

DRAFT RESPONSES
OPWDD ASSESSMENT OF PUBLIC COMMENT
Supported Employment (SEMP) ADM
November 17, 2023

Comment 1 - Regarding Section 1; Part A and B: The section goes into detail regarding the Minimum Wage requirement, there should be consideration of including greater specific details of Worksite Integration including supervisor not paid by SEMP; interacts with other workers, meets/serves customers in the broader community, etc.

Response 1 - SEMP services assist individuals in obtaining, maintaining, or advancing in self-employment or competitive, integrated employment in the general workforce. How an individual interacts with their supervisor (not paid by SEMP), interacts with other workers, etc. is unique to the individual and the type of job they hold. Therefore, this must be explored by the provider and isn't detailed in this ADM.

Comment 2 – The Minimum Wage Requirement for Hired Employment (page 2, B of ADM) states that “If the individual obtains a new job, the service provider must complete a new Attachment #1, Verification that Job Meets SEMP Criteria form or maintain all the information required on this form in their records for auditing and obtain written verification that the wage for the new job is at least minimum wage.” We are seeking clarification on the requirements for verification of minimum wage. Is it OPWDD’s intent that this form replaces the collection of paystubs or in addition to the collection of paystubs? Providers often have barriers to collecting pay stubs and see this form as an attestation by the agency which has confirmed all wage and employment information via this form.

Response 2 – No, it is not OPWDD’s intent that this form replaces the collection of paystubs or other documentation that the person earns at least minimum wage. While use of the form is not required, all the information on the form is needed to support a SEMP billing claim. A provider must maintain the information in their records and produce it on audit. The form is simply intended to help providers gather the appropriate information. Justification for the information required by the form (e.g., paystubs) must be attached to the form or retained by the provider. In Section 1 of the Verification that Job Meets SEMP Criteria Form, there is a question that asks what type of documentation demonstrates that the person is earning at least minimum wage and if it is attached. Providers are responsible for documenting that the person is earning at least minimum wage to bill SEMP.

Comment 3 – Regarding attachment #1, the wage verification needs clarification. It asks if there is wage documentation attached and gives the option for “no.” Therefore, is the form alone sufficient or does a pay stub need to be attached?

Response 3 – No, it is not OPWDD’s intent that this form replaces the collection of paystubs or other documentation that the person earns at least minimum wage. While use of the form is not required, all the information on the form is needed to support a SEMP billing claim. A provider

must maintain the information in their records and produce it on audit. The form is simply intended to help providers gather the appropriate information. Justification for the information required by the form (e.g., paystubs) must be attached to the form or retained by the provider. In Section 1 of the Verification that Job Meets SEMP Criteria Form, there is a question that asks what type of documentation demonstrates that the person is earning at least minimum wage and if it is attached. Providers are responsible for documenting that the person is earning at least minimum wage to bill SEMP.

OPWDD will remove the “No” option from the form.

Comment 4 - On Attachment #1 the Job integration standards section seems unnecessary. It seems that if this is provided in Innovations trainings, the definition of integrated is in the ADM, this just creates more work for the provider.

Response 4 – The information listed in Attachment #1, Verification that Job Meets SEMP Criteria is required to support a SEMP billing claim and must be produced on audit.

The minimum standards to bill SEMP are:

1. the person is earning at least minimum wage (or for example, they are in a tipped position that does not require payment of minimum wage)
2. the job is in an integrated setting. The criteria can be met in a number of ways, however, the person must be working alongside people with and without disabilities
3. funding is not available from another source
4. whether it is a group or individual placement.

Given that competitive integrated employment is the goal for people in SEMP and that an integrated job is an essential element to support and justify a provider’s billing, it is included in the form and is information that must be maintained by the provider.

Comment 5 – In section 3; Part B: “Extended SEMP services are limited to 365 days from the SEMP enrollment anniversary or up to 200 hours without prior approval”, the language is confusing regarding continuation of service past the first year. If the individual remains employed, and continues to require the Extended SEMP service, the 200 hours restarts at the anniversary date.

Response 5– The word annually has been added to the ADM for clarification. The paragraph will read as follows:

“If the individual is employed, Extended SEMP services are limited to 365 days from the SEMP enrollment anniversary or up to 200 hours annually without prior approval. Additional Extended SEMP hours must be requested and approved by OPWDD’s Central Office Employment Unit to provide more than 200 hours in the 365-day period beginning on the anniversary day of the individual’s SEMP enrollment date and annually thereafter. The service provider must stop billing for Extended SEMP services if they exceed 200 hours within the SEMP enrollment year and do

not have additional hours approved.”

Comment 6 – A section regarding combination of services may be helpful. Something that states what services can and cannot be combined with SEMP.

Response 6 – There are no daily combination limits on billable service time with regards to SEMP. This will be addressed in OPWDD trainings and materials.

Comment 7 - We are seeking clarification of training requirements for Self-Directed SEMP (page 7 of ADM) states “Self-Directed Services must adhere to OPWDD and Department of Health regulations related to staff training requirements and allowable SEMP Services. We are unclear as to what training requirements are necessary for Self-Directed SEMP services and if OPWDD could provide more clarification.

Response 7 – All staff providing and billing for SEMP services must meet the requirements in Section 1, Paragraph K of the ADM, including self-hired self-directed staff.

For clarity, OPWDD will remove the words “and Department of Health”. The paragraph will now read as follows:

“Self-Directed SEMP may be direct provider purchased, agency supported or self-hired. Self-Directed Services must adhere to OPWDD regulations related to staff training requirements and allowable SEMP services.”

Staff training requirements are listed in the SEMP ADM, Section 1, Paragraph K, L and M.

Comment 8 - The ADM states that “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.” In what scenario(s) can the total minutes for each billing category be “rounded up”?

Response 8 - Rounding for units of service is permitted based on the criteria outlined in 14 NYCRR 635-10.5(af)(2). OPWDD will provide specific examples during the upcoming training.

Comment 9 - Regarding attachment #1 section N, Is it correct to deduce from this section that a provider will round up once if the minutes are in the range of 10-14 minutes, like in HCBS Pre Voc, and if there are other periods of service in the same day that are less than 15 min, these are added all together for a final billing?

Response 9 - Rounding for units of service is permitted based on the criteria outlined in NYCRR 635-10.5(af)(2).

Comment 10 - Will there be more guidance on examples of successful self-employment across the state? Attachment #1 seems redundant as these questions are answered via the quarterly reports.

Response 10 – Yes. During the OPWDD SEMP Trainings, there will be discussion about self-employment. Attachment #1 is for the provider’s records and is not submitted to OPWDD.

Comment 11 – On Attachment #5, for ease of use the name should be the first column. If there is a TABS id is SSN and DOB necessary? Could the DDRO region/name column be combined and be drop downs to simplify the spreadsheet?

Response 11 – OPWDD is developing a portal for the provider to enter this information, and we will consider some of these options. TABS, SSN and DOB are required to identify the person between data systems. This information is only entered once by the provider.

Comment 12 - Regarding attachment #1 section G, In the area of compliance there may be a need for more detail. How to actually write instructions for staff on who gets to bill for what such as many staff attend a Life Plan meeting?

Response 12 - In Section G of the SEMP ADM, OPWDD will remove the last sentence: “Multiple staff must not bill for the same individuals during the same exact period.” This should provide clarification as to when staff can bill. Providers are responsible for directing and guiding their staff. This will be further discussed in SEMP trainings.

Comment 13 - Regarding attachment #1 section M, this statement – *Self Directed Services must adhere to OPWDD and Department of Health regulations related to staff training requirements and allowable SEMP services.* We are unaware of the Department of Health regulations related to staff training – please clarify what these are and/or where they can be found on the DOH website?

Response 13 - For clarity, OPWDD will remove the words “and Department of Health” from page 7 section M of the ADM. This sentence will now read as follows:

“Self-Directed Services must adhere to OPWDD regulations related to staff training requirements and allowable SEMP services.”

Comment 14 - Page 4. F (i)(ii): Billing for Staff Training Time; and Page 7, L. Staff Training Billing Requirements. The fear here is that, as written, providers and auditors may interpret the instructions differently. Please attempt to clarify the requirements, possibly using examples.

Response 14 - OPWDD will address this in upcoming trainings.

Comment 15 - Page 7, L: Please explain the 5-hour limit and include a statement regarding training that takes longer than 5 hours, is still limited to billing for 5 hours. Also, please clarify that the billing for the travel time to/from the training should be for the actual travel time.

Response 15 – For clarity, OPWDD added the words “in-person”. The paragraphs will now read

as follows:

“A SEMP staff person may bill for travel to, and attendance of, the OPWDD Innovations in Employment Supports Training. The SEMP staff person can bill up to five (5) hours per day for the in-person classroom training time, plus billing for travel time to the training, at the group fee for up to five individuals. If virtual then can bill up to 6 hours at the group fee for up to 5 individuals. (see F(ii) on page 4).

If more than one SEMP staff travels to and attends an OPWDD Innovations in Employment Supports Training, each staff person can bill up to 5 hours per day for the in-person classroom training time, plus billing for travel time to the training, using the group fee for up to five individuals.”

Comment 16 - Page 4. G. Billing for Meetings: Examples may be helpful to bring clarity to these instructions. Please include an example of a Life Plan meeting.

Response 16 - In Section G of the SEMP ADM, OPWDD will remove the last sentence: “Multiple staff must not bill for the same individuals during the same exact period.” This should provide clarification as to when staff can bill.

The following allowable services are listed in 14 NYCRR Subparts 635-10 & 635-99:

(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;

(xiv) meetings, reports, and communication with OPWDD staff regarding progress and outcomes for individuals receiving SEMP services

Comment 17 - Page 10. C Additional Hours of Extended SEMP Services: The second level review threshold should be increased to requests for an additional 200 hours, as the 100-hour threshold request is very routine.

Response 17 - OPWDD has reviewed and considered, however, the 100-hour threshold will remain.

Comment 18 - Page 11, A.1. Service Documentation: 5. Documentation if the Individual is present. Include “(including remote presence)”.

Response 18- Remote presence cannot be added at this time. OPWDD will consider in the future.

Comment 19 - While the proposed revisions are positive, they will require many changes to the provider’s service documentation, necessitating updates to Electronic Health Record software,

which can take several months to complete. These updates are out of the provider's control but significantly impact their ability to comply with the service documentation requirements and ability to bill for service delivery. SEMP employees will also need training in the new requirements, and providers will need to update their auditing protocols to ensure effective compliance monitoring. Given that there will need to be time provided to OPWDD to review and respond to stakeholder comments on the ADM, it is reasonable to expect that this ADM will not arrive until the end of August at the earliest. The proposed SEMP regulations and this ADM are set to become effective at the start of November, giving providers and vendors, at best, two months to get this all accomplished. Thus, we ask OPWDD to make the effective date of the ADM the start of 2024 at the earliest.

Response 19 - The planned effective date will be effective January 2, 2024.

Comment 20 - The expanded allowable services will be beneficial towards achieving employment outcomes. The expanded allowable services will also likely result in requests for additional hours within a year, possibly triggering the second-level review by the Director of the Employment Unit at Central Office. We hope the Director will consider how the expansion of allowable services has impacted what is needed as requests are made.

Response 20 - This will be one of the factors considered during second-level approval.

Comment 21 - Additional training on planning, managing and delivering the new allowable SEMP services would be valuable. We are seeking clarification on how these new allowable services should be documented.

Response 21 - OPWDD will conduct SEMP Trainings. However, documentation requirements will be the same as all other allowable SEMP services.

Comment 22 - While we understand the value of planning and projecting the usage of hours when requesting additional Extended and Intensive hours, we are hopeful that the four-week standard in the ADM is a best practice and will not result in the denial of requests.

Response 22 – Yes, this is best practice to assure that providers receive approval before their hours are expended and they can provide a continuity of service to the individuals. Requests are not approved or denied based on the submission date, but rather on the justification.

Comment 23 - Chapters of The Arc New York have reported challenges obtaining documentation from ACCES-VR if a person is denied services. This is documentation that may support the fact that funding from other sources was requested and denied; any assistance in getting ACCES-VR to provide this consistently would be appreciated. The changes with the ADM represent an opportunity for OPWDD to communicate this need to ACCES-VR.

Response 23 - The new ADM has a list of different types of documentation proving that someone has not be able to receive services from ACCES-VR. Getting a document from ACCES-VR is NOT

the only way to demonstrate that a person has received services. Additionally, providers seeking Intensive SEMP Services to develop a job for an individual should consider ETP if there is a concern that ACCES-VR (or IDEA funding) was never pursued. Following is the section listing the types of documentation.

“Individuals are eligible for Intensive SEMP services as specified in 14 NYCRR 635-10.4(j)(5), only if all other funding sources have been exhausted. The provider must have written documentation that funding from other sources was: requested and denied; received and used; or is not available for SEMP services. Examples of this documentation may include, but are not limited to:

- The closure date of the ACCES-VR case;
- A form/letter/communication from ACCES-VR that services are not available or would be better provided by OPWDD;
- A note in the individual’s Staff Action Plan, Medicaid Care Manager’s records, Life Plan/Individualized Service Plan, or other SEMP notes file describing why the individual did/did not receive ACCES-VR services;
- If the individual participated in OPWDD’s Employment Training Program (ETP), a copy of the letter of agreement between OPWDD and ACCES-VR. The letter of agreement clarifies that individuals receiving ETP, Prevocational Services or Pathway to Employment Services are not required to first receive services from ACCES-VR; or

If an individual participated in Enhanced Supported Employment (ESEMP), a copy of the letter of agreement between OPWDD and ACCES-VR.”

Comment 24 - The ADM references “Enhanced Supported Employment (ESEMP).” Several comments were received inquiring about this service. Some additional information about the history of this service may be valuable to those newer to employment services.

Response 24 - This service is no longer available. Please contact our technical assistance email employment.vocational.services@opwdd.ny.gov if there is a specific question.

Comment 25 - Explanation behind a change in service documentation elements from ADM 2016-01 is requested. The proposed ADM includes “Date the service was documented” (Element 10), removing the specific requirement of the signature of the SEMP staff delivering the service (Element 9 in ADM 2016-01). This change may have been implemented to condense the elements since Element 9 covers the verification of service provision by the staff person delivering the service, rendering the additional previous signature requirement unnecessary. While this does not appear consequential, the rationale behind this change would be valuable to understand, given that this is a compliance standard tied to payment for services.

Response 25 - OPWDD will add language as noted below to clarify the requirements:

“9. Verification of service provision by the staff person delivering the service. Either a signature or initials must be provided. Initials are permitted if a “key” is provided that identifies the title, signature, and full name associated with the staff initials.”

Comment 26 - On Attachment #3 it is unclear on page 2 what “completed ACCES-VR” is. I suggest clarifying this. On page 2 under I suggest earning “at least” minimum wage. On page 3 under E could there be an option to attach a document with this info rather than having to enter it manually (i.e. a resume)? Similarly page 8 also asks for this information a second time.

Response 26 - OPWDD will change “completed” ACCES-VR or ETP to “previously utilized” ACCES-VR Supported Employment or ETP.

OPWDD will add “at least” to minimum wage and allow the provider to attach a resume that contains the required information rather than manually enter this information. The information on Page 8 (Section IV) is required only if the provider is requesting additional hours, and this section allows the provider to justify that request. The only other section of the form required when requesting additional hour is Section I which asks for information about the person such as name, TABS ID, current service enrollment, etc.

Comment 27 - Our belief remains that if an individual successfully completed ACCES-VR before entering OPWDD SEMP and subsequently became unemployed, they would remain eligible for Intensive SEMP and would not have to re-apply for ACCES-VR. (i.e., the individual would not have to re-apply for ACCES-VR each time they become unemployed). While we do not believe the ADM indicates this, we ask that OPWDD confirm or clarify this understanding.

Response 27 - ACCES-VR and OPWDD have agreed that if a person has previously received ACCES-VR Supported Employment or ETP, there is no requirement that they receive ACCES-VR services to replace a lost job.

In the SEMP ADM, Section 3, Paragraph D: Job Loss: If an individual receiving Extended SEMP services becomes unemployed (and they are not expected to return to that employer), the service provider may continue to provide Extended SEMP services for no more than 120 days from the date the job was terminated provided that there are authorized hours remaining either through the first 200 hours of Extended SEMP OR through authorized additional hours of Extended SEMP. If the 120 days moves the individual into a new anniversary year, billing for Extended SEMP may continue until the 120 days are completed.

During the 120-day period, the service provider may:

- Apply to ACCES-VR for ACCES-VR services;
- Provide the individual with SEMP supports, such as person-centered employment planning, modified job-related discovery, addressing impediments to employment, or addressing soft skills and job retention skills;
- Use OPWDD Extended SEMP services to help the individual obtain a new job; and/or
- Submit a request to OPWDD’s Central Office Employment Unit for approval of hours to provide Intensive SEMP for the individual or apply to the

Employment Training Program (ETP).

If the individual remains unemployed after 120 calendar days, the service provider must stop billing for Extended SEMP services on the 121th day.

Comment 28 - Regarding Section 3, part A, specific criteria from the regulation should be included as it is unclear what criteria qualifies the employment. Additionally, the ACCES-VR “are not eligible to receive ACCES-VR extended services by agreement with OPWDD and ACCES-VR, therefore, no other funding is available” is confusing as it seems to say that if the service is required, no funding is available.

Response 28 – Please refer to 14 NYCRR 635-10.4(j)(5)(ii)(a).

For clarity, OPWDD will remove the words “no other funding is available” in the ADM. The paragraph will now read as follows:

“Individuals eligible for and enrolled in OPWDD SEMP Waiver services who require extended (“follow along”) services are not eligible to receive ACCES-VR extended services by agreement with OPWDD and ACCES-VR.”

Comment 29 - The “Intensive SEMP Eligibility and Other Funding Sources” section states that individuals are eligible for Intensive SEMP services at the closure of the stabilization date of the ACCES-VR case. It is unclear if this means individuals will switch to Extended SEMP at stabilization or if that will not occur until case closure. The standards will necessitate that providers have a more formal process of documenting when individuals are directly admitted to Extended SEMP. If these expectations can be discussed in an upcoming training with suggestions on acquiring the best possible documentation, that would be valuable.

Response 29 – The word stabilization date has been removed. OPWDD is working with ACCES-VR on finalizing this information. When OPWDD has more information, we will provide updated guidance and/or training to providers.