crisis Intervention and Prevention-Revised (SCIP-R) Restrictive Personal/Physical Intervention Techniques*, states that agencies are required to ensure that staff members responsible for supporting and supervising a person whose behavior support plan incorporates the use of any physical intervention technique to have successfully completed an OPWDD-approved training course on the use of positive behavioral approaches, and crisis prevention and intervention strategies on an annual basis; and have been certified or recertified by an Instructor, Instructor-Trainer or Master Trainer. In the event that OPWDD approves a new curriculum, OPWDD may specify a period of time greater than 1 year before recertification is required. PROMOTE recerts are required every 2 years. As stated in OPWDD regulations, 14 NYCRR 633.16 (e)(3)(iii), a behavior support plan incorporating the use of restrictive physical interventions and/or time-out rooms is prohibited in family care homes and hourly community habilitation. However, a behavior support plan incorporating restrictive physical interventions in hourly community habilitation may be permitted if specifically authorized by OPWDD.

10. Will there be a specific agency program code for in-residence CH-R?

CH-R and in-residence CH-R services will utilize the same program code for enrollments. However, when billing for in-residence CH-R services, providers should bill using existing processes, except that each claim must be submitted using a unique identifier which distinguishes that the claim is associated with a service that was delivered in the person's certified residence. This identifier is under development and will be distributed once the billing identifier is available for use in eMedNY.

11. Can people who live in Family Care Homes (FCH) receive in-residence CH-R?

Yes. In 21-ADM-02, the term 'residence' refers to Individualized Residential Alternatives (IRAs), Community Residences (CRs), and Family Care Homes (FCH). Please see ADM for specific guidance.

12. Will the person be automatically re-enrolled into the day service that they participated in prior to receiving in-residence CH-R due to the Public Health Emergency (PHE)? Does this also include people who were enrolled in CH-R prior to the PHE?

People who were approved for CH-R or in-residence CH-R as an alternative for day habilitation or prevocational services through Appendix K flexibilities remained enrolled in their pre-PHE day services. If a COVID-19 Life Plan/Staff Action Plan was submitted to OPWDD, the person was enrolled in CH-R with a 3/18/2020 enrollment date. The person will only be disenrolled from their pre-PHE day service with appropriate person-centered planning that is reflective of a request for an alternative service and authorized with a Notice of Decision (NOD), or through the day service provider issuing notification to the person, of the provider's proposal to discontinue, reduce or modify the person's services and affording the person with appropriate due process as set forth in 14 NYCRR 633.12. SARF's were due 8/1/2023 for anyone who is living in a certified residence and is not fully returning to their pre-PHE program, i.e., day habilitation (DH), prevocational services (PV). The pre-PHE service provider must be notified of the change.

13. What is the responsibility of the CH provider if a person engages in person centered planning and wants to continue with CH-R (including in-residence CH-R) either part-time or full-time?

Prior to 10/1/23, if the person requests through person-centered planning to continue with CH-R services, and the residential provider is also a CH provider, this should be reflected in the amended Life Plan/SARF and a NOD issued. If the residential provider is unable to deliver CH-R services, the CCO will be responsible for identifying an alternative provider. The OPWDD Regional Field Office (RFO) will automatically disenroll the person from the DH/PV service, which should be reflected in the amended Life Plan/SARF and a NOD will be issued for the new CH service/provider. After 10/1/23, requests to change services for people who received Appendix K service flexibilities will require provider submission of a DDP-1/DDP-1 Supplement (when applicable) in addition to the Life Plan update/SARF and must be submitted prior to 11/11/23.

14. If the person is receiving in-residence CH-R, how should it be documented that they are receiving this service out of their residence at least 51% of the time or a justification why services cannot be provided out of their residence?

21-ADM-02 *Requirements for Community Habilitation-Residential (CH-R) services delivered in the Individual's Certified Residence* states that when habilitative services are provided in a residence in the form of in-residence CH-R, the majority (51% or more) of the person's services should be provided outside of the residence. The Life Plan and CH-R Staff Action Plan must contain a justification of any portion of the person's CH-R services delivered in the residence. The Staff Action Plan should contain information which explains why any portion of the day services may take place in the home. Plans that justify services occurring in the home should retain a community focus in accordance with the person's interests and abilities.

15. Can people in self-direction utilize in-residence CH-R?

Yes, but only if the person has an approved Other Than Residential (OTR) budget and with the residential provider agreement.

16. Can a provider bill for in-residence CH-R up to 11/11/2023 for people who were mass enrolled on 3/18/2020?

Care Managers are currently completing a person-centered planning process with all who were

mass enrolled in CH-R in lieu of site-based day services on 3/18/2020. The Care Managers are submitting SARFs and assisting people to enroll in services that meet their needs. Some people may enroll in a CH service (including in-residence CH-R) or a new day program. Providers need to ensure that they are working with Care Managers to understand the person's choices. If a person has not disenrolled from their original day service or has not enrolled with a new CH provider, the residential provider can continue to bill the Appendix K in-residence CH-R until 11/11/23. In this example, the person will then revert to their original day service on 11/12/23. Please see OPWDD's Public Health Emergency Unwinding Guidance for timelines.

17. **Will there be additional trainings available for new providers of in-residence CH-R services?**

    Any new providers of Community Habilitation (CH), CH-R (including in-residence CH-R) will need to submit a Certificate of Need (CON) and be approved by OPWDD prior to service delivery. Please see link to OPWDD related trainings at COVID-19 Public Health Emergency Unwinding Guidance | Office for People With Developmental Disabilities (ny.gov). Please email day.community.services@opwdd.ny.gov for specific technical assistance questions.

18. **The in-residence CH-R ADM (21-ADM-02) states that there's a billing modifier being developed specifically for in-residence CH-R. When will this new code be issued**?

    After 11/11/23, when billing for in-residence CH-R services, providers will bill using existing processes, except that each claim must be submitted using a unique identifier (modifier) which distinguishes that the claim is associated with a service that was delivered in the person's certified residence. This identifier is under development, and 21-ADM-02 will be updated and redistributed once it is available in eMedNY.

19. **The in-residence CH-R ADM says that written informed consent of the person to receive in-residence CH-R services is required. Does the acknowledgement and signature on a Life Plan suffice for this requirement?**

    Yes, if the consent is appropriately documented in the Life Plan. The Care Manager documents that the person and/or the family/representative when appropriate, have chosen and consents to receiving in-residence CH-R services. The Care Manager must document this in a separate consent that is incorporated into the Life Plan or in the Life Plan itself, in the narrative in section I, in the special considerations in section II or III, or in the meeting summary in section VI. The Life Plan signature is required.

    The provider must also document in the person's Life Plan or other service-related documentation, that the person and/or the family/representative when appropriate, have affirmatively requested and provided their written informed consent to have services delivered in the residence.

20. **The in-residence CH-R ADM released in July 2021 states that the person in CH-R needs a schedule. Does this need to be documented anywhere specifically?**

    21-ADM-02 does not cite where a person's general schedule should be documented. However, it states that the appropriateness of in-residence CH-R services will be determined through person-centered planning, and that the care planning team will establish an agreed upon schedule for in-residence CH-R services. This agreed upon schedule should document both in residence and community activities. The person's overall preferences are documented in the Life Plans.