

OPWDD ASSESSMENT OF PUBLIC COMMENT SEMP Redesign

This document contains responses to public comments submitted during the public comment period for proposed regulations concerning the Supported Employment (SEMP) service redesign and changes to liability for services regulations. OPWDD received comments from five provider associations and one provider of SEMP services.

Note: This assessment does not provide answers to questions submitted, as questions are not addressed through the regulatory comment process. Questions are being answered through other mechanisms (e.g. trainings and policy/guidance). This assessment does not respond to comments that did not directly address the proposed regulations.

Comment: Three provider associations recommended that OPWDD provide the following clarifications in the regulations or in policy/guidance associated with the regulations:

- Clarification of the individual service recipient to whom the staff transportation activity is to be “billed,” and a comment that the individual to whom the staff person is traveling to support would be appropriate.
- Clarification of which of the services/activities are or are not required to be face-to-face.
- Clarification that billing for activities conducted on behalf of one individual, but performed by different staff simultaneously is allowable.
- Clarification of what providers can bill as “other” activities.
- Clarification of the timeframe for processing extension requests and providing extension authorization of the service limit, and recommendation of a 30-day maximum.
- Clarification of the process for submission of group requests and the process for determining that a group setting is the most effective setting for an individual.
- Clarification as to whether the 365 day service limit does or does not count breaks in service delivery against this limit.
- Clarification of what is meant by documentation of no ACCES-VR service availability and that providers must only maintain this documentation prospectively from July 1, 2015.
- Clarification regarding how SEMP providers are to make determinations about the provision of and funding for services in relation to ACCESS-VR and SEMP.
- Clarification regarding individuals who are not Medicaid eligible and receiving SEMP supports prior to July 1, 2015, as to whether they will be “grandfathered” in as eligible for the limited exception specified in the liability regulations, and if so, how these services will be paid.
- Clarification regarding the form and format for submission of the notice required in liability for services regulations.

Response: Regarding the SEMP service redesign, OPWDD has been providing clarification of the requirements in the proposed regulations through trainings to providers and responses to questions raised in emails and by telephone. OPWDD also plans to issue an administrative memorandum (ADM) on the effective date of the regulation that interprets provisions of the regulation for providers. OPWDD will continue providing clarification through the ADM, trainings, and other forms of technical assistance. Consequently, OPWDD plans to promulgate the proposed regulation without any changes.

Regarding changes to the liability for services regulation, OPWDD plans to issue guidance on the new regulations. OPWDD also plans to update its liability notices and issue a new notice to inform individuals affected by the regulations about the changes. Providers will be notified when this notice is available and instructions will be provided. OPWDD plans to promulgate the proposed regulation without any changes.

Comment: Two provider associations recommended amending the allowable activity: “job coaching, training, and planning within the work environment” to delete the phrase “within the work environment” because these activities often occur outside the work environment.

Response: OPWDD notes that there are several allowable activities that can be provided outside of the work environment, such as training and systemic instruction, person-centered employment planning, development of job retention strategies, etc. Consequently, OPWDD plans to promulgate the proposed regulation without any changes.

Comment: Two provider associations commented that allowable activities should include development of functional job skills (e.g., use of technology, remediation).

Response: OPWDD notes that development of functional job skills is already included as part of the following allowable services: job development, analysis, customization and carving; training and systemic instruction; and job training. Consequently, OPWDD plans to promulgate the proposed regulation without any changes.

Comment: Two provider associations commented that Federal and State Department of Labor (DOL) regulations require that employers reimburse employees for travel when employees are being paid for their work. The provider associations commented that failure to include travel for staff providing SEMP services as a billable activity represents a major inconsistency with existing DOL regulations and threatens the viability of SEMP. The provider associations recommended that OPWDD amend the regulations to create consistency with existing DOL regulations. Another provider association commented that the regulations should be amended to allow for staff transportation between activities without the individual to be counted as billable service time.

Another provider association commented that it should be made clear that billable service time does not include the “generic round trip transportation” of an individual between his or her home and job.

Response: OPWDD has considered these concerns about transportation and plans to include the following guidance in its SEMP ADM: “Allowable transportation activities include time that a job coach, job developer or employment specialist travels (during the day, evening or weekend) to billable SEMP activities, such as travel (with or without the individual) to job sites to provide SEMP services; meetings with potential and current employers; and to conduct vocational assessments. Travel time should be billed to either an individual or group activity with specific SEMP participants identified. A staff member’s travel between his or her home and place of employment at the start and conclusion of the work day is not a billable transportation service. In addition, staff travel to a non-billable activity, such as travel to lunch, is not a billable transportation service.” Consequently, OPWDD plans to promulgate the proposed regulation without any changes.

Comment: Two provider associations recommended changing the requirement for staff to complete training in an OPWDD approved vocational rehabilitation program or SEMP training program to eliminate the requirement that the trainings be approved by OPWDD, so that OPWDD does not have to individually approve hundreds of trainings. The provider associations recommended that the regulations specify the provision of specific training in job coaching, person-centered planning, job development, and job discovery. The provider associations also recommended that the regulations specify that the training requirement only applies to staff who begin providing SEMP on or after the effective date of the regulations.

A provider association recommended that a mechanism be developed to reimburse providers for costs associated with the new training requirements that are in addition to basic training requirements for direct support professionals found in OPWDD’s Part 633 regulations. Another provider association recommended that training time be billable.

A provider association expressed concern that even with the one or two year time frames for completion of training, it could be complicated by the potential lack of timely availability of the training courses offered. The provider association recommended that the regulations provide for training to take place as per course availability.

Response: OPWDD notes that the required training approved by OPWDD is its *Innovations in Employment Supports* trainings. These trainings include training in job coaching, person-centered planning, job development, and job discovery. OPWDD’s SEMP ADM will further detail the requirements for participation in these trainings and, therefore, OPWDD plans to promulgate the proposed regulation without any changes. The training requirement applies to staff who begin delivering services prior to July 1, 2015. However, such staff will have a 2-year grace period to come into compliance with the requirement. This will be specified in OPWDD’s SEMP ADM. OPWDD has

considered the concerns related to lack of timely availability of training courses offered and has worked with its contractor to ensure that trainings will be available across the State.

Comment: The SEMP provider also commented that the Extended phase service limit of 200 hours per year or 16.66 hours per month is too high and not necessary. The SEMP provider also commented that operational overhead for SEMP involves fixed costs that do not fall below a minimum threshold regardless of the number of people served.

The provider association recommended that OPWDD commit to evaluating the effectiveness of the hourly unit of service after the first year of implementation and remain open to reconsidering the monthly performance reimbursement approach. The SEMP provider recommended that OPWDD introduce tiers of hourly rates corresponding to the three levels of current monthly rates for Extended services and, with this new approach, delay implementation of the redesign for another year to give providers time to adjust to the changes.

Response: OPWDD worked with the Department of Health (DOH), which has created an hourly reimbursement for SEMP. As part of the SEMP redesign, services can be provided with or without an individual present. The annual limit on hours in the Intensive and Extended phases will ensure that individuals with developmental disabilities have enough supports to successfully obtain and maintain competitive employment. Extensions are available if an individual requires more hours of service. Consequently, OPWDD is promulgating the regulations without changes.

OPWDD appreciates the suggestion to evaluate SEMP after the first year of its implementation. As it does with all of its services, OPWDD plans to continuously monitor implementation of SEMP and make changes to the service if and when such changes are needed.

Comment: A provider association expressed concern about the significant challenge in changing procedures and protocols, developing guidance for employees, and overhauling internal compliance review procedures to implement the changes to SEMP. The provider association commented that some providers will not receive training on the changes until a week before the regulations are promulgated, and recommended that audit protocols and effective dates be lagged by 30 days following the date of dissemination of the final SEMP ADM.

Response: OPWDD and DOH made a commitment to CMS to effectuate the changes to the SEMP service and its fee structure on July 1, 2015. OPWDD and DOH have worked extensively with provider associations and providers on the redesign of SEMP and the development of the proposed regulations. OPWDD considers that providers have been given sufficient notice of the proposed requirements through participation in redesigning the service, trainings on the new requirements, and mailings and other

correspondence about the new requirements. OPWDD does not plan to lag the effective date for compliance with the regulations.

Comment: A provider association commented on the criteria for extension of service time in the Intensive and Extended phases of SEMP, noting that both phases require criteria that the extension be in the best interests of the individual. The provider association commented that clarification is needed about whether all criteria must be met or only one criterion, and recommends that OPWDD require that only one criterion be met in addition to the extension being in the best interests of the individual.

Response: OPWDD notes that the regulations list the criteria for each phase and use the term “or” instead of “and” to indicate that only one of the criterion must be met for consideration of approval for an extension of either phase.

Comment: A SEMP provider recommended that OPWDD define “integrated employment in the general workforce,” “integrated in the general workforce” and “nondisabled workers.” The provider is concerned that, with language used in this regulation and other material disseminated by OPWDD on this topic, OPWDD will authorize the provision of SEMP in facilities that are “cosmetically converted” sheltered workshops.

Response: OPWDD notes that the regulation requires the outcome of SEMP services to be paid employment at or above the minimum wage in an integrated setting in the general workforce. This language is consistent with the 2011 CMS Informational Bulletin on Employment Services. OPWDD has determined that additional clarification is not needed and plans to promulgate the regulation without any changes.

Comment: A provider association recommended that the regulations identify the types of documentation that are acceptable as evidence that competitive integrated employment is compensated at or above the minimum wage, and state explicitly that this proof must be obtained only once for the duration of the individual’s employment.

Response: OPWDD will identify the types of documentation that may be used to demonstrate that employment is at or above the minimum wage and the frequency for obtaining such documentation in its SEMP ADM. Consequently, OPWDD plans to promulgate the proposed regulations without any changes.

Comment: A SEMP provider commented that it is inappropriate to deliver SEMP in a group because group models result in insufficient individual attention to the specific needs of individuals, restriction of the range of available worksites and failure of individuals to maintain long-term placements in real jobs. The provider commented that group settings that only include individuals with disabilities isolate individuals with disabilities from nondisabled co-workers and do not conform to the new Medicaid Home and Community Based Services (HCBS) Settings regulations. The provider

recommended changes to the regulations that would only allow service delivery in groups of 2 people.

Response: OPWDD notes that group employment is an allowable HCBS waiver service as defined in the 2011 CMS Informational Bulletin on Employment. The OPWDD regulation is consistent with the language in the CMS Bulletin. Consequently, OPWDD plans to promulgate the regulations without any changes.

Comment: A SEMP provider expressed appreciation of the inclusion of Intensive SEMP as a separate service because it will allow providers to take the time needed to help people find a job that is both fulfilling as well as suitable for them and should lead to an increase in positive employment outcomes for people with disabilities. The provider commented that the identified service time limit of 250 hours per year will allow service providers to spend a significant amount of time on career exploration, setting up assessments, job development, and job coaching, and devoting more time on these areas should generate a higher job retention rate.

Response: OPWDD appreciates the support from the SEMP provider.

Comment: A provider association commented that it presumes that existing SEMP plans prior to the redesign will remain in effect after July 1, 2015, through the time period of the plan.

Response: OPWDD will provide this clarification in its SEMP ADM. The SEMP plan does not need to be updated as SEMP is still the service being provided and the valued outcomes do not change. There is no need to identify whether an individual receives Intensive or Extended SEMP. The plan just needs to identify SEMP as the service.

Comment: A provider association recommended changing the timeframe requirement for notification of individuals who are qualified for the limited exception in the liability regulations from August 1, 2015 to November 1, 2015.

Response: OPWDD considers that one month is a reasonable timeframe requirement for notification of the changes to the limited exception in the liability regulations. This timeframe is consistent with the timeframe for notifications when the existing regulations were initially promulgated in 2009. OPWDD expects that fewer notifications will need to be made than were required in 2009 under the same timeframe requirements because the notification required in the proposed regulations only pertains to individuals receiving SEMP services only. Consequently, OPWDD plans to promulgate the proposed regulations without any changes.