

**DRAFT: Message to EE Rule Advisory Committee for August 6, 2014 Meeting**

VRS Extended Employment Rule Advisory Committee,

Thank you for your participation in our initial meetings focused on sharing an overview of EE Rule information as groundwork for our advisory work together. With these groundwork sessions completed, we will be shifting gears to focus on identifying a list of EE Rule Revision change priorities for advisory committee input. With limited time, we want your help in identifying and focusing on the areas where rule changes are most important to fulfilling our shared mission of serving individuals with disabilities within the spirit and letter of the federal and state rules and regulations.

To jumpstart our conversation at the August 6th meeting, I will be presenting an initial draft of priority EE Rule change topics to share with the advisory and to gather initial perspectives. We'll continue to identify and refine our top change priorities list at the August 20th meeting.

To assist us in our advisory work going forward, Holly Johnson of Lanterna Consulting will be providing meeting design, facilitation and documentation services. Holly has worked with a number of strategic leadership initiatives with state agencies and has worked with VRS in particular on various engagements since 2007. She helped VRS establish and continues to support the VRS CRP Advisory Committee which began in November 2010. I've attached a brief bio of Holly for your information and I'm looking forward to introducing her to the committee beginning with our August meeting.

We have decided to hold off on scheduling the listening sessions until we are further into the process however please continue to hold the September 3 and 17 dates on your calendar. We will repurpose those dates for advisory committee work at metro locations to be secured and announced later.

**Logistics for our next meeting:**

Date and time: Wednesday, August 6, 1:00-3:00pm

Location - Griggs Midway Building, Room 330, 1821 University Avenue, St Paul, 55104

Please let me know if you are unable to join us. Thank you for your willingness to serve on this advisory committee. The advisory committee's perspectives will provide important input into the EE Rule revision work VRS will be doing in the months ahead.

I look forward to moving into the next phase of advisory work with you on August 6th!

John Sherman

Regards,  
Holly Johnson

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## Consultant Profile



**Holly Johnson** is founder and President of Lanterna Consulting Inc. Prior to founding her firm in 2002, she worked as a senior consultant for Renaissance Worldwide and Pareo, Inc. Holly began her career in the corporate offices of Lutheran Brotherhood, now Thrivent Financial, where she held positions in marketing, field leadership development and corporate social responsibility. She completed her graduate studies at Duke University. Holly is certified in The Institute of Cultural Affairs, Technology of Participation Group Facilitation Methods. She has completed Waterline's Action Learning course and Human Synergistics International Training.

In her work as a management consultant and facilitator, she collaborates with individuals, teams and organizations to identify and design desired change as well as create and manage major initiatives to successfully transform plans into results. She has more than 20 years of experience in public and private sector organizations. She has a deep interest in assisting leaders and teams in building stronger, healthier organizations and communities.

Her areas of expertise include:

- \* strategic assessment and planning,
- \* leadership and advisory team formation and development,
- \* initiative/program/project management, and
- \* organizational design and effectiveness

Over the past seven years, she has worked with state agencies including multiple divisions within both DEED and the DNR on numerous strategic, organizational design, training and leadership engagements. Within VRS, Holly has worked closely with Director Kim Peck and members of the leadership team on a number of efforts including:

- \* formation and development of the VRS Strategic Leadership Team,
- \* VRS strategic planning,
- \* formation and development of the VRS CRP Advisory Committee,
- \* formation and launch of the VRS Community Outreach Committee,
- \* initiative design and facilitation for the Next Generation Placement Design Team,
- \* design and facilitation of a process redesign for the VRS Fiscal Review process

She has been engaged by the Council of State Administrators of Vocational Rehabilitation (CSAVR) for strategic planning work. She has also been engaged by various agencies in the states of Kentucky, South Dakota and Virginia. Holly has provided consulting, training and facilitation for metro area school districts and strategic planning for metro city councils. She has been a consulting partner with Minnesota Management & Budget (MMB)'s Management Analysis and Development (MAD) since December 2007.

**Draft of Priority Extended Employment Rule Change Topics**

This list is not complete. It will be changed based on feedback from the Extended Employment Rule Advisory committee and other interested parties.

Vocational rehabilitation staff assumptions for the process:

- (1) retain outcome-based performance system based on hours of work,
- (2) some legislative change to the definition of "rehabilitation facility," Minn. Stat. 268A.01, subd. 6, which would permit the funding of organizations that are not operated for the primary purpose of providing or facilitating employment for persons with a severe disability,
- (3) and a possible legislative change with the board composition language requiring a person with a disability as cited in Minn. Stat. 268A. 085.

**1. Archaic or problematic language**

The rule review does not currently envision ending the pay for performance system defined in 3300.2035 based on hours of work at specified rates. However, there is language in the rule which is problematic. The following sections should be considered:

- 3300.2035 subp 4 (1) which establishes the procedure for establishing each providers 1998 contract starting point;
- 3300.2035, subp. 6.(A) which establishes the initial three statewide uniform rates;
- 3300.2035, subp. 7.(B) which establishes a cap of \$4,279,000 dollars in the center based fund;
- 3300.2035, subp. 8.(C)(e) which requires completed independent audits be submitted within 90 days from the close of the funding year;
- 3300.2025, subp. 5 which establishes the minimum level of ongoing employment support services to *two in-person* contacts per month;
- 3300.2025, subp. 9 which establishes the retention period for a worker's case file at *3 years* after the completion of the audit process for the state fiscal year when the worker was last reported;
- 3300.2035, subp. 5 requires the department conduct an *annual* survey of EE program needs by subprogram including geographic distribution of services.

## **2. Caps on non-competitive employment**

The Olmstead plan specifies that caps be placed on non-competitive employment. There is no method identified in the Olmstead plan as to what capping method should be used.

There is a cap in funding for center based employment in the current rule. At present CBE funding is half the amount specified in the rule. There is no cap on community employment.

There are mechanisms in the rule and practice which also limit center based funding. Providers can voluntarily reduce center based funds and shift them to the community support fund. This is a uni-directional and permanent shift.

Unearned funds allocated out under the new and expanded provision of the rule have always been redistributed to supported employment grants in the competitive RFP process.

Capping mechanisms will need to be developed to meet the goals defined in the Olmstead plan.

## **3. Definition of Eligible Community Rehabilitation Provider**

The rule refers to rehabilitation facility or facility. It is defined as an entity which meets the definition found at MN statute 268A.01 which "is operated for the primary purpose of providing or facilitating employment for persons with a severe disability." This requirement currently requires that Allina Hospitals and clinics operate under a legislative exception which ends June 30, 2015. Legislative action to widen the definition in 268A.01 will affect the rule.

## **4. Affirmative Business Enterprise**

Affirmative Business Enterprise (ABE) employment is defined in MN statute 268A.01, subd 14. The definition requires certification by the commissioner. The present rule has no definition of Affirmative Business Enterprise or standards for its certification. In addition the statutory definition requires ABE be funded as community employment.

## **5. Supported Employment Exception in Statute**

The statutory definition of supported employment found in MN statute 268A.01 subd 13.b allows the commissioner to certify a rehabilitation facility setting as integrated, and employment *may* be considered supported employment. There is no reference in the current rule to this provision. Nor are there defined standards which govern the granting of a certification for the site.

#### **6. Wage Level Incentive Payments**

The wage level incentive is found at 3300.2045. It redistributes dollars that are unearned in a fiscal year based on hours above minimum wage reported both the Community Support Fund and the Center Based Employment Fund. This redistribution was developed to meet the requirement under the rule authority given in MN statute 268A.15 subd3. to consider "the performance of rehabilitation facilities relative to their impact on the economic status of workers in the extended employment program."

The wage level incentive should be reviewed to see if there is a better approach to funding to meet the requirement of performance affecting the impact on the economic status of extended employment workers.

#### **7. Contract Variance Based on Consideration of Economic Considerations**

Rule section 3300.2040 provides for a variance to the contract starting point if a provider establishes that it could not meet contract "due to circumstances beyond the control of the provider." It further requires the provider to supply a plan for "corrective action to meet contracted hours during the next contract period." The variance was developed to meet the requirement under the rule authority given in MN statute 268A.15 subd3. to "consider the economic conditions of the community".

In practice this section has led to confusion in granting variances based on what where circumstances beyond the control of management. And also, what was to be considered an adequate plan for corrective action.

#### **8. Overproduction of work hours by individual CRPs**

There is no provision in the rule to fund over-production and increase funding to those providers who are exceeding their community support funding. This may be a disincentive to grow programs to fully meet existing demand for supports for competitive employment. It has been an issue of concern to providers.

#### **9. Natural Supports**

Natural supports are defined in 3300.2005 Subp. 28 as a process of "a provider helping an employer to expand its capacity for training, supervising and supporting one or more workers with most severe disabilities." 3300.2025 subp 6. requires that natural supports be identified in the worker's extended Employment support plan along with a written agreement. This provision has been rarely used, if at all, and should be reviewed to determine relevance.

#### **10. Rates paid for reported hours of work**

There is no mandated requirement in the rule to change the rate paid to providers for their reported work hours. There is a rule based option to increase rates based on cost of living from funding unearned by providers. This option runs in competition with use of unearned dollars for new and expanded programs. Historically rate increases have run behind cost of living. And most rate increases have been granted because legislation included specific funds for rate increases.

The initial rates paid for hours of work in supported, community and center based employment were set in 1998 based on estimates of the wages earned in each program. These estimates were then used to establish the initial amounts for the community support fund and the center based fund. As noted they have not been adjusted for inflation and not examined to see if they are sufficient to provide fiscal stability to the extended employment program. Providers have made the argument that the current rate procedures acts as a limiting factor on program growth, especially expansion of supports in the community.

#### **11. Waiver Services and Participants in Day Training and Habilitation Programs**

When the rule was promulgated Day Training and Habilitation (DTH) was the only employment-related service paid via the waiver program. Today, there are many waiver-funded employment-related services. Language dealing DTH is found in 3300.2015 subp. 7. This section needs to be revised and updated.

#### **12. Changes in federal law**

The recent adoption of the Workforce Innovation and Opportunity Act which includes the federal vocational rehabilitation program and changes in the Home and Community Based waiver services mandated by the Department of Health and Human Services may require that changes to the rule be drafted which considers those changes.

#### **13. Board Composition and Duties**

There are some issues with composition of rehabilitation boards as required in MN statute 268A.085 particularly language which requires inclusion of a person with a disability. Issues around what constitutes disability and disclosure needed to verify that a rehabilitation board meets the statutory requirement posed problems in the past. Also, MN Rule 3300.2010 subp. G. and subp H. require training for members of the board which may no longer be needed and may be unnecessarily burdensome.