

PATHWAY TO EMPLOYMENT SERVICES

Effective January 1, 2020

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.

Note:

Per ADM 2018-06R, As of July 1, 2018, individuals new to the OPWDD system (i.e., on or after July 1, 2018), will have Life plans developed and finalized in accordance with the CCO/HH Manual. Finalized Life Plans for newly enrolled CCO members (i.e., members enrolled after 10/1/2018) are due no later than 90 days after CCO enrollment or HCBS waiver enrollment, whichever comes first.

Per ADM 2018-06R, For Life Plans finalized on or before December 31, 2019 (i.e., the transition period), OPWDD is suspending service documentation requirements for documenting the Waiver service name, frequency, duration, and effective date in the Life Plan. Instead, only the name of the service provider and the service name must be identified in the Life Plan.

Service providers are responsible for reviewing the finalized, acknowledged and agreed to Life Plan. Providers may occasionally find inaccuracies in the finalized, acknowledged and agreed to Life Plan. Providers should demonstrate due diligence in working with the Care Manager, CCOs, OPWDD and/or others to correct the Life Plan as soon as possible. Service providers should document their timely efforts to correct any errors in the



Life Plan. Examples of this documentation may include notes in the individual's monthly summary, e-mails, phone calls, etc.

All Life Plans created or amended after the transition period must comply with all regulatory and policy standards.

Per ADM 2018-09R, As of March 1, 2020, At the time of transition to the Life Plan, Habilitation Plans must transition to Staff Action Plans. All individuals transitioning from an ISP to a Life Plan who receive habilitation services must have a staff Action Plan no later than March 1, 2020.

1.	Missing Record
OPWDD Audit Criteria	If no record is available for review, claims for all dates of service associated with the individual will be disallowed.
Regulatory References	18 NYCRR Section 504.3(a) 18 NYCRR Section 540.7(a)(8)
2.	No Documentation of Service
OPWDD Audit Criteria	If the record does not document that a pathway to employment service was provided, the claim will be disallowed.
Regulatory References	18 NYCRR Section 504.3(a) 18 NYCRR Section 517.3(b)
3.	No Determination of a Developmental Disability
OPWDD Audit Criteria	The claim for services provided in the absence of a clinical assessment substantiating a specific determination of developmental disability will be disallowed.
Regulatory References	14 NYCRR Section 635-10.3(a) and (b)(1) 14 NYCRR Section 671.4(b)(1)(i)
4.	Missing or Inadequate Life Plan (LP)
OPWDD Audit Criteria	A copy of the individual's Life Plan (LP), covering the time period of the claim, must be maintained by the agency. The claim will be disallowed in the absence of a Life Plan (LP). If the Life Plan (LP) is not in place prior to the service date and in effect for the service date, the claim will be disallowed.
Regulatory References	14 NYCRR 635-10.2(a) OPWDD ADM #2015-07, p. 9 OPWDD ADM #2018-06R, pp. 1-2
5.	Unauthorized Pathway to Employment Services Provider
OPWDD Audit Criteria	The claim will be disallowed if the Life Plan (LP) does not: <ul style="list-style-type: none"> • Identify Pathway to Employment as the service to be provided. • List the provider as the authorized provider for a specific service. • Have an effective date for Pathway to Employment services that is on or before the first day of service for which the agency bills for services.
Regulatory References	14 NYCRR Section 635-10.2(a) OPWDD ADM #2015-07, p. 9 OPWDD ADM #2018-06R, pp. 3-4,7
6.	Identification of Frequency and Duration of Service
OPWDD Audit Criteria	The claim will be disallowed if the Life Plan (LP) does not: <ul style="list-style-type: none"> • Specify that the frequency for Pathway to Employment is "hour or hourly". • Specify the duration for Pathway to Employment is "time limited 12 months or 278 hours".
Regulatory References	OPWDD ADM #2015-07, p. 9 OPWDD ADM #2018-06R, pp. 3-4,7

7.	Missing Pathway to Employment Habilitation Plan/Staff Action Plan
OPWDD Audit Criteria	The claim will be disallowed in the absence of a Pathway to Employment Habilitation plan/staff action plan. If no Pathway to Employment Habilitation plan/staff action plan is in place prior to the service date and in effect for the service date, the claim will be
Regulatory References	OPWDD ADM #2012-01, p. 7 OPWDD ADM #2015-07, pp. 9-10 OPWDD ADM #2018-09R, p. 12

8.	Missing Required Elements of the Pathway to Employment Habilitation Plan/Staff Action Plan
OPWDD Audit Criteria	<p>The claim will be disallowed if any of the required elements are missing in the Habilitation Plan:</p> <ol style="list-style-type: none"> 1. The individual's name. 2. The individual's Medicaid Identification Number (CIN), if the person is a Medicaid enrollee. 3. The habilitation service provider's agency name. 4. Identification of the habilitation service(s) provided. 5. The date on which the Habilitation Plan was reviewed. 6. 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). 7. Description of the services and supports the habilitation staff will provide to the person. 8. The safeguards (health and welfare) that will be provided by the habilitation service provider. 9. The printed name, signature and title of the staff who wrote the Habilitation Plan. 10. The date that staff signed the Habilitation Plan. <p>The Staff Action Plan must contain these required elements:</p> <ol style="list-style-type: none"> 1. Individual's name; 2. Individual's Medicaid Client Identification Number (CIN) (if the individual is enrolled in the OPWDD HCBS Waiver); 3. Habilitation service provider's agency name; 4. Name of habilitation service(s) provided (e.g., Residential Habilitation or Day Habilitation); 5. Date (day, month, and year) of the Life Plan meeting, or Staff Action Plan review, from which the Staff Action Plan was developed/revised; 6. Identification of the goals/valued outcomes (My Goal) from the individual's Life Plan; 7. Identification of the provider assigned (habilitative/safeguard) goal(s) and/or support(s) from the individual's Life Plan; 8. Description of the service(s) and support(s) and identification of the frequency from Section II or III of the Life Plan (e.g., teaching laundry skills weekly) the habilitation staff will provide to the individual; 9. Safeguards (i.e., compilation of all supports and services needed for an individual to remain safe, healthy and comfortable across all settings) that will be provided by the habilitation service provider, which may be a reference to internal guidance documents that further define the safeguards; 10. Printed name(s), signature(s) and title(s) of the staff who wrote the Staff Action Plan; 11. Date (day, month, and year) that staff signed the Staff Action Plan; and 12. Evidence demonstrating the Staff Action Plan was distributed no later than 60 days after: the start of the habilitation services; the life plan review date; or the development of a revised/updated Staff Action Plan, whichever comes first (which may include, but is not limited to: a monthly narrative note; a HITS upload; or e-mail).

Regulatory References	OPWDD ADM #2012-01, p. 7 OPWDD ADM #2015-07, pp. 9-10 OPWDD ADM #2018-09R, pp. 12-13
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9.	Missing Pathway to Employment Habilitation Plan/ Staff Action Plan Review
OPWDD Audit Criteria	<p>Claims will be disallowed if the relevant Habilitation Plan(s) is not developed, reviewed or revised as necessary at a minimum of at least once annually. At least annually, one of the pathway to employment habilitation plan reviews must be conducted at the time of the ISP meeting.</p> <p>There must be evidence that the Staff Action Plan was reviewed at least twice annually. Evidence of a review may include but is not limited to a: 1) Review sign-in sheet; 2) Service note indicating a review took place; and/or 3) Revised/updated Staff Action Plan.</p>
Regulatory References	OPWDD ADM #2012-01, p. 7 OPWDD ADM #2015-07, pp. 9-10 OPWDD ADM #2018-09R, p. 13

10.	Missing Required Elements of the Pathway to Employment Habilitation Plan/Staff Action Plan Review
OPWDD Audit Criteria	<p>Habilitation Plan: There must be evidence that the Habilitation Plan was reviewed within 12 months prior to the month in which the service occurs. Evidence of a review may include, but is not limited to, a review sign-in sheet, a service note indicating a review, or revised/updated Habilitation Plan.</p> <p>Evidence of reviews must include:</p> <ol style="list-style-type: none"> 1. the individual's name, 2. the habilitation service(s) under review, 3. the staff's signature(s) from the habilitation service, 4. the date of the staff's signature, 5. date of the review. <p>Staff Action Plan: Evidence of reviews must include the: 1) Individual's name; 2) Habilitation service(s) under review; 3) Staff signature(s) from the habilitation service(s); 4) Date of the staff signature(s); and 5) Date of the review.</p> <p>The claim will be disallowed if one or more of the required elements of the review are missing.</p>
Regulatory References	14 NYCRR Section 635-99.1(bk) OPWDD ADM #2012-01, pp. 3, 7 OPWDD ADM #2018-09R, p. 13

11.	Failure to Write the Initial Pathway to Employment Habilitation Plan/Staff Action Plan Within 60 Days
OPWDD Audit Criteria	For Pathway to Employment services, the initial Habilitation Plan must be written within 60 days of the start of the habilitation service and forwarded to the Medicaid Service

	<p>Coordinator (MSC). The claim will be disallowed if the plan is not written within 60 days of the start of the habilitation service.</p> <p>The initial Staff Action Plan must be in place no later than 60 days of the start of the habilitation service, or the Life Plan review date, whichever comes first. Therefore, services that are provided no later than the first 60 days of the start of the habilitation service might not have a Staff Action Plan in place.</p>
Regulatory References	<p>14 NYCRR Section 635-99.1(bk) OPWDD ADM #2012-01, pp. 2-3, 7 OPWDD ADM #2018-09R, p. 13</p>

12.	Failure to Forward Revised Habilitation Plan/Staff Action Plan for Pathway to Employment Within Required Time Frames to the Service Coordinator/Care Manager
OPWDD Audit Criteria	<p>For service dates April 1, 2012, and after, a revised pathway to employment Habilitation Plan must be sent to the recipient's service coordinator no more than 30 days after either (a) an ISP review date, or (b) the date on which the habilitation service provider makes a significant change to the plan.</p> <p>The claim will be disallowed if the revised plan was not forwarded within 30 days to the service coordinator.</p> <p>A revised Staff Action Plan, written by the habilitation service provider, must be provided to the Care Manager. Staff Action Plans must be provided to the Care Manager no more than 60 days after either: (a) a Life Plan review date; or (b) the date on which the habilitation service provider makes a change to the Staff Action Plan.</p>
Regulatory References	<p>14 NYCRR Section 635-99.1(bk) OPWDD ADM #2012-01, p. 3 OPWDD ADM #2018-09R, p. 13</p>

13.	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 Life Plan (LP) 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 References	<p>14 NYCRR Section 635-10.5(ad)(8)(i) OPWDD ADM #2015-07, p. 9</p>

14.	Missing Required Elements for Pathway to Employment Service Documentation
OPWDD Audit Criteria	<p>Medicaid rules require that service documentation is contemporaneous with the service provision. 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.

	<ul style="list-style-type: none"> • 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) (completed contemporaneously). <p>The combination of the checklist and summary note must include all the service documentation elements listed above.</p>
Regulatory References	<p>14 NYCRR sections 635-10.5(ad)(8)(ii)-(iii) 18 NYCRR 504.3 OPWDD ADM #2015-07, pp. 8, 9</p>

15.	Missing or Inadequate Pathway to Employment Monthly Summary Note
OPWDD Audit Criteria	The claim will be disallowed if the required narrative monthly summary note is missing. The claim will also be disallowed if the monthly summary does not summarize the implementation of the individual's Pathway to Employment Service Delivery Plan during that month and does not address the individual's response to services provided along with any issues or concerns.
Regulatory References	18 NYCRR 504.3 OPWDD ADM #2015-07, p. 9

16.	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 References	14 NYCRR 635-10.4(h)(3) OPWDD ADM #2015-07, p.6

17.	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 References	14 NYCRR 635-10.4(h)(6) OPWDD ADM #2015-07, p.7
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18.	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; • serve as the individual's detailed career/vocational plan for guiding his or her employment supports; • 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; and, • 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>
Regulatory References	14 NYCRR 635-10.4(h)(6)(i) OPWDD ADM #2015-07, p. 7

19.	Failure to Write the Initial Career/Vocational Plan for Pathway to Employment Service Within Required Timeframe
OPWDD Audit Criteria	<p>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.</p>
Regulatory References	14 NYCRR 635-10.4(h)(6)(iii)

20.	Units of Service Billed Exceed Units of Service Documented
OPWDD Audit Criteria	<p>The claim will be disallowed if the number of 15-minute increments billed exceeded the number of 15-minute increments documented for Pathway to Employment services. Billing unit errors will be disallowed to the extent of the difference between the amount claimed and actual.</p> <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>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</p>

	<p>provision and/or duration of continuous periods/sessions of indirect service provision if the number of individuals being served simultaneously (individual or group) is maintained for each session.</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 service time.
Regulatory References	<p>14 NYCRR Sections 635-10.5(ad)(2), (7) and (8) 14 NYCRR Section 635-10.4(h)(1) OPWDD ADM #2015-07, pp. 5-6</p>

21.	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) OPWDD ADM #2015-07, pp. 5-6

22.	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) OPWDD ADM #2015-07, p. 4

23.	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	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.

Criteria	1401 et seq.).
Regulatory References	Centers for Medicare & Medicaid Services CMCS Informational Bulletin, September 2011, p. 14

24.	Billing for Services Not Authorized by Operating Certificate
OPWDD Audit Criteria	The claim will be disallowed if the agency does not have an operating certificate identifying certification for Pathway to Employment services.
Regulatory References	New York State Mental Hygiene Law, Section 16.03(a)(4) 14 NYCRR Sections 619.2(d) 14 NYCRR Sections 619.3