

# VRS Extended Employment Rule Revision Advisory Committee

## **SESSION NOTES for September 3, 2014**

Convened by Minnesota DEED Vocational Rehabilitation Services

### **Meeting Details**

**Date:** Wednesday, September 3, 2014

**Time:** 10:30 am - 2:30pm

**Location:** 3195 Neil Armstrong Blvd, 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:** *Jeff Bangsberg, Laura Bealy, Tim Dickie, Steve Ditschler, Jeremy Gurney, Tim Hammond, Nancy Huizenga, Holly Johnson, Karen Johnston, Anita Kavitz, Wendy Keller, Don Lavin, Clayton Liend, Rod Pederson, Dean Ritzman, John Sherman, David Sherwood-Gabrielson*

### **Welcome, Introductions and Overview of Agenda**

The meeting was called to order by facilitator Holly Johnson. Advisory members introduced themselves. Holly provided an overview of the meeting objectives, agenda and work session guidelines.

### **Key Perspectives for EE Rule Revision Work**

Advisory members reviewed the following five key perspectives and were 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

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### **Advisory Working Session on EE Rule Discussion Topics**

#### **Introduction to Group One Topics**

John Sherman, Anita Kavitz and Wendy Keller provided a brief refresher on the three topics to be discussed within Group One topics listed as follows:

**GROUP ONE** (discussion topics for September 3 & 17, 2014 meetings)

- 1. Statutory Requirement of Rehabilitation Facility Boards' Membership – Person with a disability**
- 2. Statutory Definition of "Rehabilitation Facility" Limits entities that can participate as service providers in the EE Program.**
- 3. State Certification of service providers**

As part of the introduction, the advisory committee was provided with the relevant statutory language for reference purposes. In addition, the committee was provided with the following information:

- The topics in this group are statutory issues as opposed to rule.
- Given timeline issues, John Sherman asked that the advisory focus their initial conversation on topic #2 regarding the statutory definition of who can participate as a service provider in the EE Program.
- The current statute states that providers must be a nonprofit with the primary purpose of "providing or facilitating employment for persons with a severe disability."
- There are approximately 30 active EE service providers today.
- One of the largest drivers for review of this definition is the exception that was necessary to continue funding for the former Courage Center programs after the merger with Allina Health System, Inc. Allina Health System does not meet the statutory definition for an EE service provider as it is not operated for the primary purpose of providing or facilitating employment for persons with a severe disability .
- Statute will overrule any conflict of direction posited in an RFP process for providers.
- Needs assessments are leveraged to help determine areas of greatest needs in alignment with those intended to be served by the EE Program.
- Some targeted RFPs have been used to address high unmet and/or emerging needs e.g. greater MN for autism and mental health services.

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### **Advisory Q&A and Clarifications**

- *Question:* How did the "primary purpose" of employment language enter the rule?
  - *Answer:* The language appears to have entered in the late 1960's. There was some question of what the predecessor funding system paid for since it was cost based. Advocates, some providers and legislators wanted to see more specific outcomes. The rule defined employment but also allowed for submitting 'service hours' up to a 25% limit.
- *Clarification:* Resources are being fully tapped in some areas today and services are limited by funding more often than by provider capacity in many areas of the state.
- *Question:* Can we 'grandfather' in organizations like Courage Kenny into the new rule? Please expand on reasons other than the Courage Kenny example that are also important to keep in mind.
  - *Answer:* The preference is to create a rule that addresses a more robust solution than listing specific organizational exceptions. While the Courage Kenny situation is a specific example, the larger question for the rule revision process is who should be eligible to provide services and how should that be defined for statutory and rule purposes.
- *Clarification:* Geography is part of the service access challenge however we have more people who would benefit from services in both metro and greater Minnesota. Service availability is not just an issue for rural and/or widely dispersed populations in Minnesota.

### **Facilitated Discussion on Group One Topics**

Important Considerations for Revision offered by the advisory as related to:

#### **2. Statutory Definition of "Rehabilitation Facility" Limits entities that can participate as service providers in the EE Program:**

- The vision of who is eligible to participate as service providers should be separated from the current pool of resources or 'maintenance resources' concern.
- The 'primary purpose' language might be modified to focus on organizations with demonstrated, employment expertise rather than employment services as the 'primary purpose' of the organization.
- Especially as it relates to Greater Minnesota, it is imperative that we have organizations who can support needed services and viable programs that serve needs. This raises the question about the untapped potential of partnerships to create new possibilities for services capacity, accessibility, support and outcomes.
- Given resource constraints and correlated outcomes, we are increasingly seeing a trend of health care and human services coordinating services.

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- In the case of Courage Center, the acquisition by Allina Health System was supported by an intentional connection of health to employment and vocational rehabilitation services along with other key health factors.
- EE Service Providers have some concern about increasing the participation parameters given the limited resources. There are concerns that expanding the eligibility will potentially reduce funding to current proven providers resulting in unsustainable business levels.
- Advocates favor eliminating constraints in order to encourage the free market to increase services and foster ingenuity to help people with disabilities find and retain employment. Just as we have seen services enhanced since the current statute and rule were written, we want to develop a revision that anticipates and facilitates continued advancement in services for EE workers in the future.
- The advisory committee discussed the challenges of size and resources of providers impacting their capacity for lobbying efforts. VRS would like to see a rule and statute that is widely supported by the spectrum of high quality EE providers to reduce the need and burden for lobbying.
- Should there be language developed to address exceptions and an exception process? VRS would prefer that the revision be developed to minimize the need and request for exceptions.
- People should have choices regarding employment services whenever possible. This means we must continue to develop and pursue creative ways to provide access to needed services throughout Minnesota.
- This is further supported by the mandate for "informed choice". We know that for many reasons the level of options vary across the state. We must continue to keep "informed choice" in mind as we look at developing and sustaining future capacity.

### **Potential Alternatives & Implications**

- ◆ The advisory committee noted language issues with the phrase 'rehabilitation facility' and recommended the language be updated. Ideas discussed included use of 'Community Rehabilitation Program' or 'CRP' in place of rehabilitation facility. VRS noted that this would facilitate language use of CRP as defined by federal Rehabilitation Act. There would also likely be implications for expanding the definition beyond nonprofits. The Department of Human Services has done this successfully and cited their contract with the organization Kaposia as one example.
- ◆ Going forward as a system, we recognize the interrelationship of health care and employment for people with disabilities. There is sound research supporting employment as a key to recovery for many situations including mental health.

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- ◆ Retaining 'Primary purpose' language:
  - *Pros:* keeping this language focused on employment services will help prevent new big providers who may enter and 'skim' the workers who they believe they can take on profitably while leaving EE workers with the higher resource needs under or un-served. Current EE Providers who now try to absorb some of the higher need workers assuming an offset from the full mix may experience financial distress if 'skimming' occurs which could ultimately result in current EE Providers going out of business.
  - *Cons:* the current language may be limiting potential service providers who have excellent employment services as part of, rather than their primary, service purpose. Thus impacting potential for increased services for workers. Removing 'primary purpose' language might help increase choice while continuing to uphold standards, e.g. CARF accredited.
- ◆ Another objective of the statute should be protecting resources for the people served and minimizing the potential that resources will be diluted or siphoned for other purposes beyond employment services for people with disabilities.
- ◆ The revision should strive to accommodate opening participation to service providers with quality screening that helps preserve current quality providers.
- ◆ How can we anticipate and encourage the potential of partnerships to developing employment services capacity and access for eligible Minnesotans with disabilities.
- ◆ There is 100% agreement that the new EE rules should continue to be a performance based / outcomes based system to the benefit of EE workers (persons served).
- ◆ VRS is responsible for maximizing opportunities for EE Workers. VRS seeks system wide collaboration with others in the ongoing pursuit of this objective.
- ◆ Providers present concur that VRS oversight of the EE Program is important to help ensure provider programs meet and/or exceed their legal requirements and program expectations.
- ◆ The advisory supports a nonprofit business model to address concerns that a profit motive orientation could result in reduced services to those with the most severe disabilities who require significant resources that could be considered unprofitable within corporate or for profit business drivers.

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Important Considerations for Revision offered by the advisory as related to:

**1. Statutory Requirement of Rehabilitation Facility Boards' Membership – Person with a disability**

- There is agreement on the importance of the perspective board members with disabilities can bring to a EE Provider's board. Some providers believe this perspective can be effectively represented by others without severe disabilities. Advocates stress the unique importance of qualified, first hand representation and support continuation of the requirement while acknowledging the challenges posed by self disclosure of disabilities.
- Can we leverage CARF's *Governance Standards* to encourage and promote best practices? The *Governance Standards* may be applied during the survey process at the option of the organization, if the organization has a corporate governing board. However, Minnesota could mandate, via legislation or rule, conformance as a condition of funding for nonprofit corporations. The governance standards are intended to facilitate "effective and ethical governance leadership on behalf of its stakeholders' interest to ensure that the organization focuses on its purpose and outcomes for persons served, resulting in the organization's long-term success and stability...."
- The biggest challenge with the current statute requiring a person with a disability be a member of the board of directors is often the self disclosure. Both ADA and HIPAA protect individual rights to privacy, making it difficult for the EE program to monitor compliance.
- If the current statute continues how do we continue representation on EE Provider boards' while addressing the ADA and HIPAA regulations?
- The advisory discussed the potential of leveraging the Commission on Accreditation of Rehabilitation Facilities (CARF) governance certification as one approach which current EE Providers are both familiar and have access to for purposes of promoting/ensuring boards' representation of persons with disabilities.

The discussion was drawn to a close due to meeting end. This topic will be resumed and completed at the next meeting on September 17, 2014.

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**Recap of Working Session**

**First advisory discussion topic: Statutory Definition of "Rehabilitation Facility" Limits entities that can participate as Service Providers in the EE Program.**

**There is advisory agreement that the definition continue:**

- a. to focus and support performance based/outcome based work.
- b. to limit service provider entities to the current language of "Nonprofit corporation, city, town, county or any combination of".

**The advisory recommends:**

- c. "Rehabilitation Facility" language be replaced with "Community Rehabilitation Provider (CRP)" language as a more updated and correct wording in revision.
- d. Update 268A.01 Subd. 6 that provides Extended Employment services (SubD10) for persons with a severe disability
- e. an overall review of alternative language to replace 'rehabilitation' language where appropriate and possible given some of the confusion and negative connotations that the word 'rehab' and/or 'rehabilitation' tend to evoke in the general public.

**Next Steps & Wrap Up**

Preview for September 17th Working Session:

- Updates on Topic #2 regarding the statutory definition of 'Rehabilitation Facility' limiting entities that can participate as service providers in the EE Program
- Continue and complete discussion on Topic #1: Statutory Requirement of Rehabilitation Facility Boards' Membership – Person with a disability
- Discussion on Topic #3: Certification of Community Rehabilitation Providers

Remaining 2014 Advisory meeting dates are:

- Oct 8, 15, 29
- Nov 12, 19
- Dec 10, 17

The advisory committee discussed various options for meeting locations and voiced a preference for continuing meeting at current location for the remaining meetings.

**Meeting Adjourned**

The meeting was adjourned at 2:35pm.