

OPWDD RESPONSE TO COMMENTS Pathway to Employment Service

This document contains responses to comments submitted about the Pathway to Employment service during the public comment period for the proposed regulations for this service (note: the proposed regulations have since been finalized/permanently adopted). OPWDD considers that the comments below are not official public comments as they do not refer directly to the proposed regulations. Consequently, these comments were not included in OPWDD's assessment of public comment, but are responded to in this document instead.

Comment: A provider of services and a provider association expressed satisfaction with the wide scope of activities that are included in the Pathway to Employment service. Additionally, a provider association is pleased that OPWDD saw the need to fund both direct and indirect activities that are related to job development since the ability to assess an individual's capacity from observation is just as valuable as testing and work trials. A provider association also likes the idea that self-entrepreneurial endeavors can be supported with Pathway to Employment funds. A provider association views this service as a funding investment to be made by OPWDD that will result in better outcomes for individuals and that will likely lower cost in the long term.

The NYS Education Department's ACCES-VR expressed support of the broad scope of the Pathway to Employment services and hourly rate structure as the individuals can be provided up to one year to enhance basic pre-vocational skills that can strengthen their referral to and eligibility for ACCES-VR services.

Response: OPWDD agrees with these comments and appreciates the support of the Pathway to Employment service.

Comment: A provider association suggested that OPWDD hold a series of stakeholder forums in the near future to present the new Pathway to Employment service and to field questions, concerns and comments. The provider association also recommended that OPWDD develop a frequently asked questions page for its website.

Response: OPWDD is conducting training for providers, convening meetings with families and plans to issue guidance as a means of responding to questions and providing technical assistance on requirements and best practices pertaining to service delivery, billing, and documentation of the Pathway to Employment service. Depending on the volume and frequency of





questions received, OPWDD will consider a frequently asked questions page for its website.

Comment: A provider association recommended that training be provided on Department of Labor regulations regarding paid/unpaid internships, mentorships and apprenticeships and on benefits management. Similarly, a provider association stated that it is in agreement with training that fully describes the service; however, the provider association commented that OPWDD’s training plan should be targeted at all providers in a more timely fashion. The provider association stated that it is ready and willing to assist OPWDD to expedite training and encouraged OPWDD to allow trade associations a seat at the training table to support the process from beginning to end. Similarly, a provider association believes that providers should be included in the development of performance criteria and training tools to be used in hiring and preparing staff for their roles in this service.

Response: OPWDD will be convening training sessions across the state to prepare providers for the delivery of Pathway to Employment services. The training sessions will cover allowable activities, billing and documentation requirements, and will include available information from other relevant state agencies such as Department of Labor.

Comment: A provider association expressed concern about OPWDD plans for reinvestment of Day Habilitation units into Pathway to Employment. The provider underscored that not all individuals will be transitioning from Day Habilitation programs and that many agencies do not have extra Day Habilitation units for reinvestment. The provider association asserted that reinvestment dollars will not be equivalent to the fee schedules for Pathway to Employment and will leave agencies at a loss to make up the difference.

Response: OPWDD appreciates the feedback on the reinvestment of funds to support individuals as they transition to Pathway to Employment. OPWDD will continue to work with providers to explore a variety of ways for individuals to receive Pathway to Employment services.

Comment: A provider asserted that it is difficult and burdensome to track funds once they are received and therefore, the requirement that Medicaid revenue not be used to pay salaries or stipends to individuals receiving the Pathway to Employment service is difficult and burdensome. The provider suggested that providers report on the CFR, wages paid to individuals receiving this service as non-Medicaid reimbursable costs. The provider contended that this would ensure that when the fees for these services are updated in the future, such fees will not include reimbursement for wages or stipends paid.





Response: OPWDD will consider the provider’s suggestion to include this item in the CFR in the future.

Comment: A provider asserted that transportation to necessary Pathway to Employment activities situated in a variety of community locations will be a significant challenge to obtain and support financially. The provider recommends that OPWDD clarify that since this program is a Medicaid service, transportation to such services when necessary to receive the service is eligible for non-emergency Medicaid transportation funding. Similarly, a provider association expressed that there needs to be additional transportation strategies explored as transportation continues to be a major barrier for individuals to live and work independently in the community.

Response: OPWDD added transportation (staff with an individual receiving services) as an allowable activity in its emergency regulation which took effect July 1, 2014. Under this emergency regulation, billable service time includes time when the individual is being transported to and from community experiences, as long as there is also interaction with the individual. There is no separately billed Medicaid funded transportation associated with Pathway to Employment or any other Medicaid funded OPWDD day program. Individuals receiving services in the OPWDD system who do not live in a residence operated or certified by OPWDD are eligible for Medicaid funded transportation to and from medical appointments funded by Medicaid. OPWDD encourages providers to explore transportation strategies for individuals who do not need to travel with staff to and from community experiences. OPWDD will also consider adding transportation strategies on this in future guidance on the delivery of this service.

Comment: A provider and a provider association observed that the Pathway to Employment regulations do not appear to provide any guidance or requirements regarding the qualifications for the staff assigned to deliver this service. The provider assumes that staff currently providing Supported Employment services could also be designated to provide Pathway to Employment activities.

Response: There are no specific qualifications required of staff to provide Pathway to Employment other than existing requirements in applicable federal and state laws and regulations.

Comment: The NYS Education Department’s Office of ACCES-VR observed that OPWDD’s definition of competitive employment is different from the ACCES-VR employment definition in that it does not include criteria for job retention. ACCES-VR noted that the ACCES-VR definition requires job retention for a minimum of 90 days whereas OPWDD’s





definition implies that placement in a job for one day constitutes competitive employment. ACCES-VR recommends that going forward OPWDD and ACCES-VR work closely together to understand how each agency defines employment as it relates to the referral process of individuals from OPWDD to ACCES-VR for employment opportunities.

Response: OPWDD looks forward to working with ACCES-VR on the interpretation of its definition of competitive employment as it relates to the referral process of individuals from OPWDD to ACCES-VR for employment opportunities.

Comment: A provider recommended that, based on the Pathway to Employment enrollment criteria specified in the proposed regulation, candidates for this service be excluded from participation in a “Front Door” information session prior to being enrolled in and authorized for receipt of Pathway to Employment services.

Response: Currently, OPWDD is in phase one of the “Front Door” process, which requires participation in the information session for individuals who are new to OPWDD’s system. If a candidate for the Pathway to Employment service is new to OPWDD’s system then such candidate will be expected to participate in the “Front Door.” Candidates who are not new to the system will be excluded from participation. To determine whether an individual is new to OPWDD’s system, please refer to OPWDD’s *Front Door Questions and Answers* on its website.

Comment: A provider association commented that individuals currently working in work centers may be reluctant to enter into the Pathway to Employment service and into an unpaid internship or work experience in the community. Many are very motivated to earn a paycheck and consider their current employment in a work center as a job.

Response: The Pathway to Employment service is not a mandated service for individuals. It is designed to be a person-centered service and therefore it offered only to those individuals who are interested in the service and who meet the eligibility requirements specified in the regulations.

Comment: A provider association noted that many individuals who will be participating in the Pathway to Employment service require supports in their home situation, which may include family or staff presence in the home. The provider association recommends that OPWDD consider the need for additional supports that some individuals may require in their home environments when they are employed in jobs that operate outside of the traditional workday hours. The provider association is willing to work with OPWDD to develop strategies to assist families and provider agencies to



support individuals who may be home during day time hours when their typical support system is not available.

Response: OPWDD appreciates the feedback on the possibility of in-home supports for individuals receiving Pathway to Employment services, and looks forward to working with provider associations on this issue.

Comment: A provider association commented that there needs to be a process to move an individual into Supported Employment services if a volunteer experience or internship turns into an employment goal to ensure seamless transition into employment with supports. The provider added that for individuals engaged in planning for self-employment opportunities, there needs to be timely linkage to SEMP services to implement the self-employment opportunity without time interruption in achieving employment goals in the community in an integrated setting. The provider expressed that there needs to be a Memorandum of Understanding between ACCES-VR and OPWDD to ensure there is timely eligibility determination and funding available for a seamless transition to Supported Employment services.

Response: OPWDD agrees that partnership and collaboration with ACCES-VR is very important.

