

VRS Extended Employment Rule Revision Advisory Committee

SESSION NOTES for April 21, 2015

Convened by Minnesota DEED Vocational Rehabilitation Services

Meeting Details

Date: Tuesday, April 21, 2015

Time: 10:30 am – 3:00pm

Location: ProAct, Eagan, MN 55121

Chair: John Sherman, VRS Extended Employment Program Director

Facilitator: Holly Johnson, Lanterna Consulting, Inc. contracted through Management Analysis & Development, Minnesota Management and Budget

Advisory members (or alternates) in attendance: *Laura Bealey, Tim Dickie, Steve Ditschler, Jeremy Gurney, Tim Hammond, Nancy Huizenga, Holly Johnson, Karen Johnston, Anita Kavitz, Wendy Keller, Clayton Liend, Rod Pederson (via phone until 2pm), Dean Ritzman, John Sherman, and David Sherwood-Gabrielson*

Guests: *Leann Kleaver, VRS Counselor, Dan Mills (joined at noon)*

Key Perspectives for EE Rule Revision Work

Throughout the process, advisory members are asked to keep a system wide view for the EE Rule Revision topic discussions. The five key perspectives are summarized as:

1. **Advocacy Organizations**
2. **Public Partners**
 - Local level - counties, municipalities, etc. e.g. Ramsey County
 - State level - agencies, etc. e.g. Department of Human Services (DHS), Minnesota Olmstead Plan
 - Federal level
3. **Extended Employment (EE) Providers**
4. **EE Workers**
 - Currently working
 - Eligible but not currently working
5. **VRS - EE Rule 'Owner' and Accountable Agency**
 - VRS EE team: John Sherman, Anita Kavitz and Wendy Keller
 - Other DEED and VRS staff

Advisory Session Objectives:

1. Working session focused on gathering advisory input on:
 - a. Unearned capacity within a new EE program funding model
 - b. Building incentives for innovation and outcomes
 - c. Fostering greater employer participation in supported employment
2. Gather key stakeholder perspectives and input to assist Minnesota DEED Vocational Rehabilitation Services in the EE Rule Revision process.
3. Continued exploration and discussion related to ADA, Olmstead and the Workforce Innovation and Opportunity Act (WIOA) and their combined implications for Minnesota's Extended Employment Rule revision.

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Welcome and Opening Remarks

The meeting was called to order. The facilitator Holly Johnson provided a brief overview of the meeting objectives and agenda.

Follow-up and Updates since the March 2015 Meeting

John Sherman provided a number of updates as follows:

Item #1: Review of the April 6, 2015 Mid-Minnesota Legal Aid Minnesota Disability Law Center's letter regarding the Olmstead Plan Revisions Dated March 20, 2015.

John reviewed the concerns outlined in this letter with the Advisory.

Item #2: Workforce Innovation and Opportunity Act (WIOA) draft regulations released. John provided an overview of highlights from the 273 pages of the original VR section utilizing a two-page extract from pages published in the proposed federal regulations for vocational rehabilitation posted on April 16, 2015. The draft regulations are open for a 60 day public comment period ending on June 15, 2015.

The extract outlines a few items impacting VR and EE including:

- The addition of language on self employment.
- Significant changes in definition of integrated settings and integration including the following: "*We believe the focus of whether the setting is integrated should be on the interaction between employees with and without disabilities, and not solely on the interaction of employees with disabilities with people outside of the work unit.*"
- Language on 'Opportunities for Advancement'
- Last item referenced in the extract notes that counselors can place individuals in a non-competitive employment if it leads to competitive employment in six months from placement. No more than six months plan in non-competitive employment.

John noted that there are also many changes in the area of transition pre-employment services in the draft regulations. Most sections effecting transition youth were effective immediately including the requirement that 15% of case services be applied to transition youth. Steve Ditschler noted that some WIOA policies related to Workforce boards will become effective July 1, 2015. Final WIOA regulations are expected to become effective July 1, 2016.

The draft WIOA regulations present major changes across the system including a movement to a uniform set of performance standards blended with the Department of Labor. Failure to meet standards will result in a loss of funding. There are also significant reporting implications. The standards language closely parallels what is

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occurring simultaneously with the new Medicaid requirements for Home and Community Based Services (HCBS) and will require a system linkage between DHS and VRS.

David Sherwood-Gabrielson stated that The Minnesota Employment First policy calls for DEED, DHS and MDE to adopt the policy and its core based on an informed choice as outlined by the Department of Justice. These three agencies will need to work together to fulfill the policy and develop a more coherent and common approach for understanding and practice. David reminded the committee that ADA is the legislation underpinning it all. Karen Johnston asked about the origin of WIOA to which John Sherman responded that the legislation came out of the Education Waiver Committee and was sponsored by Iowa US Senator Tom Harkin leader (now retired), a transition youth and disabilities champion.

Item #3: Status on the funding bills on EE Basic as of 4/21/2015

On House File 843 General Fund \$2,873,000 plus the Workforce Development Fund \$10,830,000 for a total of \$13,703,000 as increase 6.41%.

On Senate File 2101 General Fund \$5,745,000 plus the Workforce Development Fund \$7,580,000 for a total of \$13,325,000 for an increase of 3.90%

Current with one time General Fund \$5,995,000 plus the Workforce Development Fund \$6,830,000 for total of \$12,825,000.

Both funding bills have added some monies however both bills have removed transformational and/or transitional funding from their proposals. Karen Johnston said that MOHR has been a strong proponent for the addition of transformational funds to help make the Olmstead changes possible and were disappointed that no such monies are included in the bills. As a positive item, she noted that the 'temporary dollars' received last year were made more 'permanent'. John stated that there is no language for rates increase in either bill.

David Sherwood-Gabrielson said that the Interagency Employment Panel for the Minnesota Olmstead Plan provided recommendations for significant training and technical assistance which were not included in the Governor's budget.

Current EE policy language in the Senate includes the establishment of two funds, the definition of integrated settings, and Courage Kenny language. Language is still being updated and DEED legislative people are working on remaining issues.

Item #4: Review and refinement of March 17, 2015 EE Rulemaking Advisory Committee Recommendations. Upon discussion, the recommendations were approved for posting.

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Addressing Unearned Capacity within the Extended Employment Program

John distributed a presentation entitled 'Unearned Capacity Within the EE Program' which provided the EE Rule Advisory Committee with the following information:

268A.15

Subd. 8.Funding authority.

State grant funds under this section and section [268A.13](#) shall be available for 24 months following the end of a fiscal year to allow for the submission of final grant data reports, the completion of audit adjustments of payments to grantees including grantee appeals of final audit adjustments, and the redistribution of remaining balances in grant accounts to other grantees who meet or exceed their contracts with the department for that fiscal year.

3300.2045 WAGE LEVEL INCENTIVE

- All funds not paid out to providers as a result of underproduction and all funds repaid to the department by providers as the result of final audit adjustments must be used as a performance fund for extended employment providers whose workers' wages meet or exceed the federal minimum wage.
- The incentive fund must be distributed to each extended employment provider based on the proportionate share of hours of work where the statutory minimum or a higher wage was paid. The ratio is the provider's hours divided by the total hours meeting minimum wage reported by all extended employment providers.
- The incentives are calculated and paid separately for the center-based fund and the community support fund.

Characteristics of Wage Incentive

- Does not differentiate competitive or comparable wages - only based on hours at, or above, minimum wage
- Differs by sub-program (in SFY 2013, \$840,384 for CSF; \$57,455 for CBE)
- Varies depending on amount not earned in a given year (\$90,116 in SFY2001 versus \$897,839 in SFY2013)
- Originally intended to be low – a way to clean up loose ends

Wage Incentive: What Was Intended

- Tie up loose ends from reconciliation and audits
- Provide a performance bonus for increased wages
- Benefit to both over and under producers
- Dollars do not return to general fund
- Never really expected to be significant funding

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- Always was going to lag because of time needed to audit and reconcile which could be lengthened with appeals
- Simple, easy to understand and transparent method

Wage Incentive Current Issues and Problems

- Much larger payout since the 'Great Recession' - 2013 was about 7% of actual contracts versus 1% in 2001
- Minimum wage rates are increasing: both in the recent past and in the near future
- Does not mean comparative or livable wages
- Will be less of an incentive as movement to competitive employment continues
- Less of an incentive as non-competitive funding is reduced

Wage Incentive Questions

1. Is it effective anymore? Does it move individuals to higher earnings, livable wages?
 - Clayton Liend responded that as an EE provider, these monies allow them to pay everyone minimum wage.
 - Several EE providers said they do not use these monies to make decisions because they vary, cannot be counted upon and are difficult to budget however the providers noted that these incentives help "keep us afloat".
2. What other ways could it be used to reward performance?
 - Anita Kavitz recommended basing the incentive on audited hours rather than reported hours as currently written.
 - Steve Ditschler asked if incentive dollars might be better spent on Supported Employment or used to support system transition and transformation from non-competitive to competitive employment.
 - The committee discussed focusing the incentives to support the desired directions expressed in the legislation.
3. Are there simpler and faster ways to redistribute unearned funds?

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Some Options for Wage Incentive

1. Pay for reported overproduction in supported employment
 - Tim Dickie shared that he likes the idea however they are one time dollars and you can't support capacity based on one time dollars going forward.
 - Tim Hammond asked if there was better language to replace 'overproduction' and offered 'unreimbursed services'.
2. Make payments based on average wages in supported employment
 - Nancy Huizenga advised that this would benefit from a review of 'average wage' to understand the potential program implications.
3. Make payments based on number of persons entering supported employment for the first time
 - Tim Hammond noted that this option seems "Olmstead friendly"
 - Nancy Huizenga said you cannot assume the movement is purely from Center Based Employment
4. Reward for persons earning above SGA
5. Pay on the number of individuals currently working in non-competitive employment who leave and move solely into supported employment
 - Tim Dickie cautioned of potential for abuse by providers who might place people in center based employment in order to benefit from moving them into supported employment.
6. Provide one time technical assistance grants to assist in transitioning non-competitive supports to competitive supports
 - Karen Johnston likes this idea and said it could really help with competitive employment supports.
7. Other ideas generated by the discussion...
 - consumers want to earn more dollars
 - pay for reported overproduction except for CBE
 - some wage incentive into the CE bucket with a wage minimum to help with stepladder
 - primary incentive should be for SE movement
 - distributed among EE providers
 - new hours, moving to SE who haven't been there before
 - what can we do to incent employers
 - can we provide incentives to fund natural supports
 - funding for short term job tryouts

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How should we redistribute unearned capacity in subsequent years?

Extended Employment is an outcome based funding system that moves dollars from those who don't earn to some other use. What should that use be?

Current Redistribution Model

- Uses unearned capacity from previous year if the unearned dollars are not tied up in new and expanded programs
- Unearned capacity varies from year to year
- Distributes by
 - RFP for unserved populations/areas
 - Rate increase
 - Both RFP and rate increase

Distributing Unearned Capacity

Current Rule Requirements Guidelines for Funding – Under 1%

MN Rule 3300.2035

Subp. 3. Application and guidelines for funding.

The department will make the form of application and guidelines for extended employment program funding available to all interested parties upon request. The department's guidelines shall include information on priorities for program funding, including target populations or geographic distribution of services, that will be addressed in the allocation of state grant funds.

Subp. 5. Annual survey.

The department shall conduct an annual survey of extended employment program needs for center-based, community, and supported employment, including the geographic distribution of these services. The results of this survey shall be considered in the department's application and guidelines for funding in subpart 3, and in the department's issuance of requests for proposals under parts [3300.2030](#), subparts 1 and 2, and [3300.2052](#), subpart 1, item C. This information shall be available to public officials, workers, providers, advocacy organizations, and social service agencies.

Subp. 4 (C) (2)

Allocation from underproduction shall be redistributed to other providers on the basis of guidelines established by the department for that funding year. The guidelines shall consider unmet needs of target populations and the geographic distribution of center-based employment, community employment, and supported employment.

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Distributing Unearned Capacity

Current Rule Requirements Guidelines for Funding – Over 1%

MN Rule 3300.2035

Subp. 4 (C) (3)

- When the allocation to be redistributed under department guidelines is at least one percent of the total allocation for either the center-based fund or the community support fund, the department shall issue a request for proposals under part [3300.2030](#), subparts 1 and 2.
- Alternatively, the allocation to be redistributed may, at the commissioner's discretion, be used to adjust the statewide uniform rates under subpart 6, item B.

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3300.2035 Subp. 6. B.

The statewide uniform work hour rates for center-based employment, community employment, and supported employment may, at the commissioner's discretion, be adjusted to account for changes in the Consumer Price Index (CPI).

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Distributing by RFP

- requires needs assessment which should deliver useful information but can be slow and costly in staff time
- Allows for targeting geographic areas, specific disabilities
- Reserves dollars while the new and expanded programs develop; dollars are 'unproductive' for a significant period of time

3300.2030 Subp. 3.

Exception to contract procedures and adjustment of state grant funds for new or expanded programs.

New or expanded programs under this part may be exempt from the contracting procedures in part [3300.2035](#), subpart 4, item A, and the adjustment of state grant funds in part [3300.2035](#), subpart 8, for up to three years.

- New and expanded providers only earn contract for actual production; there is no provision for development funds
- Requires separate accounting for expanded programs

Distributing by rate increase

- Executed at Commissioner's discretion - not required
- Distribution method is not specified - usually has been done proportionately across sub-program rates
- Technically linked to CPI – in practice it lags
 - Not enough funds
 - Competition with program needs
- Is uniformly distributed – not linked to regional costs or provider's actual change in operating costs
- Usually strong interest by providers to increase rates
- Addition to presentation: Increasing rates provides more income to providers, but results in less Minnesotans served by the same contracted funds.

Issues for RFP

1. There is no provision for expansion of existing programs; i.e. a successful existing program is not eligible to expand the existing program with new dollars
Note: unless it's desired expansion coincides with Department's goals of a competitive RFP.
2. Because contract dollars are earned only by production a New and Expanded program can face cash flow issues while developing the program.
3. New program providers may not understand the complexity of managing an outcome based funding model for extended supports.

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4. The needs assessment required for RFPs has been problematic to execute and costly given existing staff resources.
5. After three years there is no guarantee that the provider will continue to spend dollars on the targeted area/population that was originally funded, as the current rules do not require funds remain with the project after the “new/expanded” period.

Other potential ways of redistributing unearned capacity: Overproduction

- Potentially encourages CRPs to expand existing programs to grow to meet current needs by funding unpaid hours of work and providing a stable funding source for the future
- Does not tie up ‘unproductive’ dollars for as long a period as an RFP
- Funds unpaid hours of work
- Easy to administer, quicker and less complex
- The Department loses the ability to target funds to specific areas of unmet needs and to track the impact of targeted funds.
 - *Note: 16 counties in SFY2014 with fewer than 5 EE workers reported.*
- *Added to presentation:* Maintains a closed system – available only to current EE providers – maybe lacking innovation and creativity that new or grassroots organizations could bring to service delivery system to meet new or expanded needs of an evolving disability population.
- *Added to presentation:* Does not address the needs of persons with disabilities in the event that an existing provider leaves a service delivery area or goes out of business.
- *Added to presentation:* Does not address the needs of referral sources, i.e., VR or counties, in the event that an existing provider does not provide relevant or satisfactory services or chooses not to make necessary changes.

Other potential ways of redistributing unearned capacity: Time Limited

Transformation Grants

- Provides grants to providers to plan and execute programs to transform non-competitive employment to supported employment
- Would not necessarily be included in the base – when the grant was completed the provider would have needed to identify permanent supported employment funding
- Could be used with new and expanded grants to pay for initial program development including staff
- Might speed up transformation
- Adds complexity to administration of the program

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- Could use the unearned dollars that are currently used to fund the Wage Incentive bonus.
- *Added to presentation:* The unfunded authority exists in M.S. 268A.15, subd. 6, for innovation and expansion grants to providers to “encourage the development, demonstration, or dissemination of innovative business practices, training programs, and service delivery methods that (a) expand and improve employment opportunities for persons with severe disabilities who are unserved or underserved by the EE program; and (2) increase the ability of persons with severe disabilities to use new and emerging technologies in employment settings, and foster the capacity of providers and employers to promote the integration of individuals with severe disabilities into the workplace and the mainstream of community life.”

* *End of presentation*

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Recap of Advisory Committee Consensus and Key Points

The committee discussed the program responsibility to serve those already in the system along with bringing new entrants into the program. VRS staff noted that in some counties, insufficient resources do not allow counselors to write new plans.

John acknowledged the challenges for EE providers to engage with new individuals when the EE provider is moving into 'unfunded' territory or has already had to look for temporary fiscal fixes to bridge program years in order to manage capacity to current funding. Some EE providers do their best to "take everyone" if at all possible but it is not a sustainable financial model. The advisory committee agrees that the focus of the discussion is about finding a better, longer term solution to address overproduction.

The committee also discussed the potential of a one-time RFP to assist with training and technical assistance for EE providers that would be available for ~1-3 years to provide a safety net for change. Members agreed that while the goal is to help long-term EE workers move into competitive employment, that even if an individual moves, given the nature of their disabilities and other life conditions, individuals may return to Extended Employment/Supported Employment if they are unable to work without supports.

The EE Advisory Committee renewed their focus on the program priorities of:

1. Getting jobs for EE workers,
2. Keeping jobs for EE workers, and
3. Increasing wages for EE workers.

With those program priorities in mind, the Committee recommends targeting unearned dollars to support:

1. RFPs for new/unserved/underserved; supports for new plans
 - examine short term grant ideas
2. Overproduction for services to existing workers
3. Wage/rate increases indexed to wages

The committee asked EE staff to develop models to balance the combination of ideas.

Wrap Up

In conclusion, John thanked the advisory committee for all their work and said he and Anita will continue to further develop draft models incorporating their input and ideas for the next meeting scheduled for May 6th.

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Next Steps:

1. EE Program staff will incorporate an exam of draft WIOA regulations items such as self employment implications into the rule writing.
2. Agenda item #4 '*Will the Changes We've Developed Make a Substantive Difference for EE Workers?*' will be deferred to a future meeting since both advisory members representing advocates were unable to attend (Jeff Bangsberg and Don Lavin) and their perspectives are vital to the discussion.
3. The advisory will continue proactive sharing and cascading of the work of the VRS EE Rule Revision Advisory Committee with other EE system members notably the membership of Minnesota Organization for Habilitation and Rehabilitation (MOHR) for the benefit of input and support for the revision.
4. The next advisory committee meetings will be as follows:
 - a. **Tuesday, June 2nd**, 10:30am to 3:00pm (*rescheduled from May 6th*)
 - b. Hosted at Proact, 3195 Neil Armstrong Blvd, Eagan, MN 55121.

Meeting Adjourned

The meeting was adjourned at 3:00pm.

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