



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
310 Great Circle Road
NASHVILLE, TENNESSEE 37243

Date: July 16, 2015
Memo To: DIDD HCBS Waiver Providers
From: TennCare and the Department of Intellectual & Developmental Disabilities
Re: Billing for Supported Employment

The purpose of this memo is to remind you of longstanding federal requirements pertaining to Supported Employment services, and to ensure that Supported Employment services delivered under the State's Section 1915(c) Home and Community Based Services Waivers are provided in accordance with those requirements, as well as the federal HCBS Settings Rule and the State's approved Section 1915(c) waiver applications.

1. **Supported Employment services cannot be billed for *vocational* services provided in a facility based setting.** This is true even if the person is earning a competitive wage in a sheltered work setting.

Waiver funding is **not** available for the provision of *vocational* services delivered in facility based or sheltered work settings, where individuals are supervised for the primary purpose of producing goods or performing services. If services in the facility-based or sheltered work setting are *vocational*, and not *pre-vocational* in nature, waiver services **cannot** be billed or reimbursed.

This means that waiver services should **never** be billed for the time that a person is engaged in *vocational* activities in a sheltered work setting, even if two (2) hours of integrated Supported Employment services have been provided for that day. In order to bill under *any* of the Employment or Day Services categories, all services provided must comport with all applicable federal requirements and therefore cannot include *vocational* services delivered in a facility-based or sheltered work setting.

The distinction between *vocational* and *pre-vocational* services is that *pre-vocational* services, regardless of setting, are delivered *for the purpose* of furthering habilitation goals such as attendance, task completion, problem solving, interpersonal relations and safety, *as outlined in the individual's person-centered ISP*. The ISP should clearly identify the person's *individualized* habilitation goals AND should also clearly identify that the intent of the service is to develop needed skills to pursue integrated community based employment at or above the minimum wage. Service notes and ongoing planning

activities should clearly document progress toward achieving those goals and efforts toward transition to more integrated and competitively compensated employment options. A general statement that services are *pre-vocational* in nature will not suffice.

Further, *pre-vocational* services should not continue indefinitely. Consistent with 2011 CMS Guidance on Employment Services¹ and the State's approved 1915(c) waivers (see excerpt attached), and as advised during "Changes to the State's HCBS Waivers" webinars conducted in the spring:

"Facility-Based Day Services may be provided:

- ***Only when the person supported needs time-limited pre-vocational training and such training is not available on the job site.***
- ***For persons who, through the person centered planning process, choose to participate in a facility based program in order to-***
 - ***Focus on the development of individualized and specific skills that will support them in achieving employment and/or community living goals. "***

As a reminder of information also provided during the aforementioned webinars: **Effective July 1, 2016, Facility-Based Day Services will be evaluated and authorized for 6 month periods.**

2. ***Pre-vocational services delivered in a facility-based setting are to be billed under Facility-Based Day services. Pre-vocational services are not to be billed under Supported Employment services unless the individual has participated in at least two (2) hours of Supported Employment during that day.***
3. ***If a person's pre-vocational services involves paid work in a facility-based or sheltered work setting and the person is earning a wage at or above 50% of the minimum wage, it is expected that the ISC or Case Manager and Circle of Support are working with the person to pursue employment in integrated, competitive work settings.***

Independent Support Coordinators/Case Managers and providers across all three waiver programs are responsible to ensure that Supported Employment is only authorized for persons who are engaged in either small group or individualized integrated employment in the community, and that *pre-vocational* Day Services are only requested, provided, and billed in accordance with these requirements.

If you are a provider billing under Supported Employment for any *vocational* services provided in a sheltered work setting, if you are billing the Supported Employment per diem for service days that do not involve an individual participating in at least two (2) hours of either small group or individualized integrated employment in the community, or if you are billing Facility Based Day Services for activities that are *vocational*, rather than *pre-vocational* in nature, you are obligated to notify the responsible ISC/Case Manager immediately as ISPs and related cost plans must be amended as appropriate. Failure to provide and bill services per state and federal requirements described above could result in recoupment of payments made for such services as well as potential False Claims Act violations. TennCare will be initiating targeted Utilization Review audits of Supported Employment services to ensure compliance with these requirements.

¹ Available at <http://downloads.cms.gov/cmmsgov/archived-downloads/CMCSBulletins/downloads/CIB-9-16-11.pdf>

ISCs and Case Managers should also ensure that all requirements pertaining to *pre-vocational* services are clearly documented in the ISP, when such services are needed by the person to pursue individual employment goals.

TennCare and DIDD are currently working on waiver amendments that will establish an hourly rate for Individual Supported Employment services, and further clarify expectations regarding these important benefits. The amendments will be posted for public comment prior to their submission to CMS.

Please direct any questions regarding this memo to Amy Gonzalez at Amy.Gonzalez@tn.gov or Lauren Pearcy at Lauren.Pearcy@tn.gov.



Michelle Morse Jernigan
Deputy, TennCare LTSS Quality & Administration



Jordan Allen
Deputy Commissioner, DIDD

Excerpt of approved 1915(c) Waiver Applications

Section C-1/C-3 Service Specifications:

Employment and Day Services:

Employment and Day Services shall mean individualized services and supports selected by the person supported, that help the person to seek employment and work in competitive integrated settings and engage in community life, based on his or her individualized needs and preferences and as reflected in the person-centered ISP, and to acquire, retain, or improve skills in the area of self-care, sensory/motor development, socialization, daily living skills, and communication, in order to pursue and achieve his or her personal employment and/or community living goals.

All individual employment and day services goals and objectives, along with needed supports shall be established through the person-centered planning process and documented in the person-centered ISP and shall include opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources, as applicable based on the needs and preferences of the individual.

Employment and Day Services shall be provided as specified in the person-centered ISP in order to support the individual's employment and/or community living activities, or the development, retention, and improvement of skills necessary to achieve employment and/or community living goals. Day Services may be provided to persons as a separate service where permitted under service specifications described in this waiver.

Supported Employment shall be the preferred option for all persons supported that are not of retirement age, based on each person's needs and preferences, and shall be provided in accordance with the following requirements:

- a. A job coach employed by the Day Services provider shall be on-site at the work location and shall support the person; or
- b. The Day Services provider shall oversee the person's supported employment services including on-site supervisors, and shall have a minimum of one contact per week with the person including at least one contact per month at the work site, and shall have a job coach employed by the Day Services provider who is available on-call if needed to go to the work site.

Community-based Day Services shall support each person's full engagement in community life, based on his or her individualized needs and preferences and as reflected in the person-centered ISP, and the acquisition, retention, or improvement of skills in the area of self-care, sensory/motor development, socialization, daily living skills, communication, and social skills in order to pursue and achieve his or her personal employment and/or community living goals. This includes assisting the person to build relationships and natural supports.

Community-based Day Services are designed such that the person spends the majority of his/her time, while participating in this service, actively engaged in activities in the community. Supervision, monitoring, training, education, demonstration, or support is provided to assist with the acquisition of skills in the following areas: leisure activities and

community/public events, utilizing community resources (e.g. public transportation), acquiring and maintaining employment, educational activities, hobbies, unpaid work experiences (e.g. volunteer opportunities), and maintaining contact with family and friends.

Day Services may be provided in a facility setting only when selected by a person supported who needs time-limited pre-vocational training, when such training is not available on the job site, and to persons who, through their person-centered planning process choose to participate in a facility based program in order to focus on the development of individualized and specific skills that will support them in pursuing and achieving employment and/or community living goals. Facility-based day services must allow for opportunities for all persons supported to be engaged in the broader community when appropriate and be specified in the person-centered ISP. Opportunities to transition into more integrated settings, including competitive integrated employment, will be evaluated on at least an annual basis...

Frequently Asked Questions on Supported Employment

1. Can I still bill for FB Day Services for people who engage in Sheltered Work at a FB Day site for their 6 hour day?

Answer: It depends on whether the services are *vocational* or *pre-vocational* in nature. Waiver funding is **not** available for the provision of *vocational* services delivered in facility based or sheltered work settings, where individuals are supervised for the primary purpose of producing goods or performing services.

If the services are *pre-vocational*, the appropriate billable service is FB Day Services (and not Supported Employment) unless the person is engaged in competitive integrated employment (individual or small group) for at least two (2) hours that day AND a total of six (6) hours of Day Services are provided, in which case, the Supported Employment per diem may be billed.

In order to be *pre-vocational*, there must be clearly-defined *pre-vocational* goals in the ISP that are specific to the needs of that individual and that will help him or her develop skills that are necessary to obtain and maintain competitive employment in an integrated setting, and the *pre-vocational* services must be time-limited. Service notes and planning activities should clearly document progress toward achieving those goals and efforts toward transition to more integrated and competitive employment options. A general statement that services are *pre-vocational* in nature will **not** suffice.

2. If *pre-vocational* goals are not achieved, is there a potential that recoupment could occur for billing FB Day for services delivered in a Sheltered Work setting?

Answer: *Pre-vocational* goals and action steps must be evaluated monthly by the Day Services provider and reviewed by the ISC during their monthly review. If the person is not making progress, action steps and/or strategies should be adjusted as appropriate. Service notes and planning activities for *pre-vocational* services should clearly document progress toward achieving those goals and efforts toward transition to more integrated and competitive employment options. Where progress is not being made, we would expect to see changes in the action steps and/or strategies with the intent of achieving progress.

Recoupments will be made in any instance where Supported Employment is billed for services provided in a sheltered setting, except unless the person is engaged in competitive integrated employment (individual or small group) for at least two (2) hours that day AND a total of six (6) hours of Day Services have been provided, in which case, the Supported Employment per diem may be billed.

Providers may also be subject to recoupment if it is determined that the services are *vocational*, and not *pre-vocational* in nature, e.g.,:

- There are no clearly-defined *pre-vocational* goals in the ISP that are specific to the needs of that individual;
- The ISP is not clear that the purpose of *pre-vocational* activities is to help the person develop skills that are necessary to obtain and maintain competitive employment in an integrated setting;

- The *pre-vocational* services are not expected to be time-limited; or
- Service notes and planning activities do not clearly document progress toward achieving those goals and efforts toward transition to more integrated and competitive employment options. Where progress is not being made, we would expect to see changes in the action steps and/or strategies with the intent of achieving progress.

3. What would be an example of a good ISP goal relative to this?

Answer: Goals and action steps must be individualized based on the skills that are needed by that person in order to obtain and maintain competitive integrated employment. Goals should never be identified to support approval or continuation of facility-based *pre-vocational* activities, but rather, only when specific skills are needed by that individual in order to achieve competitive integrated employment.

One example of an outcome could be:

"Tommy has a job working for competitive wages in his community."

Action Steps might include:

1. Tommy will stay actively involved in work activity for a period of one hour continuously to increase competitive advantage in preparation for community based job opportunity.
2. Tommy will learn how to observe employee break time by clocking in and out for break.
3. Tommy will learn how to understand his weekly work schedule and record it in his calendar.
4. Tommy will learn how to ensure his paycheck is correct according to production.

Action steps for discovery might be...

1. Tommy will develop a resume he can use looking for a job.
2. Tommy will review the "want ads" in his community and document the jobs for which he is interested in applying.

Then the strategies and progress columns will describe how pre-vocational services could help to develop these skills and how we will know when progress is being made. Of importance, there should be time frames in the last column on the new ISP template, Section B to ensure that pre-vocational services are time-limited and expected to help move the person toward achieving their employment goals.