

## Site Based and Community Based Prevocational Services Amendments to 14 NYCRR Subpart 635-10

### FINAL REGULATIONS Effective Date: July 1, 2015

- **Subdivision 635-10.4(c) is amended as follows:**

(c) Prevocational services delivered before July 1, 2015.

(1) Prevocational services are activities specified in the person's individualized services plan, that prepare an individual for paid or unpaid employment, but which are not job task oriented. Said services include support and training in behaviors related to following directions, attending to task, task completion, problem solving and safety and/or may also focus on assisting the person to adjust to the productive and social relationship demands of the work place. The purpose of the service is habilitative rather than teaching a specific job task skill. Prevocational services are provided to persons not expected to join the general work force within one year (excluding supported employment programs). (For prevocational services delivered on and after July 1, 2015, see subdivisions 635-10.4(k) and (l) of this section.)

**Note: Existing paragraphs (1) - (3) are renumbered accordingly.**

- **A new subdivision 635-10.4(k) is added as follows:**

(k) Site Based Prevocational services delivered on and after July 1, 2015.

(1) Site based prevocational services are habilitation services that assist individuals to develop employment readiness skills and that are provided in non-residential facilities certified by OPWDD. The services consist of learning and work experiences that are not job-task specific but contribute to an individual's ability to attain paid employment in the community.

(2) Services shall include, but not be limited to, the following tasks and activities:

Note: New material is underlined and deleted material is in [brackets].

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- (i) training the individual to follow directions, attend to task, multi-task, complete tasks, problem solve, work safely, increase productivity, adapt to work routines, and carry out assigned duties in an effective manner;
  - (ii) helping the individual to acquire appropriate attitudes and work habits, including instruction in socially appropriate behaviors on and off the job site;
  - (iii) assisting the individual to adjust to the demands of the workplace;
  - (iv) familiarizing the individual with job production and performance requirements;
  - (v) providing travel training, including the use of public and para-transit systems;
  - (vi) instruction in the appropriate use of job-related facilities (e.g., lounge areas, lunch rooms/cafeterias, and rest rooms);
  - (vii) assessing the individual to determine his or her work interests and skills;
  - (viii) instruction in benefits planning;
  - (ix) instruction in the use of technology that can assist in developing job skills and meeting workplace expectations;
  - (x) assisting the individual to experience a variety of employment options within the community; and
  - (xi) developing the individual's service delivery plan.
- (3) To participate in site based prevocational services, the individual must have a demonstrated or assessed earning capacity relative to the prevocational task(s) involved, of less than 50 percent of the current state minimum wage, federal minimum wage or prevailing wage, whichever is greatest, and be expected to have such an earning capacity while participating in such services.
- (4) Effective July 1, 2015, there shall be no new enrollments into site based prevocational services in day training programs.

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- **A new subdivision 635-10.4(l) is added as follows:**

(l) Community Prevocational services delivered on and after July 1, 2015

- (1) Community prevocational services are habilitation services that assist the individual to develop employment readiness skills and that are provided in the most integrated setting appropriate to the needs of the individual receiving such services. The services consist of learning and work experiences, including volunteer work, that are not job-task specific but contribute to an individual's ability to attain paid employment in the community.
- (2) Community prevocational services shall include, but are not limited to, the following activities:
  - (i) training the individual to follow directions, attend to task, multi-task, complete tasks, problem solve, work safely, increase productivity, adapt to work routines, and carry out assigned duties in an effective manner;
  - (ii) helping the individual to acquire appropriate attitudes and work habits, including instruction in socially appropriate behaviors on and off the job site;
  - (iii) assisting the individual to adjust to the demands of the workplace;
  - (iv) familiarizing the individual with job production and performance requirements;
  - (v) providing travel training, including the use of public and para-transit systems;
  - (vi) transportation between activities;
  - (vii) instruction in the appropriate use of job-related facilities (e.g., lounge areas, lunch rooms/cafeterias, and rest rooms);
  - (viii) assessing the individual to determine his or her work interests and skills;
  - (ix) instruction in benefits planning;

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- (x) instruction in the use of technology that can assist in developing job skills and meeting workplace expectations;
  - (xi) assisting the individual to experience a variety of employment options within the community; and
  - (xii) developing the individual's service delivery plan.
- (3) Community prevocational services shall be provided in the most integrated setting appropriate to the needs of the individual receiving such services, provided that:
- (i) individuals may use a site (see subdivision 635-10.4(k) of this subpart) as a meeting space for job readiness training on a time limited basis not to exceed 2 hours;
  - (ii) individuals may gather at a site to identify prevocational activities for the day on a time limited basis not to exceed 2 hours; or
  - (iii) activities need to be held at a site due to inclement weather, a public safety emergency or any other significant circumstance in which service delivery in the community may jeopardize the health and safety of individuals.
- (4) The number of individuals receiving community prevocational services in a group shall be limited to no more than 8 individuals.
- **Subdivision 635-10.5(e) is amended as follows:**
    - (e) Prevocational services delivered before July 1, 2015.
  - **Paragraph 635-10.5(e)(1) is amended as follows:**
    - (1) The following shall apply to site based prevocational services provided on [or] and after January 1, 2006 and before July 1, 2015. (For prevocational services delivered on and after July 1, 2015, see subdivisions 635-10.5(ag) and (ah) of this section.)
  - **Subparagraph 635-10.5(e)(5)(ii) is amended as follows:**

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- (ii) That portion of costs related to actual products (*i.e.*, the production of a [salable] saleable good or performance of a service of economic benefit), shall not be reimbursable under this section. Such shall include wages and fringe benefits of the service recipient and others not included in the approved budget; the cost of raw materials and manufacturing equipment; capital costs solely related to production work space; and administration and overhead solely related to the job task oriented aspects of the prevocational service environment.

• **Paragraph 635-10.5(e)(8) is amended as follows:**

- (8) Unit of service for reimbursement for prevocational services. [Unit of service for reimbursement for prevocational services.]

**Note: Subparagraphs (i) and (ii) remain unchanged.**

• **Paragraph 635-10.5(e)(9) is amended as follows:**

- (9) Billing limits for prevocational services, group day habilitation, and supplemental group day habilitation (see subdivision [c] of this section). [Billing limits for prevocational services, group day habilitation, and supplemental group day habilitation (see subdivision [c] of this section).]

**Note: Subparagraphs (i) – (vi) remain unchanged.**

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

- (ag) Site Based Prevocational services delivered on and after July 1, 2015.

(1) Reimbursement for site based prevocational services is governed by this subdivision.

(2) Reimbursement of site based prevocational services (where allowed) shall be contingent on prior OPWDD approval for individuals who enroll in such service on and after July 1, 2015. OPWDD approval will be based on the following criteria:

(i) The individual must have a goal to develop pre-employment skills, which must be identified in the individual's individualized service plan (ISP);

(ii) Delivery of the service will assist the individual with improving participation in the general work force; and

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- (iii) Delivery of the service must be in the best interests of the individual.
- (3) OPWDD approval for enrollment into site based prevocational services shall not be required for individuals enrolled in prevocational services at a site prior to July 1, 2015.
- (4) Unit of service. Site based prevocational services shall be billed on a full and half unit basis.
  - (i) The agency may bill a full unit of service when the agency delivers and documents at least two face-to-face services delivered in accordance with the individual's site based prevocational services plan and provides a program day duration of at least four hours.
  - (ii) The agency may bill a half unit when the agency delivers and documents at least one face-to-face service delivered in accordance with the individual's site based prevocational services plan and provides a program day duration of at least two hours.
  - (iii) The program day duration for site based prevocational services is the length of time that the individual is present at the provider's "vocational/work program" where prevocational services are provided. The following cannot be counted as part of the program day duration:
    - (a) time spent traveling from a site based prevocational service to a separately reimbursed service and returning from the separately reimbursed service;
    - (b) time spent traveling to the first site based prevocational services activity of the day and time spent traveling home or to another service at the conclusion of the site based prevocational service program day; and
    - (c) mealtime.
- (5) Fee setting. The fees for site based prevocational services are in 10 NYCRR subpart 86-13.

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- (6) Billable service time. Billable service time is time when staff are providing allowable activities listed in paragraph 635-10.4(k) of this subpart in accordance with the individual's service delivery plan
- (7) Limits on billable service time.
- (i) On a given weekday, a maximum of the following may be reimbursed for site based prevocational services:
- (a) One unit of site based prevocational services; or
- (b) The combination of:
- (1) One half unit of group day habilitation, or four hours of community prevocational services; and
- (2) One half unit of site based prevocational services.
- (c) Additional combinations:
- (1) For individuals residing in individualized residential alternatives (IRAs), community residences (CRs) and family care homes:
- (i) One half unit of group day habilitation, or four hours of community habilitation or community prevocational services or a combination of both; and
- (ii) One half unit of site based prevocational services.
- (2) For individuals who receive one half unit of supplemental group day habilitation:
- (i) One half unit of group day habilitation services, or four hours of community prevocational services and one half unit of site based prevocational services; or
- (ii) One unit of site based prevocational services.

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- (3) For individuals who receive one full unit of supplemental group day habilitation, one half unit of site based prevocational services.
- (ii) Delivery of site based prevocational services is not permitted on a weekend day for individuals residing in IRAs, CRs and Family Care Homes.
- (iii) On a given weekend day, a maximum of the following may be reimbursed for site based prevocational services for individuals not residing in IRAs, CRs and Family Care Homes:
- (a) One unit of site based prevocational services; or
- (b) The combination of:
- (1) One half unit of site based prevocational services; and
- (2) Four hours of community prevocational services.
- (c) Additional combinations:
- (1) For individuals who receive one half unit of supplemental group day habilitation, six hours of community prevocational services or one full unit of site based prevocational services.
- (2) For individuals who receive one full unit of supplemental group day habilitation, four hours of community prevocational services or one half unit of site based prevocational services.
- (d) Services specified in clauses (a)-(c) of this subparagraph cannot be provided simultaneously with community habilitation.
- (iii) Time spent receiving another Medicaid service shall not be counted toward billable service time in instances when the Medicaid service is received simultaneously with site based prevocational services (see subdivision 635-10.4(k) of this subpart). An exception is the

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provision of Medicaid Service Coordination (MSC), which may be received simultaneously with site based prevocational services.

- (8) Documentation. Reimbursement is contingent on compliance with the documentation requirements as follows:
- (i) For individuals who were receiving prevocational services at a site before July 1, 2015, prevocational services identified in the individual's ISP are deemed to be site based prevocational services effective July 1, 2015. The service provider must identify site based prevocational services in the ISP by the next ISP review, or December 31, 2015, whichever is sooner.
  - (ii) For individuals receiving prevocational services at a site and in the community before July 1, 2015, the service provider must identify both site based prevocational services and community prevocational services in the ISP by the next ISP review, or December 31, 2015, whichever is sooner.
  - (iii) The service provider must develop a service delivery plan in the form and format specified by OPWDD that guides the delivery of the service for each individual receiving services. The plan must be documented, reviewed, and updated in accordance with section 635-99.1 of this Part.
  - (iv) The service provider shall maintain documentation that the individual receiving site based prevocational services has received the services in accordance with the individual's ISP and service delivery plan.
  - (v) For each continuous site based prevocational service period/session, the service provider shall document the service start time and the service stop time, and the provision of at least one allowable activity that was delivered in accordance with the service delivery plan.

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

(ah) Community Prevocational services delivered on and after July 1, 2015.

- (1) Reimbursement for community prevocational services is governed by this subdivision.

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- (2) Reimbursement of community prevocational services shall be contingent on prior OPWDD approval for individuals who enroll in such service on and after July 1, 2015. OPWDD approval will be based on the following criteria:
- (i) The individual must have a goal to develop pre-employment skills, which must be identified in the individual's individualized service plan (ISP);
  - (ii) Delivery of the service will assist the individual with improving participation in the general work force; and
  - (iii) Delivery of the service must be in the best interests of the individual.
- (3) OPWDD approval for enrollment into community prevocational services shall not be required for individuals enrolled in prevocational services in the community prior to July 1, 2015.
- (4) Unit of service. The unit of service for community prevocational 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 service.
- (5) Fee setting. The fees for community prevocational services are in subpart 641-3 of this Title.
- (6) Billable service time. Billable service time is time when staff are providing allowable activities listed in paragraph 635-10.4(l) of this subpart in accordance with the individual's service delivery plan.
- (7) Limits on billable service time.
- (i) On a given weekday, a maximum of the following may be reimbursed for community prevocational services:
    - (a) Six hours of community prevocational services; or
    - (b) The combination of:

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- (1) One half unit of group day habilitation or site based prevocational services; and
- (2) Four hours of community prevocational services.
- (c) Additional combinations:
  - (1) For individuals residing in individualized residential alternatives (IRAs), community residences (CRs) and family care homes:
    - (i) One half unit of site based prevocational services or group day habilitation or four hours of community habilitation; and
    - (ii) Four hours of community prevocational services.
  - (2) For individuals who receive one half unit of supplemental group day habilitation:
    - (i) One half unit of group day habilitation services or site based prevocational services and four hours of community prevocational services; or
    - (ii) six hours of community prevocational services.
  - (3) For individuals who receive one full unit of supplemental group day habilitation, four hours of community prevocational services.
- (ii) On a given weekend day, a maximum of the following may be reimbursed for community prevocational services:
  - (a) Six hours of community prevocational services; or
  - (b) The combination of:
    - (1) Four hours of community prevocational services; and

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must identify both site based prevocational services and community prevocational services in the ISP by the next ISP review, or December 31, 2015, whichever is sooner.

- (iii) The service provider must develop a service delivery plan in the form and format specified by OPWDD that guides the delivery of the service for each individual receiving services. The plan must be documented, reviewed, and updated in accordance with section 635-99.1 of this Part.
- (iv) The service provider shall maintain documentation that the individual receiving community prevocational services has received the services in accordance with the individual's ISP and service delivery plan.
- (v) For each continuous community prevocational service 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 service provision and the provision of at least one allowable activity that was delivered in accordance with the service delivery plan.

- **Existing paragraph 635-10.5(c)(7) is amended as follows:**

- (7) Billing limits for group day habilitation, supplemental group day habilitation, and prevocational services (see subdivision [e] of this section) delivered before July 1, 2015. (See paragraph (17) of this subdivision for billing limits for group day habilitation and supplemental day habilitation delivered on and after July 1, 2015).

- **A new paragraph 635-10.5(c)(17) is added as follows:**

- (17) Limits on billable service time.

- (i) On a given weekday, a maximum of the following may be reimbursed for group day habilitation services:
  - (a) One unit of group day habilitation services; or
  - (b) The combination of:

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- (1) One half unit of site based prevocational services, or four hours of community prevocational services; and
- (2) One half unit of group day habilitation services.
- (c) Additional combinations:
  - (1) For individuals residing in individualized residential alternatives (IRAs), community residences (CRs) and Family Care Homes:
    - (i) One half unit of site based prevocational services, or four hours of community habilitation or community prevocational services or a combination of both; and
    - (ii) one half unit of group day habilitation services.
  - (2) For individuals who receive one half unit of supplemental group day habilitation:
    - (i) One half unit of site based prevocational services, or four hours of community prevocational services and one half unit of group day habilitation; or
    - (ii) One unit of group day habilitation services.
  - (3) For individuals who receive one full unit of supplemental group day habilitation, one half unit of group day habilitation services.
- (ii) Delivery of group day habilitation services is not permitted on a weekend day.
- (iii) On a given weekend day a maximum of the following may be reimbursed for supplemental group day habilitation:
  - (a) One unit of supplemental group day habilitation; or
  - (b) The combination of:
    - (1) For individuals who receive one half unit of supplemental group day habilitation, six hours of community prevocational

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services or one full unit of site based prevocational services (where allowed, see paragraph 635-10.5(ag)(7) of this section).

(2) For individuals who receive one full unit of supplemental group day habilitation, four hours of community prevocational services or one half unit of site based prevocational services (where allowed, see paragraph 635-10.5(ag)(7) of this section).

(c) Services specified in clauses (a)-(b) of this subparagraph cannot be provided simultaneously with community habilitation.

(iii) Time spent receiving another Medicaid service shall not be counted toward billable service time in instances when the Medicaid service is received simultaneously with group day habilitation services (see paragraph 635-10.4(b)(2) of this subpart). An exception is the provision of Medicaid Service Coordination (MSC), which may be received simultaneously with group day habilitation services.

• **Existing paragraph 635-10.5(ab)(11) is amended as follows:**

(11) Billing limits for individuals who live in an IRA, CR, or FCH.

(i) Community habilitation (CH) services may only be reimbursed if the services are delivered on weekdays and have a service start time prior to 3:00 p.m.

[(ii) CH services may not be reimbursed on a given day that the individual receives:

(a) one full unit of group day habilitation services; or

(b) one full unit of prevocational services; or

(c) one full unit of a blended service (which is a combination of day habilitation and prevocational services); or

(d) any combination of two half units of: group day habilitation, prevocational services or blended services.]

[(iii)] (ii) On a given weekday, a maximum of the following may be reimbursed:

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- (a) six hours of CH services; or
- (b) the combination of:
  - (1) one half unit of[:] group day habilitation[,] or site based prevocational services or four hours of community prevocational services [or blended services]; and
  - (2) four hours of CH services.
- (iii) Time spent receiving another Medicaid service shall not be counted toward billable service time in instances when the Medicaid service is received simultaneously with CH services (see paragraph 635-10.4(b)(3) of this subpart). An exception is the provision of Medicaid Service Coordination (MSC), which may be received simultaneously with CH services.

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