

**Pathway to Employment Service  
Amendments to 14 NYCRR Subparts 635-10 and 635-99, and Section 686.99**

Note: These permanently adopted “final” regulations have been amended by emergency/proposed amendments. The text in this document is not the complete text of the regulations in effect on this topic. The text of the emergency/proposed amendments are available on the OPWDD website at [www.opwdd.ny.gov](http://www.opwdd.ny.gov). Look under “Regulations & Guidance.”

**Effective Date: July 1, 2014**

- **A new subdivision 635-10.4(h) is added as follows:**
  - (h) Pathway to employment is a person-centered, comprehensive career/vocational employment planning and support service that provides assistance for individuals to obtain, maintain or advance in competitive employment or self-employment. This service combines an individualized career/vocational planning process that identifies the individual’s support needs, with the provision of services that will strengthen the skills needed to obtain, maintain or advance in competitive employment. It engages individuals in identifying a career/vocational direction, provides instruction and training in pre-employment skills, and develops a path for achieving competitive, integrated employment at or above the New York State minimum wage.
    - (1) The pathway to employment service consists of specific allowable activities that are listed in subparagraphs (i) and (ii) of this paragraph.
      - (i) The following allowable activities only involve direct service provision to the individual. Direct service provision consists of activities involving interaction with the individual.
        - (a) job readiness training, including individualized and appropriate work related behaviors;
        - (b) instruction and teaching of tasks necessary to obtain employment;
        - (c) individualized and ongoing job coaching;
        - (d) travel training;
        - (e) stress management, social skill development and interpersonal skill building;
        - (f) vocational observation and assessment;

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- (g) situational observation and assessment;
  - (h) job-related discovery;
  - (i) experiential learning in career exploration and vocational discovery;
  - (j) experiential learning to achieve a specific career/vocational outcome;
  - (k) assessment for use of assistive technology to increase independence in the workplace;
  - (l) community experiences through volunteer opportunities, paid or unpaid internships, mentorships, apprenticeships, job clubs, work site visits, job placement, or other job exploration modalities (Note: individuals participating in paid internships must be paid at least the minimum wage);
  - (m) education and counseling around benefits management and employment;
  - (n) career/vocational planning;
  - (o) customized job development; and
  - (p) planning for self-employment, including identifying skills that could be used to start a business, and identifying business training and technical assistance that could be utilized in achieving self-employment goals.
- (ii) The following allowable activities only involve indirect service provision to the individual. Indirect service provision consists of activities that take place on behalf of the individual and that do not involve interaction with the individual.
- (a) observation and assessment of an individual's interactions and routines at home, in the community and within other services or programs that could translate into employable skills;
  - (b) development of community experiences through volunteer opportunities, paid or unpaid internships, mentorships, apprenticeships, job clubs, work site visits, job placement, or other job exploration modalities;
  - (c) preparing a pathway to employment service delivery plan; and
  - (d) preparing a pathway to employment career/vocational plan.

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- (2) To receive the pathway to employment service, the following criteria must be met:
- (i) The individual must express an interest in competitive employment or self employment. Competitive employment or self employment must be identified as a goal in the individual's individualized service plan (ISP);
  - (ii) The individual must be enrolled in the Home and Community Based Services (HCBS) Waiver; and
  - (iii) Delivery of the service must be in the best interests of the individual.
- (3) The number of individuals receiving pathway to employment services simultaneously from a service provider staff shall be limited to no more than 3 individuals.
- (4) Pathway to employment service delivery plan. The service provider shall develop an individual-specific pathway to employment service delivery plan that guides the delivery of the service. Such service delivery plan shall:
- (i) list the individual's objectives and the relevant allowable activities that are necessary to achieve the individual's career/vocational and employment goals and to prepare the individual to receive supported employment services provided under this subpart or under another State or federal program, and
  - (ii) outline the responsibilities of the individual and the service provider necessary to facilitate the successful delivery of the service and the achievement of the individual's career/vocational and employment goals.
- Note: See section 635-99.1 of this part for requirements pertaining to review and revision of habilitation plans (including the pathway to employment service delivery plan) that are attached to or included in the ISP.
- (5) Pathway to employment career/vocational plan. The service provider shall develop a pathway to employment career/vocational plan for each individual receiving the service.
- (i) The career/vocational plan shall:
    - (a) identify and focus on the individual's career/vocational and employment goals, employment needs, talents, and natural supports; and
    - (b) serve as the individual's detailed career/vocational plan for guiding his or her employment supports.

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- (ii) Unless OPWDD authorizes an extension in accordance with paragraph 635-10.5(ad)(5) of this subpart that specifies a later timeframe for the completion of the plan, the pathway to employment provider shall develop the career /vocational plan no later than 12 months after the date the individual started receiving the service, or the date as of which the individual received 278 hours of the service, whichever occurs first. The pathway to employment provider shall give the career/vocational plan to the individual upon completion of the service.

Note: See subdivision 635-10.5(ad) of this subpart for requirements related to reimbursement of pathway to employment services.

- **A new subdivision 635-10.5(ad) is added as follows:**

(ad) Pathway to employment. The following shall apply to the pathway to employment service .

(1) Reimbursement shall be contingent on prior OPWDD approval. OPWDD approval will be based on the following criteria:

(i) The individual must express an interest in competitive employment or self employment. Competitive employment or self employment must be identified as a goal in the individual's individualized service plan (ISP);

(ii) The individual must be enrolled in the Home and Community Based Services (HCBS) Waiver; and

(iii) Delivery of the service must be in the best interests of the individual.

(2) Unit of service. The unit of service for pathway to employment services shall be one hour equaling 60 minutes, and shall be reimbursed in 15-minute increments. When there is a break in the service delivery during a single day, the service provider may combine, for billing purposes, the duration of continuous periods/sessions of indirect service provision and/or the duration of continuous periods/sessions of direct service provision.

(3) Fee setting. Hourly fees are based on the following:

(i) The Region in which the individual lives - Region 1, Region 2 or Region 3.

(a) Region 1 (NYC) is New York City and includes the counties of New York, Bronx, Kings, Queens and Richmond;

(b) Region 2 (NYC suburban) includes the counties of Putnam, Rockland, Nassau, Suffolk, and Westchester;

(c) Region 3 (upstate New York) includes all other counties of New York State.

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(ii) The number of individuals being served simultaneously - Individual (1) or Group (serving 2 or 3 individuals). Group size shall be limited to no more than 3 individuals.

(4) Fee schedule. The hourly fees for the pathway to employment service are as follows:

Pathway to Employment-- Fee is hourly per person

<u>Region</u>	<u>Individual Fee</u>	<u>Group Fee</u>
<u>Region 1</u>	<u>\$43.04</u>	<u>\$37.68</u>
<u>Region 2</u>	<u>\$41.92</u>	<u>\$35.64</u>
<u>Region 3</u>	<u>\$33.40</u>	<u>\$28.40</u>

(5) Timeframe for completion of service. The pathway to employment service is time limited to a maximum of 12 months and 278 hours of service for each individual, unless OPWDD authorizes an extension.

(i) If the service provider considers that an individual needs more than 12 months and/or additional hours to complete the service, the service provider may submit a written request to OPWDD, in the form and format specified by OPWDD, for an extension(s) of a period of time and/or number of hours.

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

(a) whether the individual engaged (or will engage) in an internship or volunteer opportunity and has the potential to be hired within 6 months of the scheduled completion of the pathway to employment service;

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

(c) whether unforeseen circumstances prevent (or will prevent) the service provider from maintaining continuous delivery of the pathway to employment service;

(d) the best interests of the individual; and/or

(e) the timeliness of the service provider's request for an extension.

(iii) In the event that an extension(s) is authorized by OPWDD, the extension(s) shall not exceed 12 months and 278 hours of service.

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- (iv) The service provider shall maintain documentation of OPWDD's authorization of the extension.
- (6) Lifetime limit on hours of service delivery. There shall be a lifetime limit of a maximum of 556 hours of service delivery per each individual receiving the service.
- (7) Billable service time. Billable service time is:
  - (i) time when staff are providing pathway to employment allowable activities listed in paragraph 635-10.4(h)(1) of this subpart in accordance with the individual's pathway to employment service delivery plan; and
  - (ii) time when staff are developing the pathway to employment service delivery plan.
- (8) Restrictions on billable service time.
  - (i) Time spent receiving another Medicaid service shall not be counted toward pathway to employment billable service time in instances when the Medicaid service is received simultaneously with one or more pathway to employment allowable activities that involve direct service provision to the individual (see paragraph 635-10.4(h)(1) of this subpart). An exception is the provision of Medicaid Service Coordination (MSC), which may be provided simultaneously with allowable activities that involve direct service provision to the individual.
  - (ii) Pathway to employment billable service time for allowable activities that involve indirect service provision to the individual shall be limited to 60 hours of billable service time (see subparagraph 635-10.4(h)(1)(ii) of this subpart).
- (9) Documentation. Reimbursement is contingent on compliance with the documentation requirements as follows:
  - (i) The service provider shall maintain documentation that the individual receiving pathway to employment services has received the services in accordance with the individual's ISP and pathway to employment service delivery plan (see paragraph 635-10.4(h)(3) of this subpart).
  - (ii) For each continuous indirect service provision period/session, the service provider shall document the service start time and the service stop time, the ratio of individuals to staff at the time of the indirect service provision and the provision of all allowable activities that were delivered in accordance with the individual's pathway to employment service delivery plan.

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- (iii) For each continuous direct service provision period/session, the service provider shall document the service start time and the service stop time, the ratio of individuals to staff at the time of the direct service provision and the provision of at least one allowable activity that was delivered in accordance with the individual's pathway to employment service delivery plan.
- (iv) The service provider shall maintain any additional documentation necessary to demonstrate compliance with federal requirements related to pathway to employment.
- (10) Use of Funds. The pathway to employment service provider must ensure that Medicaid revenue billed and received for the provision of the pathway to employment service is not used to pay salaries or stipends to individuals receiving the service.

Note: See subdivision 635-10.4(h) of this subpart for pathway to employment allowable activities and other requirements not related to reimbursement.

- **Subdivision 635-99.1(bk) (the definition of individualized service plan (ISP)) is amended as follows:**

... It is the responsibility of the person's chosen service coordinator to ensure that the ISP is reviewed at least semi-annually and includes consideration of the information obtained from other-than-OPWDD providers (if any), who are providing services (i.e., as appropriate, the individualized written rehabilitation plan (IWRP) or the individualized education plan (IEP)). The service coordinator should also ensure that a review of the ISP occurs when the person and/or his or her advocate request it; or when the capabilities, capacities or preferences of the person have changed and warrant a review; or when it is determined by the service coordinator that the prevailing plan (or portions thereof) is/are ineffective. If habilitation services are provided (i.e., residential habilitation, day habilitation, community habilitation, supported employment, pre-vocational services, pathway to employment), the relevant habilitation plan(s) must be developed, and on a semiannual basis thereafter, reviewed and revised as necessary by the habilitation service provider. [The service coordinator shall attach the relevant habilitation plan(s) to the ISP. With the following documents as attachments to the ISP, the ISP is complete] The ISP shall include or contain as attachments the following: ...

- **Subdivision 686.99(ab) (the definition of individualized service plan (ISP)) is amended as follows:**

... It is the responsibility of the person's chosen service coordinator to ensure that the individualized service plan is reviewed at least semi-annually and includes consideration of the information obtained from other-than-OPWDD providers (if any), who are providing services (i.e., as appropriate, the individualized written rehabilitation plan (IWRP) or the individualized education plan (IEP)). The service coordinator should also ensure that a review of the ISP occurs

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when the person and/or his or her advocate request it; or when the capabilities, capacities or preferences of the person have changed and warrant a review; or when it is determined by the service coordinator that the prevailing plan (or portions thereof) is/are ineffective. If habilitation services are provided (i.e., residential habilitation, day habilitation, community habilitation, supported employment, prevocational services, pathway to employment), the relevant habilitation plan(s) must be developed, and on a semiannual basis thereafter, reviewed and revised as necessary by the habilitation service provider. [The service coordinator shall attach the relevant habilitation plan(s) to the ISP. With the following documents as attachments to the ISP, the ISP is complete] The ISP shall include or contain as attachments the following: ...