

## **OPWDD ASSESSMENT OF PUBLIC COMMENT**

### **Changes to the Pathway to Employment Service**

This document contains responses to public comments submitted during the public comment period for proposed regulations concerning changes to Pathway to Employment services. While OPWDD appreciates and has considered all feedback submitted by commenters, this assessment responds only to those comments specific to the content of the emergency proposed regulations.

**Comment:** Commenters expressed an understanding of, and agreement with, many of the regulatory changes to the service (e.g. increasing the group size for job readiness and the prohibition of Pathway to Employment services in day training programs/sheltered workshops).

**Response:** OPWDD appreciates the commenters' support of the regulatory changes to the Pathway to Employment service.

**Comment:** A commenter stated that defining the number of hours of job readiness is burdensome and creates fiscal vulnerability for providers. The commenter suggested that, if the goal is to ensure that providers aren't merely providing the bulk of services in job readiness/classroom type activities, then it would be just as effective to increase the number of hours in each of the respective community experiences since providers are already tracking this anyway. The commenter suggested that OPWDD limit approvals on extensions of hours if providers are providing excessive job readiness and fail to demonstrate good faith efforts to provide community based experiences.

A commenter contended that any service that is offered should be based on an individual's needs, and requested that OPWDD consider amending the 20 hour regulatory standard for job readiness to allow for additional hours based on the needs of a specific individual.

**Response:** The intent behind the regulatory changes is to minimize/eliminate fiscal vulnerability and other burdens on providers of Pathway to Employment services. The Pathway to Employment service is capped at 278 hours, and 60 of those hours are allowable indirect services. There should not be a need for more than 20 hours of job readiness training. However, if an individual requires more hours of service, an extension may be requested. Consequently, the regulation is being adopted as proposed.

**Comment:** Commenters expressed concern about the new regulatory provision in 635-10.4(h)(4) requiring a minimum of three different community experiences prior to the completion of the service and that if an individual dis-enrolls from Pathway to Employment services prior to completion, the allowable services may be billable. Commenters are concerned that services may end abruptly and that previous billings will be "invalidated."

A commenter recommends the removal of the language relating to disenrollment and potential non-reimbursement of allowable services. The commenter stated that the addition of this language places the provider at distinct risk for repayment of eligible funds and that, at times, providers have limited control over the disenrollment of an individual from a service prior to the completion of community experiences. The commenter considers that community experiences completed in accordance with OPWDD ADM#2015-07 must be eligible for reimbursement as separately delivered, and not contingent on a minimum of three being accomplished.

Another commenter recommends that the regulations explicitly state that the documentation of good faith attempts to create work experiences is sufficient to justify the services previously provided.

Another commenter stated that the requirement for a minimum of three community experiences is reasonable and allows for a more person centered service. The commenter stated that the new regulatory provision validates that services have been rendered to the individual even if the individual has not obtained his or her original goals and that such services should be paid for.

**Response:** The requirement for a minimum of three community experiences is designed to create opportunities for individuals to explore their various skills and talents through participation in a variety of community experiences. The regulation indicates that if an individual dis-enrolls from Pathway to Employment services prior to completion, the allowable services may be billable. OPWDD will issue administrative guidance that provides criteria for billing under these circumstances. Consequently, the regulation is being adopted as proposed.

**Comment:** A commenter contended that the number of allowable indirect services has increased but the total amount of units of indirect services remains the same. The commenter contended that the indirect services in the discovery process takes more than 60 hours to conduct and this can result in staff time that is unbillable. The commenter recommended that consideration be given to increasing the number of units allowed for indirect services to accommodate the increase in indirect services.

Another commenter stated that there may be legitimate situations where 60 hours of indirect services is not enough. The commenter recommended allowing the agency to make an appeal to OPWDD requesting an increase in the indirect services allotment on a case by case basis.

**Response:** OPWDD may grant an extension of hours of Pathway to Employment services in accordance with the regulations in subdivision 635-10.5(ad). Such extension could potentially include hours for indirect services. OPWDD's expectation, however, is that the bulk of Pathway to Employment services be delivered as direct

services and, therefore, OPWDD does not intend to increase the number of hours for indirect service provision. Consequently, the regulations are being adopted as proposed.

**Comment:** A commenter expressed concern with the regulatory provision that defines travel without an individual present as an indirect service. The commenter stated that this would result in rapidly using up all of the 60 hours of indirect services that “were meant to be used in more constructive ways.” The commenter stated that, since travel without an individual present is only billable if the intention is to deliver a valid Pathway to Employment service, then that service should define how travel time is classified. The commenter gave the following example: If the staff member travels alone to and from a meeting with the individual in his home and delivers a Pathway to Employment service then the travel aspect of the service should be considered a direct service. If the staff travels alone to and from a location where the individual is not present (i.e. clinician interview), then travel time should be considered an indirect service.

Another commenter stated that the new explanation of travel time in the regulations clearly identifies how and what can be billed for under this activity.

**Response:** The provision of travel as an allowable activity is an option, not a requirement. Providers should be strategic about how indirect hours are allocated to avoid exceeding the limit of hours, and to ensure that service delivery is effective, efficient and meets the needs of individuals receiving the service.

**Comment:** A commenter sought clarification in reference to the allowable activity in 635-10.4(h)(1)(ii)(j), “other activities, as authorized by OPWDD.” The commenter asked if such activities can only be authorized at the Central Office level.

**Response:** Other activities as referenced in 635-10.4(h)(1)(ii)(j) are authorized by OPWDD’s Central Office Employment Unit.

**Comment:** A commenter expressed concern with the regulatory provision that prohibits the provision of Pathway to Employment services in day training programs/sheltered workshops. The commenter contended that the addition of this limitation creates a number of questions and potential challenges to service providers who are attempting to transition individuals from sheltered workshops by way of participation in Pathway to Employment services. The commenter stated that it may be useful for Pathway to Employment staff who are beginning to support an individual currently working in a sheltered workshop, to observe the individual, identify current work skills and otherwise gain valuable information that can be used to help such individual develop career objectives and a pathway to achieving such. The commenter added that there are also Pathway to Employment eligible individuals who participate in a sheltered workshop that are not eligible for prevocational services as they have demonstrated an earning

capacity of greater than 50 percent of the current Federal minimum wage or prevailing wage and that these individuals may be appropriate for Pathway to Employment services in an effort to help transition them out of the sheltered workshop or day training program. The commenter stated that indirect services of observation and assessment while the individual is in the sheltered workshop or day training program may be of significant benefit.

The commenter also requested clarification as to whether the prohibition applies to certified day training programs that do not pay a subminimum wage or have a Department of Labor issued subminimum wage certificate.

Another commenter recommended changing the language to read as follows ““Pathway to Employment certified providers shall not offer said services in a setting that is certified as day training/sheltered workshops.”

**Response:** If the provider has non-certified space in the workshop, providers can utilize such space for observations and assessments. Otherwise, Pathway to Employment staff may observe and assess individuals in any services other than day training programs/sheltered workshops in order to obtain the information needed, and to observe how the individual interacts with others and participates in community life. Consequently, the regulation is being adopted as proposed.

**Comment:** A commenter sought clarification as to where or whom within OPWDD the required career vocational plan is to be submitted, and clarification as to whom and when the career vocational plan is to be submitted to the Adult Career and Continuing Education Services (ACCES-VR).

A commenter sought clarification on whether an ACCES-VR denial letter is required to be part of an individual’s Pathway to Employment record prior to the start of Pathway to Employment services.

**Response:** The career vocational plan can be uploaded into OPWDD’s CHOICES system. The plan should also be submitted to the respective ACCES-VR Regional Office Employment Liaison. An ACCES-VR denial letter is not required prior to the start of Pathway to Employment services.

**Comment:** A commenter sought clarification of the requirement that the provider retain a copy of the Letter of Agreement between OPWDD and the NYS Education Department. The commenter’s interpretation is that the provision is not prescriptive in how the letter is retained, providers can either keep a single copy administratively in a general file or file a copy in the file of any individual who is receiving this service.

**Response:** The commenter's interpretation is correct that the regulatory provision is not prescriptive in how the letter is to be retained. A best practice would be to file the agreement with all records associated with delivery of the Pathway to Employment service.

**Comment:** A commenter stated that, while the proposed amendments offer greater service flexibility for providers, there are a number of areas within the regulations that remain too subjective and ambiguous. The commenter requested that OPWDD's ADM #2015-07 be updated and disseminated prior to June 1, 2016 to include details related to the regulatory amendments.

**Response:** OPWDD intends to issue revised administrative guidance that is reflective of the regulatory changes to the Pathway to Employment service in the near future.