



OMIG AUDIT PROTOCOL OPWDD SUPPORTED EMPLOYMENT FOR SERVICE DATES JULY 1, 2015 TO MARCH 9, 2016

Revised February 5, 2018

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

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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 § 504.3(a) 18 NYCRR § 540.7(a)(8)

2.	No Documentation of Supported Employment (SEMP) Services
OMIG Audit Criteria	If the recipient's record does not document that a SEMP service was provided, the claim will be disallowed. Note: SEMP services July 1, 2015, and after consist of the allowable activities found in 14 NYCRR § 635.10(4)(j)(1)(i-xx).
Regulatory References	18 NYCRR § 504.3(a) 18 NYCRR § 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 § 635-10.3(a) and (b)(1)

4.	Unauthorized SEMP 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., SEMP) or does not designate the agency as the provider of the service. For SEMP services, the following must be included in the ISP: specification of an effective date for SEMP that is on or before the first date of service, specification of frequency, and specification of duration as ongoing as authorized.
Regulatory References	14 NYCRR § 635-10.5(af)(8)(i) and (ii) OPWDD ADM #2015-08, pp.7-8

5.	Missing Copy of 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 § 635-10.2(a) 14 NYCRR § 635-99.1(bk) OPWDD ADM #2015-08, p. 7

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6.	Missing Habilitation Plan for SEMP 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 #2012-01. The claim will be disallowed if the relevant habilitation plan(s) is missing for SEMP or does not cover the time period of the SEMP claim.
Regulatory References	14 NYCRR § 635-99.1(bk)(1) 14 NYCRR § 635-10.4(j)(5)(i) OPWDD ADM #2012-01, pp. 2-3 OPWDD ADM #2015-08, p. 8

7.	Missing Required Elements of the Habilitation Plan for SEMP Services
OMIG Audit Criteria	For every habilitation service, a recipient must have a Habilitation Plan that contains the following elements: the individual's name; the individual's Medicaid identification number; the habilitation service provider's agency name; identifications of the habilitation service(s) provided; the date the habilitation plan was reviewed; identification of at least one valued outcome that is derived from the ISP; description of the services and supports the habilitation staff will provide to the person; safeguards that will be provided by the habilitation provider; the printed name, signature and title of the staff who wrote the Habilitation Plan; and, the date that staff signed the Habilitation Plan. The claim will be disallowed if one or more of the required elements is missing.
Regulatory References	14 NYCRR § 635-99.1(bk)(1) 14 NYCRR § 635-10.4(j)(5)(iii) OPWDD ADM #2012-01, pp. 3 and 7 OPWDD ADM #2015-08, p. 8

8.	Missing Habilitation Plan Review for SEMP 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 SEMP services must be conducted at the time of the ISP meeting. The claim will be disallowed in the absence of evidence of a habilitation plan review within 12 months prior to the month in which the service occurs or if at least annually, a habilitation plan review was not conducted at the time of the ISP meeting. Evidence of reviews must include: 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; and the date of the review.
Regulatory References	14 NYCRR § 635-99.1(bk) 14 NYCRR § 635-10.4(j)(5)(iii) OPWDD ADM #2012-01, pp. 3, 4, and 7 OPWDD ADM #2015-08, p. 8

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9.	Failure to Write the Initial Habilitation Plan for SEMP Service Within 60 Days
OMIG Audit Criteria	For SEMP 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 SEMP service.
Regulatory References	14 NYCRR § 635-99.1(bk) OPWDD ADM #2012-01, p. 2 OPWDD ADM #2015-08, p. 8

10.	Failure to Forward Revised Habilitation Plan for SEMP Service Within 30 Days to the Service Coordinator
OMIG Audit Criteria	A revised SEMP service plan must be forwarded 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. The claim will be disallowed if the reviewed/revised habilitation plan was not forwarded within 30 days to the service coordinator.
Regulatory References	14 NYCRR § 635-99.1(bk) OPWDD ADM #2012-01, pp. 3-4

11.	Missing Required Elements for the SEMP Checklist Documentation
OMIG Audit Criteria	The claim will be disallowed in the absence of one or more of the required 10 elements in the SEMP daily service note documentation: individual’s name and Medicaid number (CIN); name of the agency providing the SEMP service; identification of the category of waiver service provided; documentation of start and stop times; the ratio of individual(s) to staff; description of service...; the date the service was provided; verification of service provision by the staff person delivering the service; a narrative description of the individual’s response to the service and/or the purpose of the service entered at least weekly; and, the signature of the SEMP staff person documenting the service and date the service was documented (or initials as references in item #8). Note: No error will be cited if element #9 is missing. No. 9 was listed in error as a required element (corrected in the SEMP ADM #2016-01, beginning March 9, 2016).
Regulatory References	OPWDD ADM #2015-08, pp. 6-7

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12.	SEMP Narrative Monthly Summary Note Missing or Not Done Within Required Time Period
OMIG Audit Criteria	The claim will be disallowed if the required SEMP monthly summary note was missing or not completed, signed, dated no later than the 30 th day after the month service.
Regulatory References	OPWDD ADM #2015-08, p. 6

13.	Missing Elements of the Narrative Monthly Summary Note
OMIG Audit Criteria	The claim will be disallowed in the absence of one or more of the following required elements of the monthly summary note: the implementation of the individual's SEMP Service Delivery Plan for the month; description of the individual's vocational progress; description of some of the interactions of staff to address vocational challenges; description of the individual's response; and any issues or concerns (if necessary).
Regulatory References	OPWDD ADM #2015-08, p. 6

14.	Billing for Non-Reimbursable Service Time
OMIG Audit Criteria	If the SEMP claim included time for non-reimbursable services, the time for the non-reimbursable portion of the claim specific to the non-reimbursable service time will be disallowed.
Regulatory References	14 NYCRR § 635-10.5(af)(6) 14 NYCRR § 635-10.5(af)(7) OPWDD ADM #2015-08, pp. 4 and 7

15.	Units of Service Billed Exceeded Units of Service Documented
OMIG Audit Criteria	The claim will be disallowed if the number of 15 minute increments billed exceeded the number of 15 minute increments documented for SEMP services. Billing unit errors will be disallowed to the extent of the difference between the amount claimed and the actual amount.
Regulatory References	14 NYCRR § 635-10.5(af)(5) 14 NYCRR § 635-10.5(af)(6)(i) and (ii) 14 NYCRR § 635-10.5(af)(7) OPWDD ADM #2015-08, p. 5

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16.	Failure to Obtain Written Extension to Provide Intensive or Extended SEMP Services
OMIG Audit Criteria	The claim will be disallowed if the provider fails to obtain and maintain documentation of the request to and authorization from OPWDD to provide an extension of Intensive or Extended SEMP services.
Regulatory References	14 NYCRR 635-10.5(af)(2)(ii) and (3)(ii) OPWDD ADM # 2015-08 p. 4

17.	Billing for Services by Ineligible Provider/Provider Employee
OMIG Audit Criteria	The claim will be disallowed if the SEMP services billed were performed by providers or provider staff not authorized by either the NYS Department of Health or OPWDD. The claim will be disallowed if the SEMP services billed were performed by provider staff who have not met educational or staff training requirements.
Regulatory References	14 NYCRR § 635-10.1(b) 14NYCRR § 635-10.4(j)(4)(i) and (ii) OPWDD ADM #2015-08, p.5

18.	SEMP Compensation Not at or Above Minimum Wage
OMIG Audit Criteria	The claim will be disallowed if the SEMP compensation paid to a recipient was not at or above the established minimum wage. The service provider must obtain documentation when an individual is initially hired that verifies that the salary earned is at least minimum wage. This does not apply to recipients who are pursuing self-employment. Wages earned in self-employment may be below the state or federal minimum in accordance with Department of labor guidelines.
Regulatory References	34 CFR § 361.47(a)(9) Centers for Medicare & Medicaid Services CMCS Informational Bulletin, September 2011, p. 9 14 NYCRR § 635-10.4(j) 14 NYCRR § 635-99.1(v) OPWDD ADM #2015-08, pp. 2-3

19.	SEMP Services Available Through an Educational Agency
OMIG Audit Criteria	The claim will be disallowed if the SEMP 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.). The service provider must maintain documentation that there is no funding available for the recipient’s SEMP services from the NYS ACCESS-VR.
Regulatory References	Centers for Medicare & Medicaid Services CMCS Informational Bulletin, September 2011, p. 9 14 NYCRR § 635-10.5(af)(8)(iv)

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