



ADMINISTRATIVE DIRECTIVE MEMORANDUM

Transmittal:	21-ADM-03
To:	Developmental Disabilities Regional Office (DDRO) Directors Developmental Disabilities State Operations Office (DDSOO) Directors Executive Directors of Voluntary Agencies delivering: Day Habilitation, Community Habilitation, Prevocational Services, Supported Employment (SEMP), Pathway to Employment, Support Broker and Respite Services Care Coordination Organization (CCO) Administrators
Issuing OPWDD Office:	Division of Policy and Program Development
Date:	July 28, 2021
Subject:	Ability to use Technology to Remotely Deliver Home and Community-Based Services (HCBS)
Suggested Distribution:	Habilitation Program/Service Staff Quality/Compliance Staff Billing Department Staff CCO and Basic HCBS Plan Support Care Managers and Care Manager Supervisors
Contact:	People First Waiver mailbox at peoplefirstwaiver@opwdd.ny.gov
Attachments:	

Related ADMs/INFs	Releases Cancelled	Regulatory Authority	MHL & Other Statutory Authority	Records Retention
ADM #2006-01 ADM #2015-07 ADM #2020-01R ADM #2016-01 ADM #2017-01		14 NYCRR §§635-10.4, 635-10.5 42 CFR §441.301	MHL §§13.07, 13.09(b), 33.13, 43.02 OPWDD's Comprehensive HCBS Waiver under §1915(c) of Social Security Act, 42 USC 1396n(c)	18 NYCRR §504.3(a) 18 NYCRR §517.3 14 NYCRR §635-4.5 New York False Claims Act (State Finance Law §192)

Purpose:

The purpose of this Administrative Directive Memorandum (ADM) is to describe the requirements for using technology to remotely deliver the following services authorized under OPWDD's Comprehensive Home and Community Based Services (HCBS) 1915(c) Waiver: Day Habilitation, Community Habilitation, Pre-vocational Services, Supported Employment (SEMP), Pathway to Employment, Support Broker and Respite Services. For these services, where applicable ADM's and other regulations outline face-to-face service delivery requirements, those face-to-face requirements may be met using remote technology as outlined in this memorandum.

The provisions in this ADM will take effect upon the conclusion of the COVID-19 Appendix K authority which will be no later than six (6) months following the end of the Federal COVID-19 Public Health Emergency. The requirements described within apply to HCB services that are intended to be a long-term service delivery option for an individual. For the purpose of this ADM, a long-term service delivery option is defined as the need for services that are not being provided on an emergent basis and are anticipated to last more than thirty (30) service days.

Background:

Remote service delivery, for the purposes of this ADM, refers to an electronic method of service delivery, including any two-way, real-time communication technology that meets the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Remote service delivery is a service delivery option for specified HCBS Waiver services when the delivery of such service meets the following requirements:

- The remote service delivery ensures the individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
- The remote service delivery does not isolate the individual from the community or interacting with people without disabilities.
- The individual has other opportunities for integration in the community via the other Waiver program services the individual receives and are provided in community settings.
- The request to use technology to deliver services remotely must be initiated by a request from the individual and/or the family/representative when appropriate, and not the provider.

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

an individual's service delivery plan, along with in-person services, as described in their Life Plan. The individual must be able to participate in remote service delivery when services are effectuated via verbal prompting. The planning team must determine how the need for hands-on services can be met during time when remote services are provided (e.g. a natural support assisting with toileting). If these needs cannot be met and the individual's privacy assured, then the delivery of services using remote technology is not appropriate.

Discussion:

Care Planning and the Individual's Choice to Receive Services using Remote Technology

The appropriate use of remote service delivery for a specific service is determined as part of the person-centered planning process. The individual and/or the family/representative when appropriate, must state their preference for remote service provision over in-person supports and provide written informed consent to the remote delivery of services. The planning team will establish a schedule for in-person face to face and for services delivered remotely, reflecting the plan agreed upon by the parties listed above. In most cases, the majority of habilitative services will be delivered in-person face to face. The Care Manager must document the preference of the individual and/or the family/representative when appropriate, to use remote service delivery and confirm that the provider's Staff Action Plan (SAP) allows for the safe and effective remote delivery of services via technology. The individual and/or the family/representative when appropriate, the provider, and the Care Manager each have a role in planning for the use of remote service delivery as described below.

Role of the Individual and/or the Family/Representative

- 1) The individual and/or the family/representative when appropriate, must express a preference for remote service delivery and provide written informed consent for remote service delivery using technology as outlined in the schedule agreed upon by the planning team.
- 2) The individual and/or the family/representative when appropriate, must reaffirm their preference and provide written informed consent to continue receiving remote service delivery using technology at least every six (6) months or with each semi-annual Life Plan review.
- 3) The individual and/or the family/representative when appropriate, will contact the Care Manager at any time, if the use of remote technology is no longer desired.

Role of the Provider Delivering the Remote Service

- 1) The provider explains privacy requirements and appropriately documents in the individual's clinical records, that the individual and/or the family/representative when appropriate, have consented to the use of remote technology.
- 2) The provider must confirm that the provider and the individual will use two-way, real-time communication technology that meets the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and that the equipment is adequately suited for the individual's needs in order for remote service delivery.
- 3) The provider ensures that the individual and/or the family/representative when appropriate, have been informed about their ability to change from receiving remote services by technology to in-person face to face service delivery at any time and how to make that change.
- 4) The provider ensures that the individual's needs are met through technology and that the service delivery meets all safety and quality requirements. If remote service delivery is unsafe, ineffective, or does not meet the individual's needs, the provider is responsible for notifying the Care Manager and the individual and/or the family/representative when appropriate, that remote technology is not appropriate for the particular service and to discontinue the provision of the service.

Role of the Care Manager

- 1) The Care Manager evaluates the use of technology to assure that the requirements of the Care Manager as described in this ADM are met, that remote delivery of services for the individual is appropriate, and collaboration with the provider has occurred. If the individual receiving remote service delivery lives in a certified residential setting, the Care Manager will assure that the residential provider is engaged in the planning for remote service delivery.
- 2) The Care Manager appropriately documents that the individual and/or the family/representative when appropriate, have expressed a desire and provided their written informed consent to use remote technology. 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.
- 3) The Care Manager must document that the individual and/or the family/representative when appropriate, have reaffirmed their preference and provided their written informed consent to continue receiving remote service delivery using technology at least every six (6) months or with each semi-annual Life Plan review.

- 4) The Care Manager ensures that the continued use of technology for remote service delivery is reviewed and reaffirmed by the planning team every six (6) months or with each semi-annual Life Plan review.
- 5) The Care Manager will take action as soon as practicable to amend the Life Plan if the individual and/or the family/representative when appropriate, choose to withdraw consent for remote service delivery.
- 6) The Care Manager initiates the process to return to in-person service delivery if it is determined that remote service delivery is unsafe, ineffective, or does not meet the individual's needs. This includes engaging in the person-centered planning process to discuss with the individual and/or the family/representative when appropriate, and/or the provider, of the need to move to in-person service delivery. The Care Manager will make the necessary arrangements to transition to in-person service delivery and update the Life Plan to reflect the desire of the individual and/or the family/representative when appropriate, to receive in-person service delivery.

Remote Service Delivery and In-Person Supports

The individual must be able to engage in the remotely delivered services with a degree of independence to make the service effective. People may require some physical assistance from natural supports or Waiver staff to set up and facilitate the service. If the individual lives in a certified residential setting, the Residential Habilitation provider must participate in the person-centered planning process regarding the remote service delivery. Services delivered remotely using technology that are provided when the individual is located in the certified residence are also subject to the planning requirements of 21-ADM-02, *Requirements for Community Habilitation-Residential (CH-R) services delivered in the Individual's Certified Residence*.

If the application of remote service delivery does not meet the needs of the individual, as judged by the individual and/or the family/representative when appropriate, any concerns must be addressed immediately by the Care Manager. If the concerns cannot be addressed, remote service delivery is not appropriate and should be suspended by the provider. If remote service delivery is suspended by the provider, the Care Manager must support the individual in receiving in-person service delivery.

Service Documentation and Billing Modifiers

All service documentation that is part of the individual's record shall be maintained in accordance with New York State Mental Hygiene Law (MHL) Section 33.13, Medicaid billing policies and regulations, and all other existing documentation requirements described in the appropriate ADM for the service being provided. In addition, for

services delivered remotely using technology, the service documentation must identify that services were delivered remotely using technology and describe any disruption to services caused for any reason, including those caused by technology or equipment failure, or other related problems, if such disruptions occurred.

When billing for these services, providers should bill for the services using existing processes, except that each claim must be submitted using a unique modifier which identifies that the claim is associated with a service that was delivered using remote technology. At the time of this ADM's publication, this modifier is under development. This ADM will be updated and redistributed once the billing modifier is available for use in eMedNY.