Supported Employment
Amendments to 14 NYCRR Subparts 635-10 & 635-99

ADOPTED REGULATIONS
Effective Date: January 2, 2024

- **Existing subdivision 635-10.4(d) is deleted and reserved**

- **Existing subdivision 635-10.4(j) is amended as follows:**

(j) Supported employment (SEMP) services on and after January 2, 2024 [July 1, 2015]. SEMP is a person-centered employment planning and support service that provides assistance for an individual to obtain, maintain, or advance [in self-employment or] in competitive [integrated] employment in the general workforce[,] for which the individual is compensated at or above the applicable County, State, or Federal minimum wage or in self-employment [(whichever is greater)]. The goal of this service is sustained self-employment or competitive integrated employment at or above the applicable County, State, or Federal minimum wage[(whichever is greater)] in the general workforce, in a job that meets the individual's personal and career goals.

- **Existing paragraph 635-10.4(j)(1) is amended as follows:**

(1) SEMP consists of the following allowable services provided to and/or on behalf of an individual, including remote services, if they are not the only service delivery method:

(i) vocational assessment, person-centered employment planning and job-related experiential learning;

[(ii) person-centered employment planning;

(iii) job-related learning discovery;]

(ii) assessment and instruction in the use of remote and assistive technology to increase independence in the workplace;

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

[(iv)](iii) job development, analysis, customization, and carving, including negotiating and creating potential jobs with prospective employers on behalf of an individual or group of individuals;

[(v)](iv) training, orientation, and systematic instruction prior to employment;

[(vi) job placement;]

[(vii)](v) job coaching, training, and planning within the work environment;

[(viii)](vi) development and review of a business plan (for individuals who are pursuing self-employment or are self-employed);

[(ix)](vii) [transportation] travel time to allowable SEMP [between] activities when delivering services on behalf of an individual and to and from allowable activities when the individual is present;

[(x)](viii) travel training;

[(xi)](ix) development of soft skills and job retention strategies (e.g., social interaction, maintaining relationships with co-workers and supervisory personnel);

[(xii)](x) benefits support, advisement, and asset development;

[(xiii) career advancement services;]

[(xiv)](xi) other workplace support services including services that enable the individual to be successfully integrated into the job setting (e.g., development of natural supports in the work environment);

[(xv) negotiating potential jobs with prospective employers on behalf of an individual;]

[(xvi) communication with an existing employer to review the individual's progress in meeting workforce expectations and to discuss and address any challenges the individual may have in the work environment;]

[(xvi)](xii) communication with an existing employer to review the individual's progress in meeting workforce expectations and to discuss and address any challenges the individual may have in the work environment and career advancement services;

[(xvii)] (xiii) communication with the individual, family or other members of the individual's circle of support to discuss and address employment-related issues, such as management of benefits or challenges the individual may have in the work environment; [and/or]

[(xviii)](xiv) meetings, reports, and communication[s] with OPWDD staff [providing other OPWDD approved services] regarding progress and outcomes for individuals receiving SEMP services [that impact an individual's ability to successfully achieve employment goals];

[(xix)](xv) documentation of the delivery and support of all allowable SEMP services; [and]

[(xx)](xvi) planning the delivery of all allowable SEMP services [other activities previously approved by OPWDD.];

(xvii) managing the delivery of all allowable SEMP services;

(xviii) preparation and review of documents, reports, and other required information in support of SEMP allowable services as required by OPWDD;

(xix) staff time to attend OPWDD Innovations Training; and

(xx) other activities with prior approval from OPWDD.

- **Existing paragraph 635-10.4(j)(2) is deleted and a new paragraph 635-10.4(j)(2) is added as follows:**

(2) Self Employment. SEMP includes services that assist an individual to achieve self-employment, including home-based self-employment. Wages earned in self-employment may be below the applicable County, State, or Federal minimum wage. Self-employment services include, but are not limited to:

(i) assistance with identifying potential business opportunities;

(ii) assistance with developing, updating, and implementing a business plan, including identification of potential sources of business financing, managing finances, and other assistance in developing and launching a business;

(iii) identifying the supports the individual needs to operate the business; and

(iv) providing ongoing assistance, counseling, and guidance once the business has been launched.

- **Existing paragraph 635-10.4(j)(3) is deleted and a new paragraph 635-10.4(j)(3) is added as follows:**

(3) Self-Directed Services. Intensive and Extended SEMP (see paragraph (5) of this subdivision) may be provided as self-directed services to an individual who hires their own SEMP support staff.

- **Existing paragraph 635-10.4(j)(4) is amended as follows:**

(4) All staff providing SEMP services must:

(i) have at least a high school equivalency diploma or one year of work experience providing vocational or pre[-]vocational services to individuals with disabilities; and

(ii) complete [an] required OPWDD approved [vocational rehabilitation or]supported employment training [program]. This includes:

(*a*) 24 hours of initial training completed no later than December 31st two (2) years after the staff's date of hire or transfer into SEMP service; and

(*b*) 6 additional hours of training annually, starting January 1st of the following calendar year after the completion of initial training in clause (a) of this subparagraph. OPWDD may grant extensions or waivers under extenuating circumstances.

- **Existing paragraph 635-10.4(j)(5) is deleted and a new paragraph 635-10.4(j)(5) is added as follows:**

(5) SEMP may be delivered as follows:

(i) Intensive SEMP.

(a) An individual is eligible to receive Intensive SEMP services if:

(1) A competitive employment or self-employment related goal or valued outcome(s) is identified in the individual's Life Plan, unless the individual is approved for state funded SEMP;

(2) There is:

i) OPWDD approved Initial Intensive SEMP hours;
ii) OPWDD approved additional hours of Intensive SEMP; or
iii) Documentation that the individual has lost employment within the last 120 days; and

(3) supported employment funding is not available or not required from another funding source.

(b) Intensive SEMP services include but are not limited to:

(1) job development (i.e., activities that assist an individual in obtaining a job or establishing self-employment);

(2) job coaching services (i.e., initial supports that assist an individual to adjust to and maintain a job, once hired or self-employed.); and

(3) other allowable SEMP services as approved by OPWDD.

(c) Intensive SEMP may be provided to one individual or a group of 2-8 individuals. An individual may move to and from individual and group SEMP as needed.

(d) Limits on hours and days of Intensive SEMP.

(*1*) OPWDD may authorize up to 250 hours of Intensive SEMP per approval. Authorized Intensive SEMP hours must be provided within 365 days of the individual's SEMP enrollment annual anniversary date.

(*2*) These limits apply whether such services are delivered to an individual, a group of individuals, or a combination of both.

(e) Initial Intensive SEMP approval. Initial Intensive SEMP services require authorization from OPWDD.

(1) Application for Intensive SEMP hours must be submitted in the form and format specified by OPWDD.

(2) OPWDD approval of Intensive SEMP is determined on an individual basis. OPWDD considers:

(*i*) the individual's previous work experience (actual employment, work tryout, or job development) and if the individual needs job development services;

(ii) the individual's documented community experiences that created opportunities to explore and discover employment skills and interests, including volunteer activities, or the information contained within a comprehensive assessment (e.g., discovery report) of the individual's skills and interests that has been completed;

(iii) the strategies and resources used to address impediments to employment and the individual's response;

(iv) a justification of the individual's need for Intensive SEMP services describing how the Intensive SEMP services will assist the individual to obtain employment and specifying that Intensive SEMP is the appropriate service for the individual; and

(*v*) documentation that funding is not available or not required from the NYS Adult Career and Continuing Education Services-Vocational Rehabilitation (ACESS-VR).

(f) Additional Hours of Intensive SEMP. Additional hours of Intensive SEMP services require additional authorization from OPWDD.

(1) If the service provider determines that an individual needs additional hours of Intensive SEMP beyond the initial approval of Intensive SEMP hours, the service provider must submit a written request to OPWDD, in the form and format specified by OPWDD, for additional hours of

Intensive SEMP services.

(2) OPWDD approves additional hours of Intensive SEMP using the criteria specified in section 635-10.4(j)(5)(i)*(e)(1)* of this Subpart and considers whether the Intensive SEMP hours previously approved by OPWDD were appropriately used.

(3) Authorized additional Intensive SEMP hours must be provided within 365 days of the individual's SEMP enrollment annual anniversary date.

(g) Retroactive approvals of Intensive SEMP may only be granted by OPWDD under extenuating circumstances.

(ii) Extended SEMP.

(a) An individual is eligible to receive Extended SEMP services if:

(1) A competitive employment or self-employment related valued outcome or goal is identified in the individual's Life Plan, unless the individual is approved for state funded SEMP;

(2) the individual is currently employed in an integrated setting and earning at least the applicable County, State or Federal minimum wage, or is self-employed, or has lost employment and been unemployed for 120 days or less;

(3) the individual needs Extended SEMP to maintain employment and achieve employment goals identified in the Life Plan; and

(4) the individual does not receive Supported Employment services from the NYS ACCES-VR.

(b) Extended SEMP services include, but are not limited to:

(1) ongoing job coaching; and

(2) career development services.

(c) Extended SEMP may be provided to one individual or a group of 2-8 individuals. An individual may move to and from individual and group supported employment as needed.

(d) Extended SEMP can only be provided for a limited number of hours in accordance with section 635-10.5 of this Subpart, unless additional hours are approved by OPWDD.

(1) Prior approval from OPWDD is not required for the first 200 hours of Extended SEMP annually. The first 200 hours of service annually must be provided within 365 days from the individual's SEMP enrollment anniversary date.

(2) These limits apply whether such services are delivered to an individual, a group of individuals, or a combination of both.

(e) Additional hours of Extended SEMP services require authorization from OPWDD.

(*1*) If the service provider determines that an individual needs more than 200 hours of Extended SEMP within 365 days of their SEMP enrollment annual anniversary date, the service provider must submit a justification in a written request to OPWDD for review and approval, in the form and format specified by OPWDD, for additional hours of services. Authorized additional Extended SEMP hours must be provided within 365 days of the individual's SEMP enrollment annual anniversary date.

(*2*) OPWDD's decision on the extension request will be based on whether:

(*i*) changes in the individual's job responsibilities warrant additional hours of job coaching, training, and planning within the work environment;

(*ii*) changes in the individual's workplace warrant additional hours to develop new supports in the work environment;

(*iii*) the individual has expressed an interest in obtaining a second job, a new position, or career advancement; and/or

(*iv*) the additional hours are in the best interests of the individual.

- **Existing subdivision 635-10.5(d) is deleted and reserved**

- **Existing subdivision 635-10.5(af) is amended as follows:**

(af) Reimbursement for supported employment services on and after January 2, 2024[July 1 2015].

- **Existing paragraphs 635-10.5(af)(1)-(9) are deleted and paragraphs 635-10.5(af)(1)-(6) are added as follows.**

(1) Unit of service. SEMP 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 (individual or group) 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.

(2) Rounding. Only the total minutes of the specific billing category (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 billing category (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 service.

(3) Billable service time. Billable service time for Intensive and Extended SEMP is:

(i) time when the service provider is providing SEMP services as specified in this Subpart in support of the individual's supported employment /staff action plan; and

(ii) time when service provider is developing the supported employment staff action plan.

(4) Restrictions on billable service time.

(i) Allowable SEMP services provided without the individual present may be delivered when the individual is simultaneously receiving another direct Medicaid service. Allowable SEMP services provided with the individual present must not be delivered when the individual is simultaneously receiving another direct Medicaid service (except for Care Management).

(ii) Intensive and Extended SEMP cannot be delivered to an individual on the same date of service.

(5) Documentation.

(i) The service provider must maintain documentation and a monthly summary to show that an individual received SEMP services in accordance with their Life Plan and supported employment staff action plan.

(ii) For each continuous SEMP service session, the service provider must document at least one allowable service delivered during the SEMP service session.

(iii) The service provider must maintain documentation that funding is not available or not required from NYS ACCES-VR.

(iv) The service provider must report quarterly on Supported Employment (SEMP) data and related requested information in a form and format specified by OPWDD.

(6) Fee-setting. The fees for SEMP services are in 10 NYCRR Subpart 86-13.

- **Existing subdivision 635-99.1(v) is amended as follows:**

(v) Competitive Integrated Employment. Employment integrated in the general workforce, for which an individual is compensated at or above the applicable County, State, or Federal minimum wage[(whichever is greater)], but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.