



PATHWAY TO EMPLOYMENT SERVICES

Effective for Services July 1, 2014

Audit protocols assist the Medicaid provider community in developing programs to evaluate compliance with Medicaid requirements under federal and state statutory and regulatory law, and administrative procedures issued by the New York State Office for People With Developmental Disabilities (OPWDD). The protocols listed are intended solely as guidance in this effort. This guidance does not constitute rulemaking by OPWDD and may not be relied on to create a substantive or procedural right or benefit enforceable, at law or in equity, by any person. Furthermore, nothing in the protocols alters any statutory, regulatory or administrative requirement and the absence of any statutory, regulatory or administrative citation from a protocol does not preclude OPWDD from enforcing a statutory, regulatory or administrative requirement. In the event of a conflict between statements in the protocols and statutory, regulatory or administrative requirements; the requirements of the statutes, regulations and administrative procedures govern.

A Medicaid provider's legal obligations are determined by the applicable federal and state statutory and regulatory law. Audit protocols do not encompass all the current requirements for payment of Medicaid claims for a particular category of service or provider type and therefore are not a substitute for a review of the statutory and regulatory law or administrative procedures.

Audit protocols are applied to a specific provider or category of service(s) in the course of an audit and involve OPWDD's application of articulated Medicaid agency policy and the exercise of agency discretion. Audit protocols are used as a guide in the course of an audit to evaluate a provider's compliance with Medicaid requirements and to determine the propriety of Medicaid expended funds. In this effort, OPWDD will review and consider any relevant contemporaneous documentation maintained and available in the provider's records to substantiate a claim.

New York State, consistent with state and federal law, can pursue civil and administrative enforcement actions against any individual or entity that engages in fraud, abuse, or illegal or improper acts or unacceptable practices perpetrated within the medical assistance program. Furthermore, audit protocols do not limit or diminish OPWDD's authority to recover improperly expended Medicaid funds and OPWDD may amend audit protocols as necessary to address identified issues of non-compliance. Additional reasons for amending protocols include, but are not limited to, responding to a hearing decision, litigation decision, or statutory or regulatory change.

OPWDD AUDIT PROTOCOL – PATHWAY TO EMPLOYMENT SERVICES

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1.	Missing Recipient Record
OPWDD Audit Criteria	If no recipient record is available for review, claims for all dates of service associated with the recipient record will be disallowed.
Regulatory Reference	18 NYCRR Section 504.3(a) 18 NYCRR Section 540.7(a)(8)
2.	No Documentation of Service
OPWDD Audit Criteria	If the recipient's record does not document that a pathway to employment service was provided, the claim will be disallowed.
Regulatory Reference	18 NYCRR Section 504.3(a) 18 NYCRR Section 517.3(b)(2)
3.	No Diagnosis of Developmental Disability
OPWDD Audit Criteria	The claim for services provided in the absence of a clinical assessment substantiating a specific diagnosis of developmental disability will be disallowed.
Regulatory Reference	14 NYCRR Section 635-10.3(a) and (b)(1)
4.	Missing Copy of Individualized Service Plan (ISP)
OPWDD Audit Criteria	A copy of the recipient's ISP covering the time period of the claim must be maintained by the agency. If the ISP is missing or not valid for the service date the claim will be disallowed.
Regulatory References	14 NYCRR Section 635-10.2(a) 14 NYCRR Section 635-99.1(bk) Effective May 12, 2015, OPWDD ADM #2015-07, p.9
5.	Unauthorized Pathway to Employment Services Provider
OPWDD Audit Criteria	The claim will be disallowed if the specific services and the intensity with which they are delivered is not set forth in the individualized service plan (ISP). For service dates May 12, 2015 and after, the claim will be disallowed if the individualized service plan (ISP) does not include the following elements: <ul style="list-style-type: none"> • Identification of the Pathway to Employment category of waiver service. • Identification of the agency providing Pathway to Employment services. • Specification of an effective date for Pathway to Employment that is on or before the first date of service for which the agency bills Pathway to Employment for the individual. • Specification of the frequency for Pathway to Employment as “hour” or “hourly”. • Specification of the duration for Pathway to Employment as time limited 12 months or 278 hours, whichever comes first. If there is an extension of Pathway to Employment beyond 12 months or 278 hours, the extension must be noted in the ISP.
Regulatory Reference	14 NYCRR Section 635-10.2(a) Effective May 12, 2015, OPWDD ADM #2015-07, p.9

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6.	Missing Service Delivery Plan for Pathway to Employment Services
OPWDD Audit Criteria	A relevant habilitation plan(s) must be developed within 60 days of the start of the habilitation service. The claim will be disallowed if the relevant habilitation plan(s) is missing.
Regulatory References	14 NYCRR Section 635-99.1(bk) Effective May 12, 2015, OPWDD ADM #2015-07, p.9 OPWDD ADM #2012-01, p. 2

7.	Missing Required Elements for Pathway to Employment Service Delivery Plan
OPWDD Audit Criteria	<p>The claim will be disallowed if the Pathway to Employment service delivery plan does not contain these required elements: 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 and 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.</p> <p>On May 12, 2015, ADM 2015-07 introduced the requirement for the Pathway to Employment Service Delivery Plan to conform to the Habilitation Plan requirements found in ADM 2012-1. Therefore, for service dates on or after May 12, 2015, the claim will be disallowed if the Habilitation Plan does not contain one or more of the following required elements:</p> <ul style="list-style-type: none"> • The individual’s name. • The individual’s Medicaid Identification Number (CIN), if the person is a Medicaid enrollee. • The habilitation service provider’s agency name. • Identification of the habilitation service(s) provided. • The date on which the Habilitation Plan was reviewed. • Identification of at least one valued outcome that is derived from the individual’s ISP (valued outcomes do not need to be verbatim from the ISP). • Description of the services and supports the habilitation staff will provide to the person. • The safeguards (health and welfare) that will be provided by the habilitation service provider. • The printed name, signature and title of the staff who wrote the Habilitation Plan. • The date that staff signed the Habilitation Plan.
Regulatory References	14 NYCRR 635-10.4(h)(5) Effective May 12, 2015, OPWDD ADM #2015-07, p.9 OPWDD ADM 2012-01, pp. 2, 7

8.	Missing Habilitation Plan Review for Pathway to Employment Services
OPWDD Audit Criteria	<p>There must be evidence that the Habilitation Plan was reviewed within 12 months prior to the month in which the service occurs.</p> <p>On May 12, 2015, ADM 2015-07 introduced the requirement for the Pathway to Employment</p>

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	<p>Service Delivery Plan to conform to the Habilitation Plan requirements found in ADM 2012-1. Therefore, for service dates on or after May 12, 2015, the claim will be disallowed if there is no evidence that the Habilitation Plan was reviewed within 12 months prior to the month in which the service occurs or at least annually, the plan review was not conducted at the time of the ISP meeting.</p> <p>Evidence of reviews must include:</p> <ul style="list-style-type: none"> • The individual's name. • The habilitation service(s) under review. • The staff's signature(s) from the habilitation service. • The date of the staff's signature. • Date of the review. <p>For service dates on or after May 12, 2015, the claim will also be disallowed if the revised Habilitation Plan was not forwarded to the service coordinator within 30 days after either: 1) an ISP review date; or 2) the date on which the provider makes a significant change to the plan.</p>
Regulatory References	14 NYCRR Section 635-99.1(bk) Effective, May 12, 2015, OPWDD ADM #2015-07, p.9 OPWDD ADM #2012-01, pp. 3, 4, 7

9.	Missing Pathway to Employment Service Documentation
OPWDD Audit Criteria	<p>The claim will be disallowed if the service provider fails to 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.</p> <p>For service dates May 12, 2015 and after, the claim will be disallowed if the required Pathway to Employment checklist and/or monthly summary note is missing.</p>
Regulatory Reference	14 NYCRR Section 635-10.5(ad)(8) Effective May 12, 2015, OPWDD ADM #2015-07, p.9

10.	Missing Required Elements for Pathway to Employment Service Documentation
OPWDD Audit Criteria	<p>The claim will be disallowed if the provider is not in compliance with the documentation requirements as follows:</p> <ul style="list-style-type: none"> • 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. • 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

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	<p>pathway to employment service delivery plan.</p> <ul style="list-style-type: none"> • The service provider shall maintain any additional documentation necessary to demonstrate compliance with federal requirements related to pathway to employment. <p>For service dates May 12, 2015 and after, the claim will be disallowed if the service documentation does not contain the following required elements:</p> <ul style="list-style-type: none"> • Individual’s name and Medicaid number (CIN). • Name of the agency providing the Pathway to Employment service. • Identification of the category of waiver service provided. (Pathway to Employment Service). • Documentation of start and stop times. Document the service start time and service stop time for each continuous period of service provision. • The ratio of individuals to staff. (E.g. 1:1, 1:2 or 1:3). In the case of a job readiness class indicate the total number of participants. • Description of direct services. If direct services are provided, each documented session must list at least one allowable direct service delivered in accordance with the individual’s Pathway to Employment Service Delivery Plan. • Description of indirect services. If indirect services are provided, each documented session must list all allowable indirect services delivered during the session in accordance with the individual’s Pathway to Employment Service Delivery Plan. • The date the service was provided. • Verification of service provision by the staff person delivering the service. Initials are permitted if a “key” is provided which identifies the title, signature and full name associated with the staff initials. • The individual’s response to the service. • Signature of the Pathway to Employment staff person documenting the service and date the service was documented (or initials as referenced in item #9). <p>The combination of the checklist and summary note must include all the service documentation elements listed above.</p>
<p>Regulatory Reference</p>	<p>14 NYCRR sections 635-10.5(ad)(8) Effective May 12, 2015, OPWDD ADM #2015-07, pp.8, 9</p>

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11.	Billing for Services by Ineligible Provider
OPWDD Audit Criteria	<p>For dates of service prior to 4/13/2016, the claim will be disallowed if the pathway to employment services billed were performed by providers or provider staff not authorized by either the NYS Department of Health or OPWDD.</p> <p>Effective 4/13/2016, the claim will be disallowed if the agency does not have an operating certificate identifying certification for pathway to employment services.</p>
Regulatory References	<p>For services prior to 4/13/2016, 14 NYCRR 635-10.1(b)</p> <p>For services effective 4/13/2016, New York State Mental Hygiene Law, Section 16.03(a)(4)</p>
12.	Number of Individuals Receiving Pathway to Employment Service Exceeds Limits
OPWDD Audit Criteria	The claim will be disallowed if the pathway to employment service was delivered simultaneously from the service provider to more than 4 individuals, with the exception of job readiness training, which shall be limited to no more than 10 individuals.
Regulatory Reference	<p>14 NYCRR 635-10.4(h)(3)</p> <p>Effective May 12, 2015, OPWDD ADM #2015-07, p.6</p>
13.	Missing Pathway to Employment Career/Vocational Plan
OPWDD Audit Criteria	The service provider shall develop a pathway to employment career/vocational plan for each individual receiving the service. The claim will be disallowed if the pathway to employment career/vocational plan is missing and the grace period has expired.
Regulatory Reference	<p>14 NYCRR 635-10.4(h)(6)</p> <p>Effective May 12, 2015, OPWDD ADM #2015-07, p.7</p>
14.	Missing Required Elements for Pathway to Employment Career/Vocational Plan
OPWDD Audit Criteria	<p>The pathway to employment career/vocational plan shall:</p> <ul style="list-style-type: none"> • identify and focus on the individual's career/vocational and employment goals, employment needs, talents and natural supports; and • serve as the individual's detailed career/vocational plan for guiding his or her employment supports. <p>For service dates May 12, 2015 and after, the pathway to employment career/vocational plan has the following additional requirements:</p> <ul style="list-style-type: none"> • As part of developing the career/vocational plan a report must be completed that contains a summary of interviews, action steps, career development activities, community-based volunteer experiences, work experiences and recommendations for other employment related services. • At the completion of the service, the individual must receive a copy of his or her career/vocational plan. <p>The claim will be disallowed if one or more of the required elements are missing.</p>

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Regulatory References	14 NYCRR 635-10.4(h)(6)(i) Effective May 12, 2015, OPWDD ADM #2015-07, p.7
15.	Failure to Write the Initial Career/Vocational Plan for Pathway to Employment Service Within Required Timeframe
OPWDD Audit Criteria	Unless OPWDD authorizes an extension in accordance with 14 NYCRR 635-10.5(ad)(5) 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 claim will be disallowed if the initial career/vocational plan for pathway to employment service was not written within the required timeframe.
Regulatory Reference	14 NYCRR 635-10.4(h)(6)(iii)
16.	Claimed Incorrect Billing Units
OPWDD Audit Criteria	<p>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.</p> <p>For service dates July 1, 2014 through May 11, 2015, 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.</p> <p>For service dates May 12, 2015 and after, 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 direct service provision and/or duration of continuous periods/sessions of indirect service provision <u>if the number of individuals being served simultaneously (individual or group) is maintained for each session.</u></p> <p>Billable service time. Billable service time is:</p> <ul style="list-style-type: none"> • time when staff are providing pathway to employment allowable activities listed in 14 NYCRR 635-10.4(h)(1) in accordance with the individual's pathway to employment service delivery plan; and • time when staff are developing the pathway to employment service delivery plan. <p>Restrictions on billable service time.</p> <ul style="list-style-type: none"> • 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 14 NYCRR 635-10.4(h)(1)). 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. • 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

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	service time. The claim will be disallowed if non-reimbursable time was counted toward the pathway to employment billable service time.
Regulatory References	14 NYCRR Sections 635-10.5(ad)(2), (7) and (8) 14 NYCRR Section 635-10.4(h)(1) Effective May 12, 2015, OPWDD ADM #2015-07, p.5

17.	Incorrect Billing of Individual Rate Fee
OPWDD Audit Criteria	The claim will be reduced if an individual rate fee was billed and a group service was documented.
Regulatory References	14 NYCRR Sections 635-10.5(ad)(3) Effective May 12, 2015, OPWDD ADM #2015-07, p.5 and 6

18.	Pathway to Employment Compensation Not At or Above Minimum Wage
OPWDD Audit Criteria	The claim will be disallowed if the pathway to employment compensation paid to a recipient was not at or above the established minimum wage.
Regulatory References	34 CFR Section 361.47(a)(9) Centers for Medicare & Medicaid Services CMCS Informational Bulletin, September 2011, p. 13 14 NYCRR 635-10.4(h) Effective May 12, 2015, OPWDD ADM #2015-07, p.2

19.	Pathway to Employment Services Available Under a Program Funded Under Section 110 of the Rehabilitation Act of 1973 or Section 602(16) and (17) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(16 and 17)).
OPWDD Audit Criteria	The claim will be disallowed if the pathway to employment services were available under a Program Funded Under Section 110 of the Rehabilitation Act of 1973 or the IDEA (20 U.S.C. 1401 et seq.).
Regulatory References	Centers for Medicare & Medicaid Services CMCS Informational Bulletin, September 2011, p. 14

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