

**Site Based and Community Based Prevocational Services  
Amendments to 14 NYCRR Sections 635-10.4 & 635-10.5**

**FINAL REGULATIONS**

**Effective Date: September 19, 2018**

- **Existing paragraph 635-10.4(c) is amended as follows:**
  - (c) Prevocational services [delivered before July 1, 2015].
- **Existing paragraph 635-10.4(c)(1) is amended as follows:**
  - (1) *Prevocational services* are activities specified in the [person's] individual's [individualized services] habilitation plan/staff action plan, that prepare an individual for 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] individuals not expected to join the general work force within one year (excluding supported employment programs and pathway to employment). [(For prevocational services delivered on and after July 1, 2015, see subdivisions [k] and [l] of this section.)]
- **Existing paragraph 635-10.4(c)(3) is deleted and a new 635-10.4(3) is added as follows:**
  - (3) To participate in Prevocational Services the individual must:
    - (i) require habilitative services including learning and work experiences, including volunteer experiences, where the individual can develop general, non-job-task specific strengths and skills that contribute to employability in paid employment in integrated community settings; and either
    - (ii) have a documented and assessed earning capacity of less than 50 percent of the current state minimum wage, federal minimum wage, or prevailing wage; or
    - (iii) be likely unable to retain competitive employment in the community without significant prevocational or job readiness services due to the nature of his or her developmental disability.
- **New paragraph 635-10.4(c)(5) is added as follows:**

- (5) Prevocational Services When the Individual is Paid.
- (i) To participate in paid 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, and be expected to have such an earning capacity while participating in Prevocational services.
  - (ii) To pay less than minimum wage, a provider must have a valid Department of Labor 14c Certificate and comply with all applicable Federal laws and regulations.
- **New paragraph 635-10.4(c)(6) is added as follows:**
- (6) Annual Prevocational Services Assessment.
- (i) The Annual Prevocational Services Assessment must be conducted in the community at a non-certified site.
  - (ii) The Annual Prevocational Services Assessment must be completed in a form and format prescribed by OPWDD.
  - (iii) This assessment must determine whether Site Based or Community Based Prevocational services:
    - (a) continue to meet the individual's pre-employment and/or job readiness needs; and
    - (b) assist the individual in obtaining competitive employment.
- **New paragraph 635-10.4(c)(7) is added as follows:**
- (7) Prevocational Service Group Size and Number of Groups Per Location.
- (i) Group size may not exceed eight (8) individuals per one (1) staff member in Site Based or Community Based Prevocational services. Group size may only be enlarged with prior OPWDD approval.
    - (a) For Community Based Prevocational services, only one group is permitted per location at the same time. Site Based Prevocational services are permitted more than one group per location.
    - (b) Providers must obtain prior OPWDD approval for an increase in group size and/or number of groups as specified above. Requests for increase in group size or number of groups must be completed in a form and format prescribed by OPWDD.

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

- (c) OPWDD approval of increased group size or number of groups will expire within 24 months of approval.
  - (d) The service provider must maintain documentation of OPWDD's approval to increase group size or number of groups per location.
- **Existing subdivision 635-10.4(k) is amended as follows:**
  - (k) *Site Based Prevocational Services* [delivered on and after July 1, 2015].
- **Existing paragraph 635-10.4(k)(1) is deleted and a new paragraph 635-10.4(k)(1) is added as follows:**
  - (1) Site Based Prevocational services must be provided in non-residential Site Based OPWDD-certified facilities, except for the annual assessment. Annual Assessments must be conducted in the community at non-certified sites. Site Based Prevocational services are activities specified in the individual's habilitation plan/staff action plan that provide learning and work experiences, including volunteering, where an individual can develop general, non-job-task-specific strengths and skills that contribute to employability in paid employment in integrated community settings.
- **Existing paragraph 635-10.4(k)(2) is amended as follows:**
  - (2) [Services shall include, but not be limited to, the following tasks and activities:]Site Based Prevocational services include:
    - (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 acquire appropriate attitudes and work habits, including instruction in socially appropriate behaviors on the job site;
    - (iii) assisting the individual with [to] adjusting to the demands of the workplace, including stress management techniques;
    - (iv) familiarizing the individual with job production and performance requirements;
    - (v) instructing the individual to adhere to generally accepted workplace policies, conduct and dress [providing travel training, including the use of public and para-transit systems];
    - (vi) instructing the individual to communicate effectively with supervisors, coworkers and customers; [instruction in the appropriate use of job-related facilities (e.g., lounge areas, lunch rooms/cafeterias, and rest rooms);]

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- (vii) assessing the individual to determine his or her work interests and skills;
  - (viii) instructing the individual, family, advocates, and support staff about benefits, planning, education, and counseling pertaining to benefits management and employment; [instruction in benefits planning;]
  - (ix) providing information to an individual and his or her family on Work Incentive Programs and the Ticket to Work Program; [instruction in the use of technology that can assist in developing job skills and meeting workplace expectations;]
  - (x) instructing on the use of technology that can assist in developing job or volunteer skills, and meeting workplace expectations; [assisting the individual to experience a variety of employment options within the community; and]
  - (xi) instructing the individual on topics related to mobility and the appropriate use of job-related facilities, such as lounge areas, lunch rooms/cafeterias, and rest rooms; [developing the individual's service delivery plan.]
  - (xii) transportation, including transporting the individual to and from pre-vocational services; and
  - (xiii) other services, as previously authorized by OPWDD.
- **Existing paragraph 635-10.4(k)(3) is deleted and a new paragraph 635-10.4(k)(3) is added as follows:**
    - (3) Effective one year from effective date of this regulation, Site Based Prevocational services must only be provided at a site that is certified by OPWDD as a Site Based Prevocational services site, with the exception of the required annual assessment.
  - **Existing paragraph 635-10.4(k)(4) deleted and a new paragraph 635-10.4(k)(4) is added as follows:**
    - (4) New enrollments in Site Based Prevocational services (enrollments after December 5, 2017) must have prior written approval from OPWDD. OPWDD approval is based on the following criteria:
      - (i) There is an approved Workshop Transformation Plan where the site/location continues to meet the integration standards outlined in the transformation plan or an approved plan that creates a new integrated business;
      - (ii) The individual has a goal to prepare for employment or develop job readiness skills, which are identified in the individual's individualized service plan (ISP)/life plan;

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- (iii) Delivery of the service will assist the individual with improving participation in the general work force; and
- (iv) Delivery of the service is in the best interests of the individual.
- **Existing subdivision 635-10.4(I) is amended as follows:**
  - (I) *Community Based Prevocational Services* [delivered on and after July 1, 2015].
- **Existing paragraph 635-10.4(I)(1) is deleted and a new paragraph 635-10.4(I)(1) is added as follows:**
  - (1) Community Based Prevocational services are not provided in OPWDD certified space, except as provided in 635-10.4(I)(4). Community Based Prevocational services are activities specified in the individual's habilitation plan/staff action plan that provide learning and work experiences, including volunteering, where an individual can develop general, non-job-task-specific strengths and skills that contribute to employability in paid employment in integrated community settings. Services are intended to develop and teach general skills.
- **Existing paragraph 635-10.4(I)(2) is amended as follows:**
  - (2) Community Based P[p]revocational services may be provided directly to an individual or on his or her behalf. These services may include, but are not limited to: [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 with [to] adjusting to the demands of the workplace including stress management techniques;
    - (iv) familiarizing the individual with job production and performance requirements, such as training the individual to follow directions;
    - (v) providing travel training, including the use of public and para-transit systems;
    - (vi) instructing the individual to adhere to generally accepted workplace policies, conduct and dress; [transportation between activities;]
    - (vii) instructing the individual to communicate effectively with supervisors, coworkers and customers; [instruction in the appropriate use of job-related facilities (e.g., lounge areas, lunch rooms/cafeterias, and rest rooms);]

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- (viii) instructing the individual on topics related to mobility about the appropriate use of job-related facilities, such as lounge areas, lunch rooms/cafeterias; and rest rooms; [assessing the individual to determine his or her work interests and skills;]
- (ix) instructing the individual, family, advocates, and support staff about benefits, planning, education, and counseling pertaining to benefits management and employment; [instruction in benefits planning;]
- (x) instructing the individual about [instruction in] the use of technology that can assist in developing job/volunteer skills and meeting workplace expectations;
- (xi) assessing the individual to determine his or her work interests, productivity and skills; [developing the individual's service delivery plan.]
- (xii) assisting the individual to experience a variety of employment and/or volunteer options within the community;
- (xiii) documenting and supporting the delivery of Community Based Prevocational services. Examples include habilitation plans/staff action plans, service documentation, monthly summaries, annual assessments, and other documentation directly related to the delivery of community based prevocational services, as required by OPWDD;
- (xiv) transporting individuals between activities;
- (xv) assisting an individual with obtaining and participating in Community Based Prevocational experiences;
- (xvi) developing and negotiating potential community and employment experiences on behalf of the individual;
- (xvii) assisting an individual with obtaining and participating in Community Based Prevocational experiences;
- (xviii) communicating with family or other members of the individual's circle of support to discuss and address issues related to Community Based Prevocational activities, and preparing the individual for prevocational activities;
- (xix) staff travel time to and from allowable Community Based Prevocational services activities while the staff is being paid for work hours by the provider;
- (xx) staff time to attend OPWDD Innovations Training; and

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(xxi) other services, as previously authorized by OPWDD.

- **Existing paragraph 635-10.4(I)(3) is deleted and a new 635-10.4(I)(3) is added:**
  - (3) Community Based Prevocational services must be provided in the most integrated settings. Community Based Prevocational services may not be provided in OPWDD certified space. However, certified settings may be used for any combination of the following activities, not to exceed 2 hours per day:
    - (i) providing time limited job readiness training; and/or
    - (ii) identifying prevocational activities for the day.
- **Existing paragraph 635-10.4(I)(4) is deleted and a new 635-10.4(I)(4) is added:**
  - (4) Community Based Prevocational services must be provided in integrated settings. Community Based Prevocational services may not be provided in OPWDD certified space, except when:
    - (i) providing services at the community site when conditions make it unsafe for individuals to receive service or travel to their usual community location, a public safety emergency, or any other significant circumstance in which service delivery in the community may jeopardize the health and safety of individuals as determined and documented by the provider agency administration; or
    - (ii) OPWDD has given prior approval based on the best interests of the individual(s).
- **Existing subdivision 635-10.5(ag) is amended as follows:**
  - (ag) Site Based Prevocational Services [delivered on and after July 1, 2015].
- **Existing subdivision 635-10.5(ag)(2) is amended as follows:**
  - (2) Reimbursement of S[s]ite B[b]ased P[p]revocational services [(where allowed) shall be] is contingent on prior OPWDD approval for individuals who enroll in such services. [on and after July 1, 2015.] OPWDD approval will be based on the following criteria:
- **Existing subparagraph 635-10.5(ag)(4)(i) is deleted and a new 635-10.5(ag)(4)(i) is added as follows:**
  - (i) The agency can bill a full unit of service when the agency delivers and documents:
    - (a) at least two services provided directly to the individual in accordance with the individual's Site Based Prevocational habilitation plan/staff action plan; and

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- (b) the individual is present for a four-hour program day, and may also include services listed in sub division 635-10.4(k) of this subpart.
- **Existing subparagraph 635-10.5(ag)(4)(ii) is deleted and a new 635-10.5(ag)(4)(ii) is added as follows:**
  - (ii) The agency can bill a half unit when the agency delivers and documents at least:
    - (a) one service directly to the individual delivered in accordance with the individual's Site Based Prevocational habilitation plan/staff action plan; and
    - (b) the individual is present for a 2-hour program day, and may also include services listed in paragraph 635-10.4(k) of this subpart.
- **Existing subparagraph 635-10.5(ag)(4)(iii) is amended as follows:**
  - (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:
    - **Existing paragraph 635-10.5(ag)(5) is deleted and all remaining paragraphs are renumbered accordingly.**
    - **Existing paragraph 635-10.5(ag)(6) is deleted and all remaining paragraphs are renumbered accordingly:**
    - **Existing subparagraph 635-10.5(ag)(7)(iii) is deleted.**
    - **Existing subdivision 635-10.5(ah) is amended as follows:**
      - (ah) Community Based Prevocational services\_ [delivered on and after July 1, 2015.]
- **Existing paragraph 635-10.5(ah)(2) is amended as follows:**
  - (2) Reimbursement of C[c]ommunity Based P[p]revocational services [shall be] is contingent on prior OPWDD approval for individuals who enroll in such services. [on and after July 1, 2015.] OPWDD approval will be based on the following criteria:
    - (i) The individual must have a goal to develop employment and pre-employment skills[, which must be] identified in [the individual's] his or her individualized service plan (ISP)/life plan;
    - (ii) Delivery of the service will assist the individual with improving[participation] his or her participation in the general work force; and
    - (iii) Delivery of the service must be in the best interests of the individual.

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- **Existing paragraph 635-10.5(ah)(4) is deleted and a new 635-10.5(ah)(4) is added accordingly:**
  - (4) Unit of service. Community Based Prevocational service is an hourly service and is reimbursed in 15-minute increments. When there is a break in service delivery during a single day, the service provider must combine, for billing purposes, the durations of the continuous periods/sessions of each specific type of service provision. The durations of each individual session within a day must be combined, but individual and group sessions provided in the same day must not be combined.
  
- **Existing paragraph 635-10.5(ah)(5) is deleted a new 635-10.5(ah)(5) is added accordingly:**
  - (5) Rounding. Only the total minutes of the specific Community Based Prevocational service (individual or group) for the day may be rounded up to the next 15-minute increment. If there are multiple periods of service during the day, the provider must combine the total minutes for the specific service (individual or group) for the day, and may not round each specific service period separately. The provider should determine how many 15-minute increments were provided for each specific service. If there are additional minutes of the specific service provided that do not meet the full 15-minute increment, the additional minutes may be rounded to one additional 15-minute increment if there were 10-14 minutes of additional specific service.
  
- **Existing subparagraph 635-10.5(ah)(7)(iii) is deleted and a new subparagraph 635-10.5(ah)(7)(iii) is added as follows:**
  - (iii) Allowable Community Based Prevocational services provided without the individual present may be delivered when the individual is simultaneously receiving another direct Medicaid service. Allowable Community Based Prevocational services provided with the individual present may not be delivered when the individual is simultaneously receiving another direct Medicaid service. An exception is the provision of Medicaid Service Coordination/Care Coordination, which may be provided simultaneously with allowable Community Based Prevocational services activities.

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