

# STATE OF NEW YORK

4878

2025-2026 Regular Sessions

## IN SENATE

February 13, 2025

Introduced by Sen. FAHY -- 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~~] such commissioner for services provided by any facility or program  
10 licensed, operated or approved by the office for people with develop-  
11 mental disabilities; provided, however, that such rules and regulations  
12 shall be subject to the approval of the office for people with develop-  
13 mental disabilities and shall take into account the policies and goals  
14 of such office.

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

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

22 (2) "Service days" are days when residential habilitation services are  
23 provided in a community residence under the home and community-based  
24 waiver operated by the office for people with developmental disabilities  
25 and pursuant to regulations promulgated by the commissioner of the  
26 office for people with developmental disabilities to a person who is  
27 either present in the community residence or is absent from the communi-  
28 ty residence and residential habilitation services are performed by

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

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

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

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

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

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

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

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

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

54 § 2. This act shall take effect immediately and shall be deemed to  
55 have been in full force and effect on and after April 1, 2026.