

## SEMP Redesign Amendments to 14 NYCRR Subparts 635-10, 635-12 & 635-99

Proposed Regulations  
Effective: July 1, 2015  
Comments Due: Monday, June 8, 2015

- **Subdivision 635-10.4(d) is amended as follows:**
  - (d) Supported employment (SEMP) services prior to July 1, 2015. Supported employment under the HCBS waiver, is a service providing appropriate staff and/or material supports for a person obtaining or being maintained in a compensated employment setting in accordance with individual capabilities, choices and employment goals. (For SEMP provided on and after July 1, 2015, see subdivision 635-10.4(j) of this section.)
  
- **A new subdivision 635-10.4(j) is added as follows:**
  - (j) Supported employment (SEMP) services on and after July 1, 2015. SEMP is a person-centered employment planning and support service that provides assistance for an individual to obtain, maintain, or advance in self-employment or in competitive integrated employment in the general workforce, for which the individual is compensated at or above the state or federal minimum wage (whichever is greater). The goal of this service is sustained self-employment or competitive integrated employment at or above the state or federal minimum wage (whichever is greater) in the general workforce, in a job that meets the individual's personal and career goals.
    - (1) SEMP consists of the following allowable activities provided to and/or on behalf of an individual:
      - (i) vocational assessment;
      - (ii) person-centered employment planning;
      - (iii) job-related discovery;
      - (iv) job development, analysis, customization, and carving;
      - (v) training and systematic instruction prior to employment;

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- (vi) job placement;
- (vii) job coaching, training, and planning within the work environment;
- (viii) development and review of a business plan (for individuals who are pursuing self-employment or are self-employed);
- (ix) transportation between activities;
- (x) travel training;
- (xi) development of soft skills and job retention strategies (e.g., social interaction, maintaining relationships with co-workers and supervisory personnel);
- (xii) benefits support and asset development;
- (xiii) career advancement services;
- (xiv) other workplace support services including services that enable the individual to be successfully integrated into the job setting (e.g., development of natural supports in the work environment);
- (xv) negotiating potential jobs with prospective employers on behalf of an individual;
- (xvi) communication with an existing employer to review the individual's progress in meeting workforce expectations and to discuss and address any challenges the individual may have in the work environment;
- (xvii) communication with family or other members of the individual's circle of support to discuss and address employment-related issues, such as management of benefits or challenges the individual may have in the work environment; and/or
- (xviii) meetings and communications with staff providing other OPWDD approved services that impact an individual's ability to successfully achieve employment goals;

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- (xix) documentation of the delivery of SEMP services; and
- (xx) other activities previously approved by OPWDD.
- (2) SEMP may be delivered in the following two phases:
  - (i) Intensive SEMP. Intensive SEMP services include intensive job development and/or intensive job coaching services provided to a single individual or small group of individuals.
    - (a) Intensive job development services include activities that assist an individual in obtaining a job or establishing self-employment.
    - (b) Intensive job coaching services include initial supports that assist an individual to adjust to and maintain a job, once hired or self-employed.
    - (c) Intensive SEMP may be provided as:
      - (1) Intensive - 1, which is Intensive SEMP provided to one individual; or
      - (2) Intensive - 2, which is Intensive SEMP provided to a group of 2-8 individuals.
    - (d) Intensive SEMP can only be provided for a time-limited period in accordance with section 635-10.5 of this Subpart.
  - (ii) Extended SEMP. Extended SEMP services include ongoing job coaching and career development services provided to a single individual or small group of individuals who may have received up to 365 days of intensive supported employment services and who are currently employed.
    - (a) Ongoing job coaching services include activities to assist an individual to maintain employment.
    - (b) Career development services include services to assist an employed individual in obtaining a new job or a second job or in changing his or her career path.

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- (c) Extended SEMP may be provided as:

  - (1) Extended - 1, which is Extended SEMP provided to one individual; or
  - (2) Extended - 2, which is Extended SEMP provided to a group of 2-8 individuals.
- (d) Extended SEMP can only be provided for a limited number of hours in accordance with section 635-10.5 of this Subpart.
- (3) Self Employment. SEMP may include services and support to assist an individual to achieve self-employment, including home-based self-employment. Wages earned in self-employment may be below the state or federal minimum wage. Assistance for self-employment may include:

  - (i) assistance to identify potential business opportunities;
  - (ii) assistance to develop a business plan, including identification of potential sources of business financing, and other assistance in developing and launching a business;
  - (iii) identification of the supports the individual needs to operate the business; and
  - (iv) ongoing assistance, counseling, and guidance once the business has been launched.
- (4) All staff providing SEMP services must:

  - (i) have at least a high school equivalency diploma or one year of work experience providing vocational or pre-vocational services to individuals with disabilities; and
  - (ii) complete an OPWDD approved vocational rehabilitation or supported employment training program.
- (5) Supported Employment Service Delivery Plan.

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- (i) The service provider must develop a supported employment service delivery plan that guides the delivery of the service for each individual receiving SEMP services.
  - (ii) The plan must identify the responsibilities of the individual and the service provider necessary for delivery of the service and the achievement of the individual's employment goals.
  - (iii) The plan must be documented, reviewed, and updated in accordance with section 635-99.1 of this Part.
- (6) Self-Directed Services. Intensive and Extended SEMP may be provided as self-directed services to an individual who hires his or her own SEMP support staff.
- **Section 635-10.5(d) is amended as follows:**
  - (d) Supported employment (SEMP) services prior to July 1, 2015. (For SEMP provided on and after July 1, 2015, see subdivision 635-10.5(af) of this section.)
- **A new subdivision 635-10.5(af) is added as follows:**
  - (af) Reimbursement for supported employment services provided on and after July 1, 2015.
    - (1) General provisions.
      - (i) SEMP may be delivered in two phases and provided to a single individual or small group of individuals as follows:
        - (a) Intensive SEMP.
          - (1) Intensive - 1, which is Intensive SEMP provided to one individual; or
          - (2) Intensive - 2, which is Intensive SEMP provided to a group of 2-8 individuals.
        - (b) Extended SEMP.

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- (1) Extended - 1, which is Extended SEMP provided to one individual; or
    - (2) Extended - 2, which is Extended SEMP provided to a group of 2-8 individuals.
  - (ii) Reimbursement is not permitted for delivery of Intensive and Extended SEMP on the same date of service.
  - (iii) Reimbursement is contingent on prior approval from OPWDD for individuals who enroll in SEMP on or after July 1, 2015.
  - (iv) Prior approval from OPWDD is contingent on an individual's eligibility for Intensive or Extended SEMP, in accordance with paragraphs (2) and (3) of this subdivision, at the time of enrollment.
  - (v) Prior approval from OPWDD is not required for an individual who was enrolled in SEMP prior to July 1, 2015 and remained continuously enrolled in SEMP on and after July 1, 2015.
- (2) Intensive SEMP.
- (i) Reimbursement for Intensive SEMP is contingent on an individual's eligibility for services based on the following eligibility criteria:
    - (a) the individual has expressed an interest in competitive employment, and competitive employment is identified as a goal in the individual's individualized service plan (ISP);
    - (b) the individual is not employed or has been employed for less than 365 days; and
    - (c) the individual needs Intensive SEMP in order to obtain employment, become stabilized in employment, or achieve employment goals identified in the ISP.
  - (ii) Limits on hours of service and the term of service delivery for reimbursement of Intensive SEMP. Unless OPWDD authorizes an extension of the number of hours or length of the term of service, no more than 250 hours of service across 365 days can be reimbursed for an individual receiving Intensive SEMP. These limits apply

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whether such services are delivered to an individual (Intensive -1) or a group (Intensive - 2) or a combination of both (Intensive -1 and Intensive -2).

(iii) An individual may move between individual and group employment as needed.

(3) Extended SEMP.

(i) Reimbursement for Extended SEMP is contingent on an individual's eligibility for services based on the following criteria:

(a) the individual has expressed an interest in competitive employment, and competitive employment is identified as a goal in the individual's individualized service plan (ISP);

(b) the individual is currently employed in an integrated workplace and earning at least the state or federal minimum wage (whichever is greater) or is self-employed; and

(c) the individual needs Extended SEMP in order to maintain employment and achieve employment goals identified in the ISP.

(ii) Limits on hours of service and term of service delivery for Extended SEMP. Unless OPWDD authorizes an extension of the number of hours of service, no more than 200 hours of service across a 365 day time period can be reimbursed for an individual receiving Extended SEMP. These limits apply whether such services are delivered to an individual (Extended -1) or a group (Extended - 2) or a combination of both (Extended -1 and Extended - 2).

(iii) An individual may move between individual and group employment as needed in Extended SEMP.

(4) Extension of SEMP. Intensive or Extended SEMP services may be extended with prior authorization from OPWDD.

(i) If the service provider considers that an individual needs more than 365 days of Intensive SEMP and/or additional hours of Intensive or Extended SEMP, the service provider may submit a written request

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to OPWDD, in the form and format specified by OPWDD, for such extension of services.

(ii) OPWDD's decision on the extension request will be based on the following:

(a) For Intensive SEMP:

(1) whether the individual has recently become employed and needs an extension of Intensive SEMP services or has potential to be hired within 60 days of the scheduled completion of the Intensive SEMP phase;

(2) whether there is (or will be) a break in the provision of the SEMP service due to an individual's extended medical absence or personal hardship;

(3) whether unforeseen circumstances prevent (or will prevent) the service provider from maintaining continuous delivery of the SEMP service; or

(4) whether the extension is in the best interests of the individual.

(b) For Extended SEMP:

(1) whether changes in the individual's job responsibilities warrant additional hours of job coaching, training, and planning within the work environment;

(2) whether changes in the individual's workplace supports warrant additional hours to develop new supports in the work environment; or

(3) whether the extension is in the best interests of the individual.

(5) Unit of service. The unit of service for Intensive and Extended SEMP is one hour, which equals 60 minutes, and is reimbursed in 15-minute increments. When there is a break in the service delivery during a single day, the service provider must combine the durations of the continuous

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periods/sessions of each specific type of service provision for billing purposes (e.g., the durations of each Intensive -1 session provided within one day must be combined, but Intensive -1 and Intensive - 2 sessions provided within one day must not be combined).

(6) Billable service time. Billable service time for Intensive and Extended SEMP is:

- (i) time when the service provider is providing SEMP as specified in this subpart in accordance with the individual's supported employment service delivery plan; and
- (ii) time when service provider is developing the supported employment service delivery plan.

(7) Restrictions on billable service time.

- (i) Time spent receiving another Medicaid service must not be counted toward SEMP service time in instances when the Medicaid service is received simultaneously with one or more allowable SEMP activities (see subdivision 635-10.4(j) of this subpart) provided directly to the individual. An exception is the provision of Medicaid Service Coordination, which may be received simultaneously with all allowable SEMP activities.
- (ii) If an individual is in the Intensive phase of SEMP, the individual is not eligible to receive the Pathway to Employment service because allowable activities in Intensive SEMP and the Pathway to Employment service are the same.

(8) Documentation.

- (i) For an individual who was enrolled in SEMP prior to July 1, 2015 and remained continuously enrolled in SEMP on and after July 1, 2015, "monthly" SEMP identified in the individual's ISP is deemed to be "hourly" SEMP effective July 1, 2015. The service provider must identify the unit of service change in the ISP on the date of the next ISP review, or December 31, 2015, whichever is sooner.

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- (ii) The service provider must maintain documentation to show that an individual received SEMP services in accordance with his or her ISP and supported employment service delivery plan.
- (iii) For each continuous SEMP service session, the service provider must document date of service, the service start and stop times, the ratio of individuals to staff at the time of the SEMP service provision; and the allowable activities delivered during the SEMP services session.
- (iv) The service provider must maintain documentation that there is no funding available for the individual's SEMP services from the NYS ACCESS-VR (Adult Career and Continuing Education Services-Vocational Rehabilitation).

(9) Fee setting. The fees for SEMP services are in 10 NYCRR subpart 86-13.

- **Subdivision 635-12.3(f) is amended as follows:**

- (f) The provider shall inquire whether an individual applying for services is already [receiving or also applying for] enrolled in supported employment services or applying for or enrolled in respite services. If the individual is [receiving] enrolled in supported employment services or [also] applying for or enrolled in [either or both of those] respite services, the provider shall comply with its obligations as specified in section 635-12.12(c) and/or (d) of this Subpart, as applicable.

- **Section 635-12.12 is amended as follows:**

Prior to July 1, 2015, the limited exception provisions in this section were applicable to individuals applying for supported employment services who met specified criteria. The limited exception is no longer permitted for individuals enrolling in supported employment services on and after July 1, 2015.

- (a) The provisions of sections 635-12.2--635-12.10 of this Subpart are not applicable in the [following] circumstances in either paragraph (1) or paragraph (2) of this subdivision:

- [(1) The individual is applying for or receiving supported employment services and the individual is not receiving any of the following services: Medicaid service coordination, day treatment services, the following HCBS waiver

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services: residential habilitation services (community (in a community residence), IRA, or family care community rehabilitation services, day habilitation services, prevocational services, or respite services; blended services or comprehensive services. In addition, at no time on or after March 15, 2010 may the individual have full Medicaid coverage and be enrolled in the HCBS waiver.]

- (1) Supported employment services. The individual is enrolled in supported employment services and all of the following conditions are met:
- (i) Either:
    - (a) the individual was enrolled in supported employment services prior to July 1, 2015, and was continuously enrolled in supported employment services with the same provider on and after July 1, 2015; or
    - (b) the individual was enrolled in supported employment services prior to July 1, 2015, and on or after July 1, 2015 the provider downsized or eliminated the provision of supported employment services, causing the individual to dis-enroll in that provider's supported employment services and re-enroll in supported employment services from the same or a different provider.
  - (ii) The individual is not enrolled in any of the following services:
    - (a) Medicaid Service Coordination;
    - (b) day treatment services;
    - (c) residential habilitation provided in an individualized residential alternative (IRA), community residence (CR), or family care home;
    - (d) hourly community habilitation;
    - (e) day habilitation services;
    - (f) site based prevocational services;
    - (g) community prevocational services;

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(h) respite services.

Note: This list of services previously included at-home residential habilitation, community habilitation phase II, and blended and comprehensive services, which have been discontinued.

(iii) The individual was not enrolled in the HCBS Waiver at any time on or after March 15, 2010.

[(2) The individual is applying for or receiving respite services and the individual is not receiving any of the following services: Medicaid service coordination, day treatment services, the following HCBS waiver services: residential habilitation services (community (in a community residence), IRA, or family care community rehabilitation services, day habilitation services, prevocational services, or supported employment services; or blended services or comprehensive services. In addition, at no time on or after March 15, 2010 may the individual have full Medicaid coverage and be enrolled in the HCBS waiver.]

(2) Respite services. The individual is applying for or enrolled in respite services and all of the following conditions are met:

(i) The individual is not enrolled in any of the following services:

(a) Medicaid Service Coordination;

(b) day treatment services;

(c) residential habilitation provided in an IRA, CR, or family care home;

(d) hourly community habilitation;

(e) day habilitation services;

(f) site based prevocational services;

(g) community prevocational services;

(h) supported employment services.

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Note: This list of services previously included at-home residential habilitation, community habilitation phase II, and blended and comprehensive services, which have been discontinued.

- (ii) The individual was not enrolled in the HCBS Waiver at any time on or after March 15, 2010.
- [(b) Providers of supported employment services and providers of respite services shall provide notice, in the form and format specified by the commissioner, to all individuals applying for or receiving such services who appear to meet the requirements for the limited exception in subdivision (a) of this section. The notice shall include information about the limited exception and the obligation of the individual to notify the provider if he or she applies for other services. For such individuals receiving preexisting services, the notice shall be provided by the notice date. For such individuals applying for other than preexisting services, the notice shall be provided prior to the receipt of services.]
- (b) Notice requirements. All notices specified in this subdivision shall be in the form and format specified by OPWDD.
  - (1) Respite. Providers of respite services shall notify all individuals applying for respite services, who appear to meet the requirements for the limited exception set forth in paragraph 635-12.12(a)(2) of this section, about the limited exception and the obligation of the individual to notify the provider if he or she applies for other services.
  - (2) Supported employment services. Providers shall notify all individuals who are qualified for the limited exception on July 1, 2015 about the changes in criteria for qualification for the limited exception for supported employment. The notice must be provided to all such individuals no later than August 1, 2015.
- (c) Supported employment services--individuals applying for other services.
  - (1) If an individual [is applying for or receiving] enrolled in supported employment services[,] meets [or is expected to meet] the criteria specified in paragraph 635-12.12(a)(1) of this section, and applies for another service specified in such paragraph, the individual and the provider of other services receiving the application must notify the provider of the supported employment services that such application has been made.

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- (2) Prior to the receipt of the other services, the provider of the other services and the provider of supported employment services (if the provider of supported employment services is aware of the individual's application for another service) shall give notice to the individual and liable parties, if known. The notice shall be in the form and format specified by [the commissioner] OPWDD and shall include information about the following:
- (i) that the limited exception will no longer be in effect if the person [receives] who is enrolled in supported employment services [and] enrolls in any of the other services[.,];
  - (ii) the provisions of clause 635-12.12(a)(1)(i)(b) of this section concerning individuals who were enrolled in supported employment prior to July 1, 2015 and who switch providers of supported employment on or after July 1, 2015; and
  - (iii) information about the obligations of the [person] individual and liable parties [that would then be required] when the individual enrolls in other services and potential consequences of failure to comply with such obligations.
- (3) If the individual [begins to receive] enrolls in any of the other services in addition to the supported employment services, the limited exception is no longer in effect and the provisions of sections 635-12.2--635-12.10 of this Subpart are applicable, effective on the date the person begins to receive the other services.
- (4) The obligations of the individual and liable parties to pay for the supported employment services as specified in section 635-12.6 or 635-12.7 of this Subpart starts on the date the person [begins to receive] enrolls in the other services or, if the supported employment services are preexisting services, on June 15, 2010 (if it is later).
- (5) An individual who was enrolled in supported employment services prior to July 1, 2015, who is also enrolled in any of the other services specified in paragraph 635-12.12(a)(1) or (2) of this section may stop receiving the other service(s). If all of the criteria specified in paragraph 635-12.12(a)(1) or (2) of this section are met, the provisions of sections 635-12.2 through 635-12.10 of this subpart will no longer be applicable, effective the date the person dis-enrolls from all such other services. This does not apply to

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individuals who enroll in supported employment services on or after July 1, 2015. These individuals are not eligible for the limited exception described in this section.

- (d) Respite services--individuals applying for other services.
- (1) If an individual is applying for or [receiving] enrolled in respite services, meets or is expected to meet the criteria specified in paragraph 635-12.12(a)(2) of this section, and applies for another service specified in such paragraph, the individual and the provider of other services receiving the application must notify the provider of the respite services that such application has been made.
  - (2) Prior to the receipt of the other services, the provider of the other services and the provider of respite services (if the provider of respite services is aware of the individual's application for another service) shall give notice to the individual and liable parties, if known. the notice shall be in the form and format specified by [the commissioner] OPWDD, and shall include information that the limited exception will no longer be in effect if the person [receives] who is enrolled in respite services [and] enrolls in any of the other services, and information about the obligations of the person and liable parties that would then be required and potential consequences of failure to comply.
  - (3) If the individual [begins to receive] enrolls in any of the other services in addition to the respite services, the limited exception is no longer in effect and the provisions of sections 635-10.2--635-10.10 of this Subpart are applicable, effective on the date the person begins to receive the other services.
  - (4) The obligations of the individual and liable parties to pay for the respite services as specified in section 635-12.6 or 635-12.7 of this Subpart starts on the date the person [begins to receive] enrolls in the other services or, if the respite services are preexisting services, on June 15, 2010 (if it is later).
  - [(e)](5) An individual [receiving] enrolled in [supported employment services or] respite services who is also [receiving] enrolled in any of the other services specified in paragraph 635-12.12(a)(1) or (2) of this section, as applicable, may stop receiving the other service(s). If all of the criteria specified in paragraph 635-12.12(a)(1) or (2) of this section are met, the

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provisions of sections 635-12.2--635-12.10 of this Subpart will no longer be applicable, effective the date the person [stops receiving] dis-enrolls from all such other specified services.

- **A new subdivision 635-99.1(v) is added as follows and existing subdivisions are re-lettered accordingly:**

(v) Competitive Integrated Employment. Employment integrated in the general workforce, for which an individual is compensated at or above the state or federal minimum wage (whichever is greater), but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

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