


<b>STATE OF NEW HAMPSHIRE BDS GENERAL MEMORANDUM (GM)</b>	
<b>DATE:</b>	5/12/23, Revised 9/9/24
<b>TO:</b>	Area Agency Executive Directors and Financial Managers, BDS Staff, Developmental Service Medicaid Enrolled providers of HCBC waivers
<b>FROM:</b>	Jessica Gorton, Bureau Chief, Bureau of Developmental Services
<b>SIGNATURE:</b>	
<b>SUBJECT:</b>	Out of Service Unit Billing Guidance
<b>GM NUMBER:</b>	GM#23-007
<b>EFFECTIVE DATE:</b>	7/1/23
<b>REGULATORY GUIDANCE:</b>	This memo is a communication tool circulated for informational purposes only. The goal is to provide information and guidance to the individuals to whom it is addressed. The contents of this memo and the information conveyed are subject to change. This communication is not intended to take the place of or alter written law, regulations or rule.

<b>MEMORANDUM SUMMARY</b>	
<p>The purpose of this memorandum is to:</p> <ul style="list-style-type: none"> <li>• Clarify Centers for Medicare and Medicaid Services (CMS) requirements regarding Out of Service Units;</li> <li>• Define when an Out of Service unit can and cannot be billed;</li> <li>• Define Service Codes and Billing Practices for Out of Service Authorizations;</li> <li>• Detail how Out of Service days/units are authorized when multiple providers support the same individual, with examples;</li> <li>• Explain how Out of Service days/units are authorized with a change in provider, with examples; and</li> <li>• Explain how Out of Service days/units are authorized with a change in service, with examples.</li> </ul>	

**CMS Requirements for Out of Service Units:**

Out of Service (OOSvc) units allowed and reimbursed, per the Olmstead Update #3 for State Medicaid Directors, <https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/smd072500b.pdf>, may not exceed the lesser of 30 days or the number of days for which the State authorizes a payment for “bedhold” in nursing facilities. According to State of New Hampshire Administrative Rule He-E 802.15(d)(4), a nursing facility may not bill for more than 30 reserved bed days per resident per state fiscal year.

Residential Habilitation, Community Participation Services (CPS/Day) and Supported Employment services (SEP) are the only waiver services that will be issued OOSvc Service Authorizations (SAs). No OOSvc units will be approved for any Participant Directed and Managed Services (PDMS) method of service delivery for these

three services or any other BDS waiver services (Developmental Disability, Acquired Brain Disorder & In Home Support waivers).

**Residential Habilitation:**

BDS will issue an OOSvc SA not to exceed 30 units per individual per SA year.

For Residential Habilitation, if the individual is not receiving residential habilitation services at 12:01 am, residential habilitation cannot be billed. A residential habilitation OOSvc unit can then be considered, based on the guidance below.

An OOSvc unit is defined as time that was not spent with an individual to render a service due to an individual's unplanned medical, social or therapeutic leave in which the provider is open and available to provide the service.

**Waiver Funded OOSvc Units:**

SA authorized OOSvc units can be billed based on the following criteria:

- An individual is not present for services as outlined their Individual Service Agreement (ISA);
- The provider was ready, willing and able to provide the services; and
- No services were rendered.

Examples include the following **unplanned** events (not defined in the ISA):

- Individual vacation day;
- Individual visits their family;
- Individual visits with friends; or
- Individual's sick day.

**OOSvc Units Not Funded by the Waiver:**

OOSvc Units cannot be billed for the following reasons:

- Provider closure (inclement weather day, no staff available, unplanned closures);
- If a service is rendered and billed for, on a particular day, OOSvc units cannot also be billed for the same day, per SA;
- The maximum OOSvc units have already been billed and paid for within the SA year;
- An individual is admitted to an Institution for Mental Disease (IMD), such as New Hampshire Hospital or a rehabilitation facility under a Nursing Facility stay, or any other institutional setting in which Medicaid is no longer open; or
- The individual is receiving services on another Waiver.

**Building a Residential Service SA:**

A residential service SA will be built based upon the number of days an individual will receive planned residential services within the service authorization year, accounting for pre-scheduled provider observed holidays/staff training days (not inclement weather closures), and pre-scheduled days the individual is not going to be receiving services. Service coordinators should identify, in advance, planned day/units that the individual will not seek the identified services within the service authorization year, share the information with the service provider and document it in the service agreement. In addition, the service provider needs to identify days/units that they will not be providing the identified service and document this in the service agreement as well. **The requested budget must be reflective of the number of days/units of planned service provision only for a service authorization year.**

Examples:

- An individual needs residential service 7 days per week, 52 weeks per year. There are no planned provider closures and dates the individual will not be receiving service. The following SA's will be set up:

- One for residential services equal to 365 days; and
- One for residential OOSvc units equal to 30 days.
- An individual needs residential service 5 days per week as they go home every weekend. The following SA's will be set up:
  - One for residential services equal to 260 days (5 days \* 52 weeks); and
  - One for residential OOSvc units equal to 30 days.
- An individual needs residential service 7 days per week, 52 weeks per year; however, the residential provider is closed for 3 weeks per year. The following SA's will be set up:
  - One for residential services equal to 344 days (7 days \* (365 days – 21 days)); and
  - One for residential OOSvc units equal to 30 days.

**Community Participation Services (CPS/Day) and Supported Employment (SEP):**

BDS will issue an OOSvc SA, not to exceed 30 days of units, dependent on the number of units the individual is receiving each week as outlined in their individual service agreement. For example, if an individual is to receive 40 units (10 hours) of CPS/Day each week, a SA for 171 OOSvc units (40 units \* 30 days)/7 days per week) per SA year will be issued.

An OOSvc unit is defined as time that was not spent with an individual to render a service due to an individual's unplanned medical, social or therapeutic leave in which the provider is open and available to provide the service.

**Waiver Funded OOSvc Units:**

SA authorized OOSvc units can be billed based on the following criteria:

- An individual is not present for services as outlined their individual's ISA;
- The provider was ready, willing and able to provide the services; and
- No services were rendered.

Examples include the following **unplanned** events (not defined in the ISA):

- Individual vacation day;
- Individual visits their family;
- Individual visits with friends; or
- Individual's sick day.

**OOSvc Units Not Funded by the Waiver:**

OOSvc Units cannot be billed for the following reasons:

- Provider closure (inclement weather day, no staff available, unplanned closures);
- When the maximum OOSvc units have already been billed and paid for within the SA year; or
- If an individual is admitted to an Institution for Mental Disease (IMD), such as New Hampshire Hospital or a rehabilitation facility under a Nursing Facility stay, or any other institutional setting in which Medicaid is no longer open.
- The provider must keep accurate records so they never bill more than the annualized budget on the individual even though they can bill the in service and out of service SAs on the same day.

**Building a CPS/Day or SEP SA:**

A CPS/Day or SEP SA will be built based upon the number of units per week an individual will receive planned CPS/Day or SEP services within the service authorization year, accounting for pre-scheduled provider observed holidays/staff training days (not inclement weather closures), and pre-scheduled days the individual is not going to be receiving services, including Project Search and START. Service coordinators should identify, in advance, planned day/units that the individual will not seek the identified services within the service authorization year and share the information with the service provider and document it in the service agreement. In addition, the service provider will identify days/units that they will not be providing the identified service and document this in the

service agreement as well. **The requested budget must be reflective of the number of days/units of planned service provision only for a service authorization year.**

Examples:

- An individual needs 30 hours per week of CPS and has a planned START stay for 2 weeks. The following SA's will be set up:
  - One for CPS Services equal to 6,000 units (30 hours \* 4 units per hour \* (52 weeks – 2 weeks); and
  - One for CPS OOSvc units equal to 514 units (30 hours \* 4 units per hour (120) \* 30 units divided by 7 days/week).
- An individual has Project Search, SEP services, 40 hours per week for 9 months. The following SA's will be set up:
  - One for SEP equal to 6,240 units (40 hours per week \* 4 units per hour \* 39 weeks); and
  - One for SEP OOSvc units equal to 685 units (40 hours \* 4 units per hour (160) \* 30 units divided by 7 days/week).

**Procedure Codes for Out of Service SAs:**

An OOSvc procedure code and modifier for Residential Habilitation, CPS/Day and SEP in both the Developmental Disability (DD) and Acquired Brain Disorder (ABD) waivers will be in effect as of 7/1/23. The procedure codes are highlighted below:

<b>DD</b>						
<b>Service</b>	<b>Description</b>	<b>Procedure Code</b>	<b>Mod 1</b>	<b>Mod 2</b>	<b>Mod 3</b>	<b>Mod 4</b>
Residential	RPCLEV7	T1020	SE	UA	U7	
	RPCLEV8 - Data Conversion Code	T1020	SE	UA	U8	
	<b>Res Out of Service Days</b>	<b>T1020</b>	<b>SE</b>	<b>UA</b>	<b>U8</b>	<b>U1</b>
CPS/Day	Day Hab Level 6	T2021	SE	UA	U6	
	Day Hab Level 7 - Data Conversion Code	T2021	SE	UA	U7	
	Day Out of Service Units	T2021	SE	UA	U7	U1
SEP	SEP Level 3	H2023	SE	UA	U3	
	SEP Level 4 - Data Conversion Code	H2023	SE	UA	U4	
	SEP Out of Service Units	H2023	SE	UA	U4	U1
<b>ABD</b>						
<b>Service</b>	<b>Description</b>	<b>Procedure Code</b>	<b>Mod 1</b>	<b>Mod 2</b>	<b>Mod 3</b>	<b>Mod 4</b>
Residential	ABD PCS Level 8	T1020	SE	UB	U8	
	ABD PCS Level 9 for Data Conversion	T1020	SE	UB	U9	
	<b>ABD Res Out of Service Days</b>	<b>T1020</b>	<b>SE</b>	<b>UB</b>	<b>U9</b>	<b>U1</b>
CPS/Day	ABD Day Level 6	T2021	SE	UB	U6	
	ABD Day Level 7 for Data Conversion	T2021	SE	UB	U7	
	ABD Day Out of Service Units	T2021	SE	UB	U7	U1
SEP	ABD SEP Level 3	H2023	SE	UB	U3	
	ABD SEP Level 4 for Data Conversion	H2023	SE	UB	U4	
	ABD SEP Out of Service Units	H2023	SE	UB	U4	U1

Business Rules, in MMIS, for the use of OOSvc codes have been identified as follows:

1. Providers cannot bill an OOSvc Residential Code, highlighted in yellow, for the same individual on the same day that the regular service code is billed. For Example:
  - a. ABD Residential Habilitation Out of Service Code T1020 SE UB U9 U1 cannot be billed for the same individual on the same day that ABD Residential Habilitation Level 8 code T1020 SE UB U8 or ABD Residential Habilitation Level 9 Data Conversion Code T1020 SE UB U9 is billed. There should only be one level per person on a given day. In this instance, both claims should be denied.
2. Providers cannot bill both an Independently Determined Level and a Data Conversion Code for the same individual on the same day. For Example:
  - a. DD Community Participation Services (CPS/Day) Level 6 Code T2021 SE UA U6 cannot be billed when a DD CPS/Day Level 7 Data Conversion Code T2021 SE UA U7 is billed. There should only be one level per person at any given time. In this instance, both claims should be denied.

Beginning 5/15/23, Area Agencies/Service Coordinators will include the OOSvc units, for all services that go into effect as of 7/1/23, utilizing the new budget template face sheet. BDS will train Area Agencies/Service Coordinators on the budget template face sheet.

OOSvc units will be prior authorized for the corresponding waiver service. Each Service Coordinator and Area Agency will be able to track used units in NH Easy.

BDS will keep track of the used OOSvc units. Once the total OOSvc units used reaches 75%, BDS will contact the Service Coordinator to initiate a team meeting to discuss if adjustments to the ISA and/or SA need to be made.

**Services Provided By More Than One Provider:**

Each service provider will receive their own SA for the number of units they will provide the service for the year, and a SA for the number of OOSvc units that correspond with the service SA.

Examples:

- Charlie has two Supported Employment providers for 10 hours per week as outlined in his ISA. Provider A provides 7 hours per week and Provider B provides 3 hours per week.
  - Provider A will be issued 2 SAs:
    - One for Supported Employment for 1,456 units (7 hours \* 4 units per hour \* 52 weeks); and
    - One for Supported Employment OOSvc for 120 units (7 hours \* 4 units per hour (28) \* 30 units divided by 7 days/week).
  - Provider B will be issued 2 SAs:
    - One for the Supported Employment for 624 units (3 hours \* 4 units per hour \* 52 weeks); and
    - One for Supported Employment OOSvc for 51 units (3 hours \* 4 units per hour (12) \* 30 units divided by 7 days/week).
- Bill has two Residential Habilitation providers for 365 days. Provider C provides 5 days per week and Provider D provides 2 days per week.
  - Provider C will be issued 2 SAs:
    - One for Residential Habilitation for 260 days (5 days \* 52 weeks); and
    - One for Residential Habilitation OOSvc days for 21 days (260/365) \* 30).
  - Provider D will be issued 2 SAs:
    - One for Residential Habilitation for 105 days (365 days – 260 days); and
    - One for Residential Habilitation OOSvc days for 9 days (105/365) \* 30).

**OOSvc Days/Units When an Individual Moves To A New Service Provider Mid-way Through State Fiscal Year:**

If an individual has used all of their OOSvc days prior to the move, the receiving provider will not be issued an OOSvc SA. If the individual has not used all 30 OOSvc days, then the receiving provider will be issued an OOSvc SA with the remaining OOSvc.

**Examples:**

- Steve lives in a 24/7 staffed residence operated by Provider E. He moved to Provider G 8 months into the year and had already used all 30 Out of Service days. Provider G will not be issued a SA for OOSvc, since the OOSvc days/units are individual-specific.
- Charlie transitioned his CPS/DAY from Provider A (7 hours per week) to Provider H 3 months into the year and had used 56 units of OOSvc by the time of the transition.
  - The SAs for Provider A will be ended; and
  - Provider H will receive 2 SAs for the remaining 8 months:
    - One for CPS/DAY for 1,092 units (7 hours \* 4 units per hour \* 39 weeks); and
    - One for CPS/DAY OOSvc units equal to 64 units (7 hours \* 4 units per hour (28) \* 30 units divided by 7 days/week – 56 units used).

**Change in Individual's Number of Days or Units of Service:**

When a change in ISA prompts the need for new SAs, current SAs will be ended and newly issued SAs for the service and for OOSvc units will be pro-rated based on previous use of OOSvc.

**Examples:**

- Sally currently has 10 hours of CPS/DAY per week. After 6 months of service, she needs to increase the hours to 20 per week and has not used any Out of Service units at the time of change. She has two providers: Provider J provides 7 hours of CPS/Day per week and Provider K provides 3 hours of CPS/Day per week. With the increase in hours, Provider J will be increased to 10 hours of CPS/Day per week while, Provider K will be increased to 10 hours of CPS/Day per week. The current and future SAs are as follows:
  - Existing SAs will be ended after 6 months:
    - Provider J had 2 SAs:
      - One for CPS/Day for 1,456 units (7 hours \* 4 units per hour \* 52 weeks); and
      - One for CPS/Day OOSvc for 120 units (7 hours \* 4 units per hour (28) \* 30 units divided by 7 days/week).
    - Provider K had 2 SAs:
      - One for CPS/Day for 624 units (3 hours \* 4 units per hour \* 52 weeks); and
      - One for CPS/Day OOSvc for 51 units (3 hours \* 4 units per hour (12) \* 30 units divided by 7 days/week).
    - New SAs will be put up for 6 months/26 weeks:
      - Provider J will be issued 2 SAs:
        - One for CPS/Day for 1,040 units (10 hours \* 4 units per hour \* 26 weeks); and
        - One for CPS/Day OOSvc for 171 units (10 hours \* 4 units per hour (40) \* 30 units divided by 7 days/week).
      - Provider K will be issued 2 SAs:
        - One for CPS/Day for 1,040 units (10 hours \* 4 units per hour \* 26 weeks); and
        - One for CPS/Day OOSvc for 171 units (10 hours \* 4 units per hour (40) \* 30 units divided by 7 days/week).

- Mickey currently lives in a 24/7 residential home receiving 365 days per year of services. After 9 months of service, his guardian chooses to reduce days of services to 5 days per week. He has not used any OOSvc Units at the time of change. The current and future SAs are as follows:
  - Current SA will be ended after 9 months:
    - One for Residential Habilitation for 365 days; and
    - One for Residential Habilitation OOSvc for 30 days.
  - Future SA will be put up for 3 months or 13 weeks:
    - One for Residential Habilitation for 65 days (5 days per week \* 13 weeks); and
    - One for Residential Habilitation OOSvc days for 30 days.
- Jimmy currently lives in an enhanced family care, Provider N, setting receiving 365 days per year of services. After 2 months of service, his needs increase and he is moved to a 24/7 staffed residence, Provider M. He had used 14 OOSvc Units when he moved to the Provider M. The current and future SAs are as follows:
  - Current SA for Provider N will be ended after 2 months/60 days:
    - One for Residential Habilitation for 365 days; and
    - One for Residential Habilitation OOSvc for 30 days.
  - Future SA for Provider M will be put up for 10 months/305 days:
    - One for Residential Habilitation for 305 days; and
    - One for Residential Habilitation OOSvc for 16 days.
- After 6 months at Provider M, Jimmy's parents/guardian decided they wanted him to be home with them every weekend. He used 7 OOSvc Units in the 6 months. The current and future SAs are as follows:
  - Current SA for Provider M will be ended after 6 months/183 days (roundup  $365/2,0$ ):
    - One for Residential Habilitation for 305 days; and
    - One for Residential Habilitation OOSvc for 16 days.
  - Future SA for Provider M will be put up for 4 months/90 days to stay within the level of care and individual service agreement approved time period (365 minus 60 from Provider N minus 183 (6 months with Provider N) minus 32 days for 4 months of weekends OR roundup  $((365/3)-(16*2),0)$ ):
    - One for Residential Habilitation for 90 days; and
    - One for Residential Habilitation OOSvc for 9 days (30 minus 14 minus 7).