

Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following nine counties have certain townships with population densities of 150 or fewer persons per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

Pursuant to proposed new §§ 505.14(b)(7) and 505.28(k), rural social services districts would be required to perform expedited Medicaid eligibility determinations for Medicaid applicants who have an immediate need for personal care services ("PCS") or consumer directed personal assistance ("CDPA"). Medicaid applicants with an immediate need for PCS or CDPA include those who are not currently authorized for any type of Medicaid coverage as well as those who are currently authorized for Medicaid but only for community-based Medicaid coverage without coverage for long term care services.

Within three calendar days after receipt of the Medicaid application, physician's order and required form attesting to the Medicaid applicant's immediate need for services, the district would be required to determine whether the Medicaid applicant is a Medicaid applicant with an immediate need for PCS or CDPA and, if so, whether the applicant has submitted a complete Medicaid application. If the applicant has not submitted a complete Medicaid application, the district must notify the applicant, within this three day period, of the additional documentation that the applicant must submit, the date by which the applicant must provide such documentation, and that the district will determine the applicant's Medicaid eligibility within seven calendar days after receipt of such documentation. No later than seven calendar days after receipt of a complete Medicaid application from a Medicaid applicant with an immediate need for PCS or CDPA, the district must determine whether the applicant is eligible for Medicaid, including Medicaid coverage of community-based long-term care services, and notify the applicant of that determination.

Pursuant to proposed new §§ 505.14(b)(8) and 505.28(l), rural social services districts would be required to perform expedited PCS or CDPA assessments of Medicaid recipients with immediate needs for PCS or CDPA. Medicaid recipients with immediate needs for PCS or CDPA include Medicaid applicants with immediate needs for PCS or CDPA who the districts have determined, pursuant to proposed new §§ 505.14(b)(7) and 505.28(k), to be eligible for Medicaid, including Medicaid coverage of community-based long-term care services, as well as other Medicaid recipients who have been determined to be eligible for Medicaid, including Medicaid coverage of community-based long-term care services. Medicaid recipients with immediate needs for PCS or CDPA may be exempt or excluded from enrollment in a managed long term care plan or a managed care provider or not so exempt or excluded but not yet enrolled in any such plan or provider.

Within twelve calendar days after determining, pursuant to proposed new §§ 505.14(b)(7) or 505.28(k), that a Medicaid applicant with an immediate need for PCS or CDPA is eligible for Medicaid, including Medicaid coverage of community-based long-term care services, the social services district would be required to perform an expedited PCS or CDPA assessment to determine whether the recipient is eligible for PCS or CDPA and, if so, the level and amount of services to be authorized. Within this twelve day period, the district would also be required to notify the recipient of the district's determination and, for recipients found eligible for PCS or CDPA, authorize the services to be provided. If the recipient is subject to enrollment in a managed long term care plan or managed care provider, the district would be required to authorize the services until the recipient is enrolled in such plan or provider.

Costs:

Rural social services districts would not incur initial capital costs to comply with the proposed regulations. Districts may incur administrative costs to comply with the proposed regulations. These administrative costs would be associated with districts' performance of expedited Medicaid

eligibility determinations of Medicaid applicants with immediate needs for PCS or CDPA as well expedited PCS or CDPA assessments of Medicaid recipients with immediate needs for such services.

Minimizing Adverse Impact:

The proposed regulations should not have an adverse economic impact on rural social services districts. Each social services district's share of the cost of total Medicaid expenditures for PCS and CDPA is limited to the district's Medicaid "cap" amount established pursuant to State law. The proposed regulations would not require rural social services districts to incur any additional Medicaid expenditures for PCS or CDPA in excess of their Medicaid cap amounts.

Rural Area Participation:

The Department shared the proposed regulations with rural social services districts prior to publication.

**Job Impact Statement**

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed regulations, that they would not have a substantial adverse impact on jobs and employment opportunities.

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## Department of Labor

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### REVISED RULE MAKING NO HEARING(S) SCHEDULED

#### Methods of Payment of Wages

I.D. No. LAB-21-15-00009-RP

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following revised rule:

**Proposed Action:** Addition of Part 192 to Title 12 NYCRR.

**Statutory authority:** Labor Law, sections 21 and 199

**Subject:** Methods of Payment of Wages.

**Purpose:** This regulation provides clarification and specification as to the permissible methods of payment, including payroll debit cards.

**Text of revised rule:** Part 192 Methods of Payment of Wages

Subpart-1 General Provisions

§ 192-1.1 Permissible Methods of Payment

Employees may be paid wages by employers using the following permissible methods:

- Cash;
- Check;
- Direct Deposit; or
- Payroll Debit Card.

§ 192-1.2 Definitions

For the purposes of this part:

(a) Payroll Debit Card shall mean a card that provides access to an account with a financial institution established directly or indirectly by the employer, and to which transfers of the employee's wages are made on an isolated or recurring basis.

(b) Consent shall mean an express, advance, written authorization given voluntarily by the employee and only given following receipt by the employee of written notice of all terms and conditions of the method of payment. Consent may be withdrawn at any time, provided however, that the employer shall be given a reasonable period of time, but no longer than two full pay periods, to finalize such change.

(c) No Cost shall mean that an employee can access his or her wages, in full, without encumbrances, costs, charges, or fees.

(d) Local Access shall mean that the employee is provided with access to his or her wages, at a facility or machine which is located within a reasonable travel distance to the employee's work location or home, and without unreasonable restraint by the employer or its agent.

(e) Employee shall be as it is defined in Section 190 of the Labor Law and shall not include any person employed in a bona fide executive, administrative, or professional capacity whose earnings are in excess of the dollar threshold contained in Section 192(2) of the Labor Law, or an employee working on a farm not connected with a factory.

(f) Direct Deposit shall mean the transfer of wages into an account, of the employee's choosing, of a financial institution.

(g) Reasonable Intervals shall mean not less frequently than annually.

(h) Negotiable instrument shall be as it is defined in Section 3-104 of the New York State Uniform Commercial Code.

§ 192-1.3 Written Notice and Consent

(a) *Notice of methods of payment.* An employer who uses methods of payments other than cash or check shall provide employees with a written notice that identifies the following:

(1) a plain language description of all of the employee's options for receiving wages;

(2) a statement that the employer may not require the employee to accept wages by payroll debit card or by direct deposit;

(3) a statement that the employee may not be charged any fees for services that are necessary for the employee to access his or her wages in full; and

(4) a list of locations where employees can access and withdraw wages at no charge to the employees within reasonable proximity to their place of residence or place of work.

(b) *Consent.* An employer who offers one or more methods of payment of wages that require consent shall obtain such consent in writing and shall ensure that:

(1) It obtains the employee's informed consent without intimidation, coercion, or fear of adverse action by the employer for refusal to accept payment of wage by direct deposit or payroll debit card; and

(2) Does not make payment of wage by direct deposit or payroll debit card a condition of hire or of continued employment.

(c) *Electronic.* The written notice and written consent may be provided and obtained electronically so long as an employee is provided with the ability to view and print both the notice and the consent while the employee is at work and without cost to the employee, and the employee is notified of his or her right to print such materials by the employer through such electronic process.

(d) *Language.* The written notice and written consent shall be provided in English and in the primary language of the employee when a template notice and consent in such language is available from the commissioner.

#### § 192-1.4 Prohibited practices

An employer and its agent shall not engage in unfair, deceptive or abusive practices in relation to the method or methods of payment of wages. No employer or his agent, or the officer or agent of any corporation, shall discharge, penalize or in any other manner discriminate against any employee because such employee has not consented to receive his or her wages through direct deposit or payroll debit card.

#### Subpart-2 Methods of Payment

##### § 192-2.1 Payment of Wages by Check

When paying wages by check, an employer shall ensure that:

(a) The check is a negotiable instrument;

(b) There is at least one means of no-cost local access to the full amount of wages through check cashing or deposit of check at a financial institution or other establishment reasonably accessible to the employee's place of employment; and

(c) The employer does not impose any fees in connection with the use of checks for the payment of wages, including a fee for replacement of a lost or stolen check.

##### § 192-2.2 Payment of Wages by Direct Deposit

When paying wages by direct deposit, an employer shall ensure that:

(a) It has consent from the employee;

(b) A copy of the employee's consent must be maintained by the employer during the period of the employee's employment and for six years following the last payment of wages by direct deposit. A copy of the employee's written consent must be provided to the employee; and

(c) Such direct deposit is made to a financial institution selected by the employee.

##### § 192-2.3 Payment of Wages by Payroll Debit Card

(a) When paying wages by payroll debit card, an employer shall ensure that:

(1) It has consent from the employee;

(2) It provides the following information and receives consent at least seven business days prior to taking action to issue the payment of wages by payroll debit card, during such seven business days the employee's consent shall not take effect.

(b) An employer shall not deliver payment of wages by payroll debit card unless each of the following is provided:

(1) Local Access to one or more automated teller machines that offers withdrawals at no cost to the employee;

(2) At least one method to withdraw up to the total amount of wages for each pay period or balance remaining on the payroll debit card without the employee incurring a fee;

(c) An employer or agent shall not charge, directly or indirectly, an employee a fee for any of the items listed in this subsection. Inclusion in this subsection does not impose any separate or independent obligation to provide services, nor does it relieve an employer or agent from compliance with this Part or any Federal or State law or regulations:

(1) Application, initiation, loading, participation or other action necessary to receive wages or to hold the payroll debit card;

(2) Point of sale transactions;

(3) Overdraft, shortage, or low balance status;

(4) Account inactivity;

(5) Maintenance;

(6) Telephone or online customer service;

(7) Accessing balance or other account information online, by Interactive Voice Response through any other automated system offered in conjunction with the payroll debit card, or at any ATM in network made available to the employee;

(8) Providing the employee with written statements, transaction histories or the issuer's policies;

(9) Replacing the payroll debit card at reasonable intervals;

(10) Closing an account or issuing payment of the remaining balance by check or other means; or

(11) Declined transactions at an Automated Teller Machine that does not provide free balance inquiries;

(12) Any fee not explicitly identified by type and by dollar amount in the contract between the employer and the issuer or in the terms and conditions of the payroll debit card provided to the employee.

(d) An employer or its agent shall not deliver payment of wages by payroll debit card account that is linked to any form of credit, including a loan against future pay or a cash advance on future pay. Nothing in this subsection shall prohibit an issuer from covering an occasional inadvertent overdraft transaction if there is no charge to the employee.

(e) An employer shall not pass on any of its own costs associated with a payroll debit card account to an employee, nor may an employer receive any kickback or other financial remuneration from the issuer, card sponsor, or any third party for delivering wages by payroll debit card.

(f) An employer or its agent shall not deliver payment of wages by payroll debit card unless the agreement between the employer and issuer requires that the funds on a payroll debit card shall not expire. Notwithstanding this requirement, the agreement may provide that the account may be closed for inactivity provided that the issuer gives reasonable notice to the employee and that the remaining funds are refunded within seven days.

(g) At least thirty days before any change in the terms and conditions of a payroll debit card takes effect, an employer must provide written notice in plain language, in the employee's primary language or in a language the employee understands, and in at least 12-point font of any change to the terms or conditions of the payroll debit card account including any changes in the itemized list of fees. If the issuer charges the employee any new or increased fee before thirty days after the date the employer has provided the employee with written notice of the change in accordance with the provisions of this subsection, the employer must reimburse the employee for the amount of that fee.

(h) Where an employee is covered by a valid collective bargaining agreement that expressly provides the method or methods by which wages may be paid to employees, an employer must also have the approval of the union before paying by payroll card.

**Revised rule compared with proposed rule:** Substantial revisions were made in sections 192-1.2(b), (d), (e), 192-1.3, 192-1.4, 192-2.3(a)-(c), (g) and (i).

**Text of revised proposed rule and any required statements and analyses may be obtained from** Michael Paglialonga, Department of Labor, Building 12, State Office Campus, Room 509, Albany, NY 12240, (518) 457-4380, email: regulations@labor.ny.gov

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 30 days after publication of this notice.

#### **Revised Regulatory Impact Statement, Revised Regulatory Flexibility Analysis, Revised Rural Area Flexibility Analysis and Revised Job Impact Statement**

The revisions do not necessitate revisions to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

#### **Assessment of Public Comment**

The Department received numerous comments following publication of the original rule in the May 27, 2015 edition of the NY Register. Comments were received from employees, employee advocates, employers, business advocates, and financial institutions. The following represents a summary and an analysis of such comments, the reasons why any significant alternatives were not incorporated into the rule, and a description of the changes made in the proposed rule as a result of such comments.

Generally, comments were received arguing against any restrictions on the use of Payroll Debit Cards and comments were received which argued that Payroll Debit Cards should be prohibited in their entirety. The Department has received and considered these comments, which were informative on the benefits and limitations of Payroll Debit Cards. The Department has determined that while the payment of wages via Payroll Debit

Card can help ensure employees with access to wages in a free and effective way, restrictions and employee protections need to be implemented in order to ensure that employees can receive their wages, in full, in line with the requirements of Article 6 of the Labor Law.

Specific comments, and responses to them, are contained below.

Comment 1:

The requirement to provide a list of fee-free ATM locations near an employee's work location and home is unnecessarily burdensome and difficult due to employers' limited knowledge of their employee's place of residence.

Response 1:

The Department agrees and has amended the proposed rule to require that a list of fee-free ATM locations near an employee's work location or home.

Comment 2:

The provisions relating to required banking statements, transactional statements, and fraud/dispute resolution are unnecessary and inconsistent with the requirements of Treasury Regulation E.

Response 2:

Given the Federal regulatory scheme contained primarily in Regulation E, the Department has amended the proposed rule to eliminate the requirements for providing banking statements, transactional statements, and fraud/dispute resolution.

Comment 3:

The seven-day waiting period before seeking an employee's consent to Payroll Debit Cards is onerous and would cause significant hardship to employers.

Response 3:

The Department agrees and has amended the proposed rule to permit immediate consent with a subsequent seven day waiting period before an employer may act upon it.

Comment 4:

Immediate implementation of the rulemaking would be problematic as employers and financial institutions need time to change their systems and contracts.

Response 4:

The Department agrees and the rule will go into effect six months after adoption of the final rule.

Comment 5:

Comments asked if the services listed in Section 192-2.3(c) are required to be provided under this rule.

Response 5:

No, the Department has amended the proposed rule to provide clarity in this regard.

Comment 6:

It is not clear what the prohibition on fees for "other transactions" means in Section 192-2.3(c).

Response 6:

The Department agrees and has amended the proposed rule to remove this phrase.

Comment 7:

Electronic consent to a method of payment is not mentioned in the regulations. It would be preferable to have clarity on this issue.

Response 7:

The Department has amended the proposed rule to clarify that consent may be provided electronically by employees.

Comment 8:

The phrase "reasonable period of time" for an employer to act upon an employee's withdrawal of consent for a method of payment is ambiguous and should be clarified to not exceed two pay periods.

Response 8:

The Department agrees and has amended the proposed rule.

Comment 9:

There is confusion as to the meaning of the term "network," as that can be construed to mean an employer established network, a bank network, or an affiliated network of ATMs.

Response 9:

The Department agrees and has amended the proposed rule to eliminate references to a network of ATMs, and instead requires that local access be provided to one or more ATMs.

Comment 10:

Requiring employers to provide notice and consent in a language understood by employees is unduly burdensome. However, a significant percentage of the population needs information in languages other than English in order to ensure comprehension of the terms and requirements of a Payroll Debit Card program.

Response 10:

The Department agrees and has amended the proposed rule to permit employers to provide notice and consent either in the employee's primary language, in a language that the employee understands, or through a

template prepared by the Department of Labor in accordance with the instructions contained therein. Templates containing relevant and required information will be prepared by the Department. The Department anticipates offering templates in, at least, the following languages: Spanish, Chinese, Haitian Creole, Korean, Polish and Russian. If an employer elects to use a template prepared by the Department and none exist that the employee understands, the employer may provide the employee with the Department's English template.

Comment 11:

Comments were received that argue that the rule should allow fees for declined transactions and balance inquiries at ATMs.

Response 11:

The Department has amended the proposed rule to permit fees for declined transactions at ATMs that provide free balance inquiries, since such fees can be reasonably avoided by employees.

Comment 12:

Requiring disclosures of terms for Payroll Debit Cards and not for other methods of payment promotes a bias against Payroll Debit Cards.

Response 12:

The Department has amended the proposed rule to make disclosure requirements applicable to Payroll Debit Cards and direct deposit, as both require employee consent. Such disclosures are necessary to ensure that employees are knowledgeable of their rights under the Labor Law and the proposed rule.

Comment 13:

The prohibition of fees in the rulemaking is overly burdensome and will make Payroll Debit Cards unprofitable. Certain fees should be permitted in order to ensure profitability of Payroll Debit Cards for financial institutions offering them as a product. Employers should not be required to ensure free banking services for their employees.

Response 13:

The proposed rule does not require that all services offered by a financial institution be provided to employees free of charge, nor does it contain a general prohibition on fees. The Department has amended the proposed rule to remove certain restrictions for fees, as described in Responses 6 and 11.

Comment 14:

Employees should be given the choice of the method (electronic vs. paper) to receive information.

Response 14:

The Department has amended the proposed rule to allow employees to be provided with information electronically if they are provided with the ability to print that information for free and during work hours.

Comment 15:

The proposed rule transfers banking law compliance onto employers.

Response 15:

The Department disagrees. The proposed rule is concerned with Labor Law requirements, not banking law requirements.

Comment 16:

Requiring 12-point font on information provided to employees will increase printing costs.

Response 16:

This requirement helps to ensure that employees are knowledgeable of their rights under the Labor Law and the proposed rule.

Comment 17:

The requirement that refunds be provided due to account inactivity may increase fraud.

Response 17:

This requirement helps to ensure that employees are able to access their wages from former employers without limitation or encumbrance, as required by the Labor Law. The proposed rule leaves unchanged the provisions for unclaimed funds, should the employee fail to respond to a reasonable notice.

Comment 18:

Comments were submitted arguing that the definitions of the terms "wages" and "employee" should be expanded and/or limited.

Response 18:

These terms are as defined in Article 6 of the Labor Law, where the regulatory authority for this rule is primarily derived.

Comment 19:

Employers should be required to notify employees of their right to withdraw consent at any time.

Response 19:

Employees are required to be provided with their options of receiving wages. The templates that will be prepared by the Department will contain a statement indicating that an employee has the right to withdraw consent at any time.

Comment 20:

Wages paid on Payroll Debit Cards should be free from the garnishment of wages.

Response 20:  
The proposed rule deals only with the method of payment of wages.

Comment 21:  
The proposed rule should not prohibit beneficial overdraft services that are popular with employees.

Response 21:  
The rule does not prohibit overdraft services, only fees that are associated with such services.

Comment 22:  
A statement of employee rights under the Labor Law and the proposed rule should be required under this rule generally, and in connection with the consent for a method of payment.

Response 22:  
Such a requirement would be unduly burdensome and unnecessary. This rule deals with the methods of payment; other provisions of the Labor Law contain requirements for notice and posting of employee rights.

Comment 23:  
The provisions governing paychecks need not be addressed by the proposed rules as such rules are already governed by opinion letters.

Response 23:  
The proposed rule codifies existing requirements for paychecks, providing clarity to the regulated community on the existing requirements.

Comment 24:  
Payroll Debit Cards inhibit employee access to paystub information.

Response 24:  
The proposed rule leaves unchanged the requirements for wage statements contained in Section 195 of the Labor Law.

Comment 25:  
The term "kickbacks" as used in the proposed rule is ambiguous.

Response 25:  
This term is contained in several places within the Labor Law, most notably Section 198-b of the Labor Law, where such term has been defined and construed by the Courts.

Comment 26:  
Safeguards need to be implemented restricting employer use of employee purchasing information.

Response 26:  
The proposed rule deals only with the method of payment of wages, and not with the confidentiality of banking information.

- A new subparagraph 635-9.1(a)(1)(xxiii) is added as follows:  
*(xxiii) Supportive CRs and supportive IRAs are responsible for the cost of services that, prior to October 1, 2015, could have been met by a home health aide or personal care services separately billed to Medicaid, as specified in subparagraph 635-10.4(b)(1)(xvii) of this Part and paragraph 671.5(a)(8) of this Title.*
- Existing paragraph 635-9.1(a)(3) is amended as follows:  
(3) Family care.  
(i) The sponsoring agency (see glossary) [shall assume] is responsible for the cost of:  
(a) Any item or service for which the sponsoring agency has been paid or will be reimbursed from local, State, or Federal funds. *This includes services that, prior to October 1, 2015, could have been met by a home health aide or personal care services separately billed to Medicaid, as specified in subparagraph 635-10.4(b)(1)(xvii) of this Part.*  
Note: Existing clauses (b) – (k) of this subparagraph and subparagraph (ii) of this paragraph are unchanged.
- Existing subparagraph 635-10.4(b)(1)(xv) is amended as follows:  
(xv) Residential habilitation services in a supervised IRA [shall] include [services which]:  
(a) *services that are necessary to meet the needs of [consumers] individuals while in the residence; [and]*  
(b) *services that, prior to August 1, 2004, could have been met by home health aide or personal care services separately billed to Medicaid[.];*  
(c) *services that, prior to October 1, 2015, could have been met by home health aide or personal care services separately billed to Medicaid, with those services provided in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site; and*  
(d) *services specified in subparagraph (xvi) of this paragraph that, prior to October 1, 2015, may have been separately billed to Medicaid.*
- A new subparagraph 635-10.4(b)(1)(xvi) is added as follows:  
*(xvi) Effective October 1, 2015, residential habilitation services in a supervised IRA include the following clinical services delivered to an individual that are directly related to the individual's residential habilitation plan:*  
(a) *nutrition services that consist of meal planning and monitoring, assessment of dietary needs and weight changes, development of specialized diets, diet education, and food safety and sanitation training;*  
(b) *psychological services delivered by a licensed psychologist, licensed clinical social worker, or behavioral intervention specialist that consist of:*  
(1) *behavioral assessment and intervention planning, delivery and review or monitoring of behavioral interventions, and behavioral support services provided pursuant to section 633.16 of this Title; and*  
(2) *psychotherapy services; and*  
(c) *nursing services that consist of:*  
(1) *training and supervision of direct support staff who perform health-related and delegated nursing tasks that include, but are not limited to, observation for illness and injury, medication administration, tube feeding, and colostomy care;*  
(2) *development and monitoring of written plans of nursing services that identify interventions direct support staff carry out to address individuals' health care needs;*  
(3) *availability of nursing supervision, by a Registered Nurse, on site or by telephone, at all times to respond to direct support staff in order to address individuals' ongoing and immediate health care needs;*  
(4) *coordination of individuals' health care services, including, but not limited to, arranging for needed medical appointments and diagnostic testing, interfacing on behalf of individuals with community-based healthcare providers, and ensuring that treatments are carried out in accordance with physicians' orders; and*  
(5) *provision of direct nursing care that cannot be delegated to direct support staff and that is available within the staffing plan at the residence and/or is not available through other sources.*
- A new subparagraph 635-10.4(b)(1)(xvii) is added as follows:  
*(xvii) Residential habilitation services for an individual who resides in a supportive IRA or Family Care Home include services that, prior to October 1, 2015, could have been met by a home health aide or personal care services separately billed to Medicaid; either*  
(a) *at the residence at any time; or*  
(b) *in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site.*
- Existing paragraph 635-10.5(c)(2) is amended as follows:  
(2) Day habilitation services shall be reimbursed as either individual day habilitation, supplemental individual day habilitation, group day ha-

## Office for People with Developmental Disabilities

### NOTICE OF ADOPTION

#### Day and Residential Habilitation Changes

**I.D. No.** PDD-33-15-00005-A

**Filing No.** 899

**Filing Date:** 2015-10-13

**Effective Date:** 2015-11-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of Subparts 635-9, 635-10 and Part 671 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

**Subject:** Day and Residential Habilitation Changes.

**Purpose:** To discontinue Individual Day Habilitation services and to add allowable services under Residential Habilitation.

**Text of final rule:** • Existing subparagraph 635-9.1(a)(1)(xxii) is amended as follows:

(xxii) Supervised community residences (CRs) and supervised individualized residential alternatives (IRAs) [facilities shall assume] are responsible for the cost of [services which]:

(a) *services that are necessary to meet the needs of [consumers] individuals while in the residence; [and]*

(b) *services that, prior to August 1, 2004, could have been met by home health aide or personal care services separately billed to Medicaid[.]; and*

(c) *services specified in subparagraph 635-10.4(b)(1)(xvi) of this Part and paragraph 671.5(a)(7) of this Title that, prior to October 1, 2015, may have been separately billed to Medicaid.*