NEW YORK STATE | Office of the Medicaid Inspector General

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OMIG AUDIT PROTOCOL
OPWDD SUPPORTED EMPLOYMENT

Revised 03/24/15

Audit protocols assist the Medicaid provider community in developing programs to evaluate compliance with Medicaid requirements under federal and state statutory and regulatory law. Audit protocols are intended solely as guidance in this effort. This guidance does not constitute rulemaking by the New York State Office of the Medicaid Inspector General (OMIG) 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 audit protocols alters any statutory or regulatory requirement and the absence of any statutory or regulatory requirement from a protocol does not preclude the OMIG from enforcing the requirement. In the event of a conflict between statements in the protocols and either statutory or regulatory requirements, the requirements of the statutes and regulations 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. The OMIG cannot provide individual advice or counseling, whether medical, legal, or otherwise. If you are seeking specific advice or counseling, you should contact an attorney, a licensed practitioner or professional, a social services agency representative, or an organization in your local community.

Audit protocols are applied to a specific provider type or category of service in the course of an audit and involve the OMIG'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, the OMIG will review and consider any relevant contemporaneous documentation maintained and available in the provider's records to substantiate a claim.

OMIG, 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 the OMIG's authority to recover improperly expended Medicaid funds and the OMIG 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.

OMIG AUDIT PROTOCOL – OPWDD SUPPORTED EMPLOYMENT SERVICES

Revised 03/24/15

1.	**Missing Recipient Record**
OMIG Audit Criteria	If the recipient record is not available for review, claims for all dates of service associated with the recipient record will be disallowed.
Regulatory References	18 NYCRR Section 504.3(a) 18 NYCRR Section 540.7(a)(8)

2.	**No Documentation of Service**
OMIG Audit Criteria	If the recipient's record does not document that a supported employment service was provided, the claim will be disallowed.
Regulatory References	18 NYCRR Section 504.3(a) 18 NYCRR Section 517.3(b)(2)

3.	**No Diagnosis of Developmental Disability**
OMIG 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 References	14 NYCRR Section 635-10.3(a) and (b)(1)

4.	**Unauthorized Supported Employment Services Provider**
OMIG Audit Criteria	The claim will be disallowed if the individualized service plan (ISP) does not specify the category of waiver service that the agency is providing (i.e., supported employment) or does not designate the agency as the provider of the service.
Regulatory References	14 NYCRR Section 635-10.2(a) OPWDD ADM #2007-01, p. 5

5.	**Missing Copy of Individualized Service Plan (ISP)**
OMIG 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) OPWDD ADM #2007-01, p. 5

6.	**Missing Habilitation Plan for Supported Employment Services**
OMIG Audit Criteria	A relevant habilitation plan(s) must be developed within 60 days of the start of the habilitation service to conform to the requirements found in ADM #2003-03. The claim will be disallowed if the relevant habilitation plan(s) is missing for supported employment dates of service prior to and including July 15, 2010, and after March 31, 2012.
Regulatory References	14 NYCRR Section 635-99.1(bk) OPWDD ADM #2003-03, p. 2 OPWDD ADM #2007-01, p. 5 For services **4/01/12 and after**, OPWDD ADM #2012-01, p. 2

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7.	**Missing Required Elements of the Habilitation Plan for Supported Employment Services**
OMIG Audit Criteria	For services prior to 4/01/2012, the supported employment plan must contain these required elements: the recipient's name and CIN; the category of waiver service and the provider agency name; the recipient's valued outcomes; the date the habilitation plan was reviewed; anticipated level of support; location where the service will be provided; a description of supported employment services; safeguards provided; and, the printed name, signature and title of the person who wrote the habilitation plan, the date the plan was written, and evidence the six-month review was conducted (signature, and title of the supported employment staff and date the review was conducted). The claim will be disallowed if one or more of the required elements are missing. **NOTE:** For service dates April 1, 2012, and after, the habilitation plan for supported employment services must be reviewed at least twice annually. Additionally, for service dates April 1, 2012, and after, habilitation plan requirements resemble those prior to April 1, 2012, except that anticipated level of support and location where the service will be provided are no longer required elements of the SEMP habilitation plan.
Regulatory References	14 NYCRR Section 635-99.1(bk) For services **prior to 4/01/2012**, OPWDD ADM #2007-01, pp. 5-6 For services **4/01/12 and after,** OPWDD ADM #2012-01, p. 3 For services **4/01/12 and after,** OPWDD ADM #2012-01, p. 7

8.	**Missing Habilitation Plan Review for Supported Employment Services**
OMIG Audit Criteria	The relevant habilitation plan must be developed, reviewed or revised as necessary at a minimum of at least twice annually. At least annually one of the habilitation plan reviews for supported employment services must be conducted at the time of the ISP meeting. The claim will be disallowed if the relevant habilitation plan for supported employment services is not reviewed or revised as necessary at a minimum of at least twice annually for dates of service prior to and including July 15, 2010, and after March 31, 2012
Regulatory References	14 NYCRR Section 635-99.1(bk) OPWDD ADM #2003-03, p. 2 OPWDD ADM #2003-03, p. 3 For services **4/01/12 and after,** OPWDD ADM #2012-01, p. 3

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9.	**Failure to Write the Initial Habilitation Plan for Supported Employment Service Within 60 Days**
OMIG Audit Criteria	For supported employment services, the initial habilitation plan must be written within 60 days of the start of the habilitation service and forwarded to the service coordinator. The claim will be disallowed if the plan is not written within 60 days of the start of the supported employment service for dates of service prior to and including July 15, 2010, and after March 31, 2012.
Regulatory References	14 NYCRR Section 635-99.1(bk) OPWDD ADM #2003-03, p. 2 OPWDD ADM #2007-01, p. 5 For services **4/01/12 and after,** OPWDD ADM #2012-01, p. 2

10.	**Failure to Forward Revised Habilitation Plan for Supported Employment Service Within 30 Days to the Service Coordinator**
OMIG Audit Criteria	A revised supported employment service plan must be forwarded to the recipient's service coordinator no more than 30 days after either: (a) the six month ISP review date, or (b) if the plan's provider makes a significant change as agreed to by the recipient, their advocate and service coordinator. The claim will be disallowed if the revised plan was not forwarded within 30 days to the service coordinator for dates of service prior to and including July 15, 2010, and after March 31, 2012. For service dates April 1, 2012, and after, a revised supported employment service 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.
Regulatory References	14 NYCRR Section 635-99.1(bk) OPWDD ADM #2003-03, p. 2 For services **4/01/12 and after,** OPWDD ADM #2012-01, pp. 3-4

11.	**Missing Required Elements for Supported Employment Daily Service Note Documentation**
OMIG Audit Criteria	The claim will be disallowed in the absence of one or more of the required 9 elements in the supported employment daily service note documentation as listed in OPWDD ADM #2007-01: 1) recipient's name and CIN; 2) identification of category of waiver service provided; 3) the date the service was provided; 4) a description of the individualized service provided by supported employment staff; 5) an indication as to whether the service was delivered face-to-face; 6) the recipient's response to the service; 7) location of the service provided; 8) verification of service provision by supported employment staff delivering the service; and, 9) as necessary, documentation verifying that the DDSO/DDRO has granted waiver of work-site visits.
Regulatory References	OPWDD ADM #2007-01, p. 4

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12.	**Missing Supported Employment Daily Service Note or Monthly Summary Note**
OMIG Audit Criteria	The claim will be disallowed if the required supported employment daily service note was missing. The claim will also be disallowed in the absence of the following - at least monthly in a daily service note or in the monthly summary note: a) the description of the recipient's progress in meeting expectations specified in their supported employment plan, and b) addressing any special issues or concerns the recipient may have.
Regulatory References	OPWDD ADM #2007-01, p. 4

13.	**Failure to Meet Monthly Billing Requirements – Recipient Employed for Full Calendar Month**
OMIG Audit Criteria	The claim will be disallowed if either the requirement of at least two face-to-face documented supported employment services was not met, or the face-to-face services were not provided at the recipient's job site, assuming no "Location Waiver" was granted.
Regulatory References	14 NYCRR Section 635-10.5(d)(7)(i) OPWDD ADM #2007-01, p. 2

14.	**Failure to Meet Monthly Billing Requirements – Recipient Not Employed Anytime During the Month**
OMIG Audit Criteria	The claim will be disallowed if either the requirement of at least four documented supported employment services (on separate days) for a recipient not employed anytime during the calendar month was not met, or at least two of the four services did not involve face-to-face contacts with the recipient.
Regulatory References	14 NYCRR Sections 635-10.5(d)(7)(ii) OPWDD ADM #2007-01, p. 2

15.	**Failure to Meet Monthly Billing Requirements – Recipient Employed a Portion of the Month**
OMIG Audit Criteria	The claim will be disallowed if either the requirement of at least two face-to-face documented supported employment services (on separate days at the job site) for a recipient employed during a portion of the calendar month was not met, or the requirement of at least four documented supported employment services (on separate days), with at least two services being-face-to-face, was not met (assuming no "Location Waiver" was granted).
Regulatory References	OPWDD ADM #2007-01, pp. 2-3

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16.	Supported Employment Service Delivered by More Than One Provider
OMIG Audit Criteria	Only the claim from the authorized provider of supported employment services in a given calendar month will be allowed. The claim by the unauthorized provider will be disallowed.
Regulatory References	14 NYCRR Section 635-10.5(d)(7)(iii) OPWDD ADM #2007-01, p. 3

17.	Supported Employment Service Delivered at an Invalid Location
OMIG Audit Criteria	The claim will be disallowed if the required face-to-face supported employment service was delivered at an institutional setting or the service was delivered at the same time the recipient received another non-residential service.
Regulatory References	OPWDD ADM #2007-01, p. 3

18.	Missing Signed Location Waiver
OMIG Audit Criteria	The claim will be disallowed if a copy of the required "Location Waiver" with the appropriate OPWDD staff signature is missing.
Regulatory References	OPWDD ADM #2007-01, p. 3

19.	Billing for Services by Ineligible Provider/Provider Employee
OMIG Audit Criteria	The claim will be disallowed if the supported employment services billed were performed by providers or provider staff not authorized by either the NYS Department of Health or OPWDD.
Regulatory References	14 NYCRR Section 635-10.1(b)

20.	Supported Employment Compensation Not At or Above Minimum Wage
OMIG Audit Criteria	The claim will be disallowed if the supported 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. 9

21.	Supported Employment Services Available Through an Educational Agency
OMIG Audit Criteria	The claim will be disallowed if the supported employment services were available through 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. 9

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