

# STATE OF NEW YORK

6879

2021-2022 Regular Sessions

## IN SENATE

May 20, 2021

Introduced by Sen. MANNION -- read twice and ordered printed, and when printed to be committed to the Committee on Disabilities

AN ACT to amend the mental hygiene law, in relation to reimbursement for residential habilitation services

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (ii) of subdivision (c) of section 43.02 of the  
2 mental hygiene law, as amended by section 3 of part 00 of chapter 58 of  
3 the laws of 2015, is amended and a new subdivision (d) is added to read  
4 as follows:

5 (ii) methodologies used in the establishment of the schedules of rates  
6 or fees pursuant to this section provided, however, that in accordance  
7 with subdivision (d) of this section, the commissioner of health shall  
8 adopt rules and regulations including methodologies developed by him or  
9 her for services provided by any facility or program licensed, operated  
10 or approved by the office for people with developmental disabilities;  
11 provided, however, that such rules and regulations shall be subject to  
12 the approval of the office for people with developmental disabilities  
13 and shall take into account the policies and goals of such office.

14 (d) (i) For purposes of this subdivision, the following terms shall  
15 have the following meanings:

16 (1) "Retainer days" are days of medical leave or an associated day  
17 where any other institutional or in-patient medical payment is made for  
18 providing residential habilitation services to a person eligible for  
19 medical assistance pursuant to title eleven of article five of the  
20 social services law.

21 (2) "Service days" are days when residential habilitation services are  
22 provided in a community residence under the home and community-based  
23 waiver operated by the office for people with developmental disabilities  
24 and pursuant to regulations promulgated by the commissioner of the  
25 office for people with developmental disabilities to a person who is

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 either present in the community residence or is absent from the communi-  
2 ty residence and residential habilitation services are performed by  
3 staff. Such services shall include habilitation services, protective  
4 oversight services, supervision services, nursing supervision of direct  
5 care staff and coordination of a person's health care needs, the coordi-  
6 nation of necessary medical appointments, follow-up reports from medical  
7 appointments, follow-up and interface with hospital staff regarding  
8 emergency room visits and other hospitalizations, services and supplies  
9 related to program-related transportation, nutrition services directly  
10 related to habilitation services and psychology services that support a  
11 person's need for behavioral supports in a service setting.

12 (3) "Therapy days" are days when a person eligible for medical assist-  
13 ance pursuant to title eleven of article five of the social services law  
14 is away from a supervised community residence and is not otherwise  
15 receiving services from paid residential habilitation staff and the  
16 absence is for the purpose of visiting with family or friends, or a  
17 vacation. The therapy day must be described in the person's plan of care  
18 to be eligible for payment and the person may not receive another Medi-  
19 caid-funded residential or in-patient service on that day.

20 (4) "Occupancy adjustment" is an adjustment to the calculated daily  
21 rate of an agency which provides residential habilitation services in a  
22 supervised community residence to account for vacancy days.

23 (5) "Vacancy days" are days for which the provider is unable to bill  
24 for Medicaid due to a person residing in a community residence having  
25 moved from one residential site to another, or due to the death of the  
26 individual.

27 (ii) Notwithstanding any inconsistent provision of this section, or  
28 any other law or regulation to the contrary and subject to the avail-  
29 ability of federal financial participation, for any reimbursement for  
30 residential habilitation services provided in a supervised community  
31 residence according to a daily unit of service as promulgated by the  
32 commissioner of health:

33 (1) retainer days shall be reimbursed at one hundred percent the daily  
34 rate as determined pursuant to regulations promulgated by the commis-  
35 sioner of health, provided, however a provider is limited to being paid  
36 fourteen retainer days per rate year, multiplied by certified capacity;

37 (2) therapy days shall be reimbursed at one hundred percent the daily  
38 rate as determined pursuant to regulations promulgated by the commis-  
39 sioner of health, provided, however, a provider is limited to being paid  
40 ninety-six therapy days per rate year per person; and

41 (3) for the rate periods beginning July first, two thousand nineteen,  
42 providers shall receive an occupancy adjustment to the operating compo-  
43 nent of their rate, as the operating component of their rate is deter-  
44 mined pursuant to regulations promulgated by the commissioner of health,  
45 for vacancy days. The occupancy adjustment percentage shall be calcu-  
46 lated by dividing the sum of a provider's rate period reported retainer  
47 days, service days and therapy days by one hundred percent of the  
48 provider's certified capacity. The certified capacity of the provider is  
49 calculated by taking into account capacity changes throughout the year,  
50 multiplied by one hundred percent of the year's days. The adjustment  
51 will begin on July first, two thousand nineteen and shall be recalcu-  
52 lated on an annual basis based on the most current and complete twelve  
53 months of experience. The occupancy adjustment will be the lower of the  
54 provider's actual occupancy adjustment percentage or five percent.

55 § 2. This act shall take effect immediately and shall be deemed to  
56 have been in full force and effect on and after April 1, 2021.