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**EXTENDED EMPLOYMENT PROGRAM**  
**RULE REVISION**

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## **Statement of Need and Reasonableness**

In the Matter of Proposed Rules Governing the Extended Employment program,  
*Minnesota Rules*, chapters 3300.6000 – 3300.6070 and repeal of existing Rules  
Governing the Extended Employment program, *Minnesota Rules*, chapters  
3300.2005 – 3300.3100

Office of Administrative Hearings Docket Number: 60-9044-35198

Revisor ID Number: RD-4245

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Department of Employment and Economic Development  
Vocational Rehabilitation Services, Extended Employment Program  
332 Minnesota Street, Suite E200  
St. Paul, MN 55155  
651-259-7366  
[extended.employment@state.mn.us](mailto:extended.employment@state.mn.us)  
[mn.gov/deed/eeerule](http://mn.gov/deed/eeerule)

## **Introduction**

The Minnesota Department of Employment and Economic Development (DEED) is proposing changes to the state rules that govern the Extended Employment (EE) Program. DEED is the state's principal economic development agency. DEED programs promote business recruitment, expansion, and retention; international trade; workforce development; and community development.

The Extended Employment program provides ongoing employment support services to help Minnesotans with significant disabilities keep jobs once they have them and advance in their careers. The program is funded solely by the state with a \$13,825,000 annual appropriation. It serves more than 4,000 individuals a year. DEED administers funding contracts to 27 Community Rehabilitation Providers that provide ongoing employment support services to help an individual maintain and advance in their employment. Those services could include training, retraining job tasks, dealing with schedule changes, adjusting to new supervisors, advancing to new job tasks or positions, and managing changes in non-work environments or life activities that affect work performance.

### ***Proposed Rule Overview***

The purpose of the proposed rule is to prioritize Extended Employment program funding for services to support individuals working in Competitive, Integrated Employment.

The proposed rule modifies the Extended Employment program to reflect principles such as Minnesota's commitment to person-centered practices, informed choice, and Minnesota's Employment First policy—especially its focus on Competitive, Integrated Employment. The revision will also align the program with new practices in the broader disability services system driven by changing rules and requirements under the federal Home and Community Based Services rule, the federal Workforce Innovation and Opportunity Act, and stepped up enforcement of the Olmstead decision.

The proposed rule caps funding for employment that is not competitive and integrated, and phases out funding for employment support services to individuals who work in a center-based (workshop) setting. Additionally, the proposed rule clarifies that for a job to be truly competitive and integrated, the employer cannot be an individual's service provider.

In addition to the major policy changes, the proposed rule makes operating the program as simple as possible, while providing the highest quality services. There are opportunities to increase efficiency and streamline processes in a rule that was last revised in 1998. The best way to accomplish this was to do a complete rewrite of the rule, which means the Department proposes repealing the current 1998 rule and replacing it with this proposed rule. This will allow for the most clarity and the most logical organization of the rule.

### ***Stakeholders***

The key stakeholders are individuals with disabilities receiving Extended Employment services, individuals with disabilities who may benefit from Extended Employment services, family and guardians of individuals with disabilities, Community Rehabilitation Providers that currently receive Extended Employment funding, Community Rehabilitation Providers that would like to provide Extended Employment services, and advocacy organizations for individuals with disabilities.

### ***Public Participation and Stakeholder Involvement***

DEED Extended Employment program staff sought significant community input into the development of the proposed rule. The revision process started four years ago and has included 18 months of work by an advisory committee, eight public forums and meetings, and ongoing engagement of the 27 current Extended Employment providers.

### ***Request for Comments***

The official Request for Comments was published in the State Register on June 16, 2014. The Department received no comments at this early stage.

### ***Extended Employment Rule Advisory Committee***

The primary method of outreach and engagement with stakeholders was through the formation and engagement of an advisory committee. DEED Extended Employment program staff established the Extended Employment Rule Advisory Committee to provide a key advisory role to the rule revision. The committee identified and considered policy issues and opportunities impacting individuals who receive Extended Employment services and Extended Employment providers, and provided feedback and guidance on the drafting of the proposed rule. The committee met regularly from June 2014 to December 2015. It was composed of individuals representing DEED, Community Rehabilitation Providers, the Department of Human Services, counties, and advocacy organizations for individuals with disabilities.

Through the advisory committee, DEED Extended Employment program staff gathered feedback from key stakeholders on controversial issues, rule design options, and the direction of the Extended Employment program. This group was instrumental in helping DEED Extended Employment program staff shape the proposed rule.

### ***Public Forums***

The Department conducted eight public forums and meetings: two in Mankato, two in Brainerd, and one each in St. Paul, Bemidji, Willmar, and Rochester. The purpose of the public forums and meetings was to seek input primarily from individuals receiving Extended Employment services and their families or guardians. This was also the Department's opportunity to hear more broadly from Community Rehabilitation Providers and others in the disability services system. There was a broad representation of Extended Employment providers, Community Rehabilitation Providers, family members, county employees, and persons receiving Extended Employment support services at the forums.

### ***Email List Serve***

The Department developed an email list of individuals interested in the rule revision to disseminate rule-related information. The list has been available for self-subscription on the Department's external website since the Request for Comments in 2014. Additionally, email addresses were gathered through the public forums and other outreach and added to the list serve.

The Department will also be leveraging GovDelivery list serves maintained by the communications office to disseminate rule-related information to interested and affected parties.

### ***Rule-Specific Webpage***

The Department developed an Extended Employment Rule-specific webpage on the Department's public website, <https://mn.gov/deed/job-seekers/disabilities/extend-employment/rule-change>, to disseminate rule-related information to interested and affected parties.

These engagements gave each stakeholder group a voice at the table and the opportunity to weigh in on the changes to the Extended Employment program.

## **Alternative Format**

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Kim Babine at by mail at Department of Employment and Economic Development, 332 Minnesota Street, Ste. E200, St. Paul, MN 55101, by phone at 651-259-7349, or by e-mail at kim.babine@state.mn.us.

## **Statutory Authority**

The Department's statutory authority to adopt the rules is stated in Minnesota Statutes section 268A.15, subdivision 3 which provides:

*"The commissioner shall adopt rules on an individual's eligibility for the extended employment program, the certification of rehabilitation facilities, and the methods, criteria, and units of distribution for the allocation of state grant funds to certified rehabilitation facilities. In determining the allocation, the commissioner must consider the economic conditions of the community and the performance of rehabilitation facilities relative to their impact on the economic status of workers in the extended employment program."*

Under this statute, the Department has the necessary statutory authority to repeal and adopt the proposed rules. This statutory authority was provided for in 1995 Laws of Minnesota, Chapter 224, section 91, subdivision 2. Thus, all sources of statutory authority were adopted

and effective before January 1, 1996 and have not been revised by the Legislature since then, and so Minnesota Statutes, section 14.125, does not apply.

## Regulatory Analysis

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. The paragraphs below quote these factors and then give the agency's response.

***A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.***

The classes of people who will probably be affected by the proposed rule are: individuals with disabilities currently receiving Extended Employment services and their families or guardians; and Community Rehabilitation Providers that currently receive Extended Employment funding.

Of the 4,205 individuals in the Extended Employment program in state fiscal year 2017, there were 449 individuals receiving services through the Center-Based subprogram exclusively. There are many more individuals who receive services through a combination of the subprograms.

Extended Employment Program Subprogram	Number of Individuals (SFY 2017)
CBE Only	449
CBE and CE	677
CBE and SE	42
CBE and CE and SE	233
CE Only	410
CE and SE	198
SE Only	2,196
Total	4,205

*Note:* CBE is Center-Based Employment, CE is Community Employment, and SE is Supported Employment.

There are 27 Community Rehabilitation Providers that receive Extended Employment funding. The Community Rehabilitation Providers are public or non-profit entities in locations statewide. Each provider is unique in the size of their organization, their areas of expertise, and the range

of services they provide outside of Extended Employment. More information on the current Extended Employment providers is available at <https://mn.gov/deed/job-seekers/disabilities/extend-employment/service-provider>.

Individuals with disabilities who do not currently receive Extended Employment services who may benefit from services and Community Rehabilitation Providers that would like to provide Extended Employment services will benefit indirectly from the promulgation of the proposed rule. The proposed rule provides clearer parameters for individual eligibility and requirements for program participation. In addition, there are clearer parameters for organizations to apply for Extended Employment funding and become eligible to provide services. As these classes will see only an ancillary benefit, they are not discussed further in this analysis.

***The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.***

There are no anticipated costs to the agency to implement and enforce the proposed rule. Statutory changes made in 2016 jump-started the implementation and data systems and business practices have already been modified to accommodate the proposed rule.

There are no anticipated effects on state revenues.

***A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.***

The purpose of the proposed rule is to limit Extended Employment funding for services supporting individuals in employment settings that are not competitive and integrated in order to prioritize funding for services supporting individuals in competitive, integrated employment.

The proposed rule accomplishes this, most significantly by capping Extended Employment funding for services supporting individuals in employment settings that are not competitive and integrated, and phasing out Extended Employment funding for services supporting individuals in Center-Based Employment.

The Extended Employment Rule Advisory Committee spent significant time analyzing different methods for achieving the goal in the least costly and least intrusive way possible. Many scenarios and options were developed and discussed. The methods that appear in this proposed rule take into account the need for a gradual transition away from Extended Employment funding for supporting individuals in Center-Based Employment. The proposed change gradually reduces funding over five years. This will give Extended Employment providers time to make necessary adjustments to their business model and allow individuals in the Center-Based Employment subprogram to make informed decisions about their options for working in other employment settings and/or other programs as part of the transition.

Extended Employment providers will not lose the funding that is reduced from supporting individuals in Center-Based Employment. Providers may shift their funding to the other Extended Employment subprograms to maintain their overall contract allocation level.

There are a number of other proposed changes to accomplish the purpose that are not costly or intrusive. Those include: allowing rate increases only for the Supported Employment subprogram, changing the Wage Incentive to the Supported Employment Incentive, allowing New and Expanded Services only for the Supported Employment Subprogram, and requiring that shifts between subprogram allocations be made only to a subprogram that represents a more integrated setting. It was important to identify many ways to accomplish the purpose of the proposed rule to minimize cost and intrusion.

***A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.***

The only alternative method for achieving the purpose of the proposed rule is to seek a statutory change. The rulemaking process is preferable to the legislative method in this case as it allows for sustained dialogue between the Department and stakeholders to achieve an outcome all parties can accept. This sustained dialogue has allowed the Department to build consensus around the proposed rule and identify opportunities for further engagement during implementation of the rule.

***The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.***

*Individuals in the Extended Employment Program*

Individuals who currently receive services from the Extended Employment Program are unlikely to bear any costs to comply with the proposed rule.

Some individuals who participate in the Center-Based Employment subprogram will not bear any cost due to the gradual phasing out of funding for the Center-Based subprogram, but may have their employment setting options where they receive Extended Employment services impacted. Individuals will have the opportunity to consider a different employment setting to continue receiving services through the Extended Employment program, or they may choose to seek services through other funding sources to continue in a Center-Based setting. The phase-out time frame allows individuals, their guardians, and/or families to gather the information they need to make an informed choice about their employment options.

All individuals in the Extended Employment program will benefit from the program improvements and streamlining that will come with the proposed rule. These changes will lead to better services for individuals and more opportunities to receive employment supports in employment settings that are competitive and integrated.



*Extended Employment providers affected by the definitions of employment settings limiting what can be considered Competitive, Integrated Employment or Community Employment*

Extended Employment providers may bear some costs in reporting some individuals in the Community Employment subprogram or the Center-Based subprogram instead of the Supported Employment subprogram or the Community Employment subprogram. The proposed rule will require work hours for some individuals to be submitted for payment to a different subprogram that receives a lower hourly rate of reimbursement. Some Extended Employment providers will need to adjust the distribution of their allocations to account for this change. In order to ensure that Extended Employment providers have enough time to adjust to these definitions, providers will be allowed to adjust their allocations between subprograms without restrictions before May 1, 2020.

*Extended Employment providers who receive funding to provide ongoing employment support services in settings that are not competitive and integrated*

Some Extended Employment providers who receive funding to provide ongoing employment support services in settings that are not competitive and integrated may bear costs due to phasing-out of funding for the Center-Based Employment subprogram and/or the capping of funds for the Community Employment and Center-Based Employment settings.

These two changes may require some providers to modify their business models to deliver services in Competitive, Integrated Employment settings, and providers will bear those costs. Many Extended Employment providers have invested in bricks and mortar facilities, equipment, transportation vehicles, etc. to operate their Center-Based programs. This business model is not solely for the purposes of the Extended Employment program, but largely due to the Medicaid-funded Day Training and Habilitation system in place for the last 25 years. The rule change for Extended Employment is just one of several drivers of change for Extended Employment providers.

Extended Employment providers serving on the Extended Employment Rule Advisory Committee noted “the transition magnitude and cost will be determined based on the size and speed of the changes approved.” Given the proposed changes will have had many years of discussion before being enacted, and then the most substantial will be phased-in over five years, the Department believes any costs to providers have been minimized as much as possible.

All Extended Employment providers will benefit from the program improvements and streamlining that will come with the proposed rule. The proposed changes set clear expectations, require transparency and accountability on the part of providers and the State, and the more efficient program administration will be less burdensome for providers. All of these factors contribute to better service delivery to individuals.

*Community Rehabilitation Providers that do not currently receive Extended Employment funding*

Community Rehabilitation Providers that do not currently receive Extended Employment funding are unlikely to have costs to comply with the proposed rule. Community Rehabilitation Providers will benefit from increased transparency for how Community Rehabilitation Providers can become Extended Employment providers when funding becomes available. If Community Rehabilitation Providers choose to apply for funding and become an Extended Employment provider, there may be accreditation or program start-up costs associated, but this is also the case under the current 1998 rule. Becoming an Extended Employment provider is a voluntary choice on the part of a Community Rehabilitation provider.

***The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.***

If the proposed rule is not adopted, individuals with disabilities will not have as many opportunities to receive employment support services for employment in a competitive, integrated setting.

If the proposed rule is not adopted, Extended Employment providers who receive funding to provide ongoing employment support services in settings that are not competitive and integrated will still need to make adjustments to their business model. Data trends show Center-Based Employment in the Extended Employment program declining as more and more individuals choose employment in a more integrated setting. Further, changes in Medicaid-Waiver services is necessitating changes for Extended Employment providers of center-based services.

If the proposed rule is not adopted, Community Rehabilitation Providers that do not currently receive Extended Employment funding will have less transparency around how to become an Extended Employment provider.

***An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.***

The Extended Employment program is solely a state-funded program and thus there are no existing federal regulations that govern this program. There are no differences between the proposed rule and existing federal regulations.

***An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.***

As previously discussed, there are new policy, funding, service delivery, and operational practices in the broader disability services system driven by changing rules and requirements of the federal Home and Community Based Services rule, the federal Workforce Innovation and Opportunity Act, and stepped up enforcement of the Olmstead decision. While the laws and regulations below have no direct impact on the Extended Employment program, the

Department recognizes that new policy, funding, and operational practices elsewhere in the disability services system impact the individuals we serve and the Community Rehabilitation Providers we work with.

#### *Workforce Innovation and Opportunity Act*

The federal Workforce Innovation and Opportunity Act was passed in 2014 and made changes to help ensure that individuals with disabilities who are earning subminimum wage have the opportunity to learn about and seek Competitive, Integrated Employment in their communities. Section 511 of the law requires that individuals are provided with opportunities to explore and choose from a range of Competitive, Integrated Employment options and resources. Adults currently working in jobs that pay less than minimum wage must receive career counseling, information and referral services; and youth seeking subminimum wage employment must apply for services through the public Vocational Rehabilitation program.

#### *Medicaid Home and Community-Based Services*

Home and Community-Based Services waivers, administered by the Minnesota Department of Human Services, provide services to individuals who would otherwise be eligible to receive institutional care. In 2014, the federal Centers for Medicare and Medicaid Services oversee the Home and Community-Based Services waivers and issued a final rule to ensure that individuals receiving long-term services and supports through Home and Community-Based Services waivers have full access to the benefits of community living and the opportunity to receive services in the most integrated setting appropriate. To comply with this final rule, the Department of Human Services is instituting new employment services that will provide opportunities to seek employment and work in Competitive, Integrated Employment, engage in community life, control personal resources and receive services in the community. The new employment services take effect July 1, 2018 and participants will be transitioned to the new services on a rolling basis throughout 2018 and 2019.

#### *Stepped Up Enforcement of the Olmstead v. L.C. Decision*

Throughout state government, Minnesota is changing policies and practices due to stepped up enforcement of the decision of the U.S. Supreme Court in *Olmstead v. L.C.*, which upheld Title II of the Americans with Disabilities Act. The court held that states have an obligation to provide community-based services to persons with disabilities when such services are appropriate, the affected individual does not oppose community-based services, and community-based services can be reasonably accommodated.

## **Performance-Based Rules**

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and provide maximum flexibility for the regulated party and the agency in meeting those goals.

The Department gave particular attention to providing maximum flexibility for Extended Employment providers and the agency, streamlining processes, and simplifying requirements. The Department determined there were alternative methods to accounting for quality in service delivery other than burdensome rules and requirements.

## **Additional Notice**

Minnesota Statutes, sections 14.131 and 14.23, require that the SONAR contain a description of the Department's efforts to provide additional notice to persons who might be affected by the proposed rules or explain why these efforts were not made.

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a August 29, 2018 letter by Administrative Law Judge James LaFave.

### ***Affected persons***

- Individuals with disabilities receiving Extended Employment services
- Individuals with disabilities who may benefit from Extended Employment services
- Families and guardians of individuals with disabilities
- Community Rehabilitation Providers that currently receive Extended Employment funding (Extended Employment Providers)
- Community Rehabilitation Providers who are not currently Extended Employment Providers

### ***Other Stakeholders***

- Extended Employment Rule Advisory Committee Members
- Minnesota Organization of Habilitation and Rehabilitation
- Advocacy organizations for individuals with disabilities (such as The Minnesota Consortium for Citizens with Disabilities, The Arc Minnesota, The Minnesota Disability Law Center, PACER Center, ADA MN, National Alliance on Mental Illness Minnesota, Institute on Community Integration, Lutheran Social Services, Advocating Change Together, Minnesota Brain Injury Alliance, Minnesota Adult Day Services Association, Minnesota Families and Advocates Coalition, Mental Health Minnesota, Client Assistant Project, The Office of Ombudsman for Mental Health and Developmental Disabilities)
- Minnesota Association of Centers for Independent Living
- State Rehabilitation Council-General, State Rehabilitation Council-Blind, Governor's Council on Developmental Disabilities, Minnesota State Council on Disability, Statewide Independent Living Council, Community Rehabilitation Program Advisory Committee, State Advisory Council on Disability, Traumatic Brain Injury Advisory Committee, State Quality Council, Governor's Workforce Development Board
- Minnesota Rehabilitation Association
- Minnesota Association of People Supporting Employment First
- Vocational Rehabilitation Services staff

- Department of Human Services Disability Services Division staff
- Local Medicaid Lead Agency staff
- Association of Social Services Directors
- Olmstead Subcabinet members
- Anyone interested in employment outcomes for individuals with disabilities

***Outreach – Additional notice will be provided through several outreach touch points***

- **Informational Flyers for Individuals.** In order to share information with individuals in the Extended Employment program, DEED Extended Employment program staff developed an informational flyer that includes an explanation of program changes, how the changes might affect individuals in the program, how to get more information, and how to participate in the public comment process. The flyer was printed by DEED and distributed to Extended Employment providers. Extended Employment providers personally delivered flyers to individuals in the Extended Employment Program. Additional copies are available so that Extended Employment providers may post flyers in their facilities.
- **Engagement Opportunities for Current Extended Employment Providers.** DEED Extended Employment program staff have provided open communication with current Extended Employment providers throughout the rule revision process.
  - Since November 2017 monthly communications have provided information on potential changes, rule drafting, and process steps. The communications have provided an open space for Extended Employment providers to ask questions and express concerns about program changes or rule drafting.
  - On August 24, 2018, Kim Babine, VRS Director of Community Partnerships – presented at the Minnesota Organization for Habilitation and Rehabilitation summer conference and discussed the rule revision and implications for Extended Employment providers.
  - On August 23, 2018, Extended Employment program staff shared with Extended Employment providers the draft of the EE rule and a tentative timeline for public comment. Extended Employment providers were encouraged to ask questions, seek clarification, express concerns, or provide suggestions.
  - On August 21, 2018, Extended Employment program staff shared with Extended Employment providers another revised draft of the EE rule and a summary of changes reflected in the draft rule. Extended Employment providers were encouraged to ask questions, seek clarification, express concerns, or provide suggestions.
  - On August 9, 2018, Extended Employment program staff met with a subset of Extended Employment providers to discuss implementation of the rule in detail to minimize any unintended consequences.
  - On August 6, 2018, Extended Employment program staff shared with Extended Employment providers another revised draft of the EE rule and a summary of changes reflected in the draft rule. Extended Employment

- providers were encouraged to ask questions, seek clarification, express concerns, or provide suggestions.
- On June 22, 2018, DEED Extended Employment program staff shared with Extended Employment providers another revised draft of the EE rule and a summary of changes reflected in the draft rule. Extended Employment providers were encouraged to ask questions, seek clarification, express concerns, or provide suggestions.
  - On May 18, 2018, DEED Extended Employment program staff shared with Extended Employment providers a drafting issue related to employment settings definitions and outlined how the program planned to change the rule draft. Extended Employment providers were encouraged to ask questions, seek clarification, express concerns, or provide suggestions.
  - On April 2, 2018, DEED Extended Employment program staff shared with Extended Employment providers a revised draft of the EE rule and a summary of changes reflected in the draft rule. Extended Employment providers were encouraged to ask questions, seek clarification, express concerns, or provide suggestions.
  - On March 22, 2018, DEED Extended Employment program staff held a Webinar for Extended Employment providers to walk through a draft of the rule and discuss changes from the current 1998 rule. The Webinar also was a chance to solicit input, feedback, questions, and concerns from Extended Employment providers.
  - On March 16, 2018, DEED Extended Employment program staff shared with Extended Employment providers a draft of the EE rule and a summary of changes reflected in the draft rule. Extended Employment providers were encouraged to ask questions, seek clarification, express concerns, or provide suggestions.
  - On January 9, 2018, DEED Extended Employment program staff held a Webinar for Extended Employment providers and walked through the changes DEED might propose and provided a chance for discussion on each provision. A summary and the PowerPoint presentation were provided.
  - On November 1, 2017, Kim Babine, then Director of the Extended Employment program – now VRS Director of Community Partnerships – attended the Minnesota Organization for Habilitation and Rehabilitation’s (MOHR) meeting of Extended Employment providers to discuss the scope of changes DEED might propose and provided a chance for discussion and input.
  - On August 29, 2017, Vocational Rehabilitation Services Director Kim Peck and Kim Babine, then Director of the Extended Employment program – now VRS Director of Community Partnerships – presented at the Minnesota Organization for Habilitation and Rehabilitation summer conference and discussed the rule revision and the broad types of changes DEED was exploring for the Extended Employment program.
  - **DEED Extended Employment External Website.** Since 2014 the Extended Employment program has maintained an Extended Employment Rule Revision

website on DEED's public website. The Extended Employment Rule portion of the DEED website provides relevant information about the changes and instructions for how people can engage in the process has been updated regularly throughout the revision process. <https://mn.gov/deed/job-seekers/disabilities/extend-employment/rule-change/>

- **Email blasts.** Since 2014 the Extended Employment program has been developing and maintaining an email list of individuals who are interested in the rule revision. In addition, the Extended Employment team is coordinating with the DEED communication office to use other GovDelivery lists and any other appropriate DEED communication channels. The lists identified with potential stakeholders will reach about 6,500 individuals.
- **Access Press.** Access Press is a news source devoted to the Minnesota disability community.
  - September 2018: The Extended Employment program placed an advertisement regarding the Extended Employment rule revision and how to participate in the process. The advertisement will appear in the September 2018 edition of Access Press.
  - March 2018: The Extended Employment program placed an advertisement and wrote a story regarding the Extended Employment rule revision and how to participate in the process. Both were published in the March 2018 edition of Access Press.
- **Extended Employment Rule Advisory Committee Engagement.** Even though the work of the Extended Employment Rule Advisory Committee was completed in December 2015, Extended Employment program staff continue to solicit input from committee members on the proposed rule.
  - On August 23, 2018, Extended Employment program staff shared with with Extended Employment Rule Advisory Committee members the draft of the EE rule and a tentative timeline for public comment. Extended Employment Rule Advisory Committee members were encouraged to ask questions, seek clarification, express concerns, or provide suggestions.
  - On August 21, 2018, Extended Employment program staff shared with Extended Employment Rule Advisory Committee members another revised draft of the EE rule and a summary of changes reflected in the draft rule. Extended Employment providers were encouraged to ask questions, seek clarification, express concerns, or provide suggestions.
  - On August 6, 2018, Extended Employment program staff shared with Extended Employment Rule Advisory Committee members another revised draft of the EE rule and a summary of changes reflected in the draft rule. Extended Employment providers were encouraged to ask questions, seek clarification, express concerns, or provide suggestions.
  - On June 22, 2018 DEED Extended Employment program staff shared with Extended Employment Rule Advisory Committee members a draft of the Extended Employment rule and a summary of changes reflected in the draft rule. Extended Employment Rule Advisory Committee members were

encouraged to ask questions, seek clarification, express concerns, or provide suggestions.

- On May 18, 2018, DEED Extended Employment program staff shared with Extended Employment Rule Advisory Committee members a drafting issue related to employment settings definitions and outlined how the program planned to change the rule draft. Extended Employment Rule Advisory Committee members were encouraged to ask questions, seek clarification, express concerns, or provide suggestions.
- On April 2, 2018 DEED Extended Employment program staff shared with Extended Employment Rule Advisory Committee members a draft of the Extended Employment rule and a summary of changes reflected in the draft rule. Extended Employment Rule Advisory Committee members were encouraged to ask questions, seek clarification, express concerns, or provide suggestions.
- On January 9, 2018 Extended Employment program staff shared with Extended Employment Rule Advisory Committee members a summary of the changes DEED was likely to propose and solicited input and feedback.
- **Meetings and Presentations.** Extended Employment program staff and the Vocational Rehabilitation Services Director have been attending meetings and giving presentations on the rule revision to interested groups. Staff continue to be available to do so.

The Department's Notice Plan also includes giving notice required by statute. The Department will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the Department's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. The Department will also give notice to the Legislature per Minnesota Statutes, section 14.116.

The Department's Notice Plan did not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes, section 14.111.

## **Consultation with MMB on Local Government Impact**

As required by Minnesota Statutes, section 14.131, the Department consulted with Minnesota Management and Budget (MMB). We did this by sending MMB copies of the documents that we sent to the Governor's Office for review and approval and did so before the Department published the Notice of Intent to Adopt. The documents included: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Department will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to the Office of Administrative Hearings at the hearing or with the documents it submits for Administrative Law Judge review.



## **Determination about Rules Requiring Local Implementation**

As required by Minnesota Statutes, section 14.128, subdivision 1, the agency has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The agency has determined that it is unlikely that a local government will need to take action. The only local government provider of Extended Employment services is Hennepin County.

Hennepin County receives funding only through the Supported Employment subprogram, serving individuals working in a Competitive, Integrated Employment setting. The new definition of Competitive, Integrated Employment will require that the location where an individual works cannot be not owned or operated by their Extended Employment service provider. Due to this change, some of the employment settings where individuals in Hennepin County's program work may no longer meet the definition of Competitive, Integrated Employment. The county may choose to continue serving those individuals through shifting some of its allocation to the Community Employment or Center-Based Employment subprograms. The rule allows for such a shift. Hennepin County's overall contract allocation amount will not decrease as a result of the definition change. None of these changes are likely to require Hennepin County to adopt or amend any ordinance or regulation.

## **Cost of Complying For Small Business or City**

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city. The Department has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis section of this SONAR.

## **List of Witnesses**

If these rules go to a public hearing, the Department anticipates having Ms. Kim Babine, Director of Community Partnerships, testify in support of the need for and reasonableness of the rules.

## Rule-By-Rule Analysis

### **3300.6000: DEFINITIONS**

**Subp. 1. Scope.** This subpart is necessary to clarify the definitions in this part apply only to the proposed rule to govern the Extended Employment program. Clear, comprehensive, consistent definitions are required if the Department is to achieve the fundamental objective of program rules that clearly communicate standards, processes, and outcome expectations of the Extended Employment program. It is reasonable to define certain terms so that readers with varying perspectives are informed of the intent of particular language.

**Subp. 2. CARF.** This subpart is necessary to identify and define CARF. CARF is the entity that the Extended Employment program uses to set standards and provide accreditation for Community Rehabilitation Providers. It is reasonable to define this term as it is used throughout the rule.

**Subp. 3. Center-Based Employment.** This subpart is necessary to define Center-Based Employment. There are three employment settings by which the Extended Employment program is administered: Competitive, Integrated Employment, Community Employment, and Center-Based Employment. All three are defined in this rule. An employment setting is where an individual works and receives Extended Employment services. The employment settings correspond with a subprogram. The Extended Employment provider reports an Extended Employment individual's work hours to a specific subprogram or subprograms. The Department reimburses work hours at a rate specific to the particular subprogram.

The employment settings defined in this rule are distinguished by: 1) if the location where an individual in the Extended Employment program works is owned or operated by their Extended Employment service provider; 2) if an individual in the Extended Employment program receives wages and benefits from an employer who is also their Extended Employment service provider; 3) if an individual in the Extended Employment program interacts, for the purposes of performing job duties, with people without disabilities; and 4) if an individual in the Extended Employment program is paid at or above minimum wage and compensated at or above customary wage.

The Center-Based Employment setting means employment for which an individual: 1) works at a location that is owned or operated by their Extended Employment service provider; and 2) receives wages and benefits from an employer who is also their Extended Employment service provider.

It is reasonable to define this term as it is used throughout the rule.

**Subp. 4. Commissioner.** This subpart is necessary to clarify that references to "commissioner" refer to the commissioner of the Department of Employment and Economic Development. The definition further clarifies "commissioner" refers to either the commissioner or the commissioner's designee. It is reasonable to define this term as it is used throughout the rule.

**Subp. 5. Community Employment.** This subpart is necessary to define Community Employment. There are three employment settings by which the Extended Employment program is administered: Competitive, Integrated Employment, Community Employment, and Center-Based Employment. All three are defined in this rule. An employment setting is where an individual works and receives Extended Employment services. The employment settings correspond with a subprogram. The Extended Employment provider reports an Extended Employment individual's work hours to a specific subprogram or subprograms. The Department reimburses work hours at a rate specific to the particular subprogram.

The employment settings defined in this rule are distinguished by: 1) if the location where an individual in the Extended Employment program works is owned or operated by their Extended Employment service provider; 2) if an individual in the Extended Employment program receives wages and benefits from an employer who is also their Extended Employment service provider; 3) if an individual in the Extended Employment program interacts, for the purposes of performing job duties, with people without disabilities; and 4) if an individual in the Extended Employment program is paid at or above minimum wage and compensated at or above customary wage.

The Community Employment setting means employment for which an individual: 1) works at a location that is not owned or operated by their Extended Employment service provider; and 2) receives wages and benefits from an employer who may or may not also be their Extended Employment service provider.

The Community Employment definition change will affect the Community Employment subprogram contract allocation for some Extended Employment providers. Extended Employment providers will need to determine if they have individuals whose employment would no longer meet the definition of Community Employment and therefore, cannot be reported in the Community Employment subprogram. Extended Employment providers will need to decide if they will continue providing services to those individuals through the Center-Based subprogram. A shift from the Community Employment subprogram to the Center-Based subprograms may be necessary to accommodate this provision and the proposed rule will allow such a shift before May 1, 2020.

It is reasonable to define this term as it is used throughout the rule.

**Subp. 6. Community Employment Subprogram.** This subpart is necessary to describe the Community Employment subprogram. There are three subprograms by which the program is administered: the Supported Employment subprogram, the Community Employment subprogram, and the Center-Based Employment subprogram. The Supported Employment and Community Employment subprograms are defined in this rule and the Center-Based subprogram is defined in Minnesota Statute 268A. Each subprogram represents a different employment setting and work hours reported in each subprogram are reimbursed at specific rate.

The Community Employment subprogram is the service category for individuals working in an employment setting that meets the definition of Community Employment.

It is reasonable to define this term as it is used throughout the rule.

**Subp. 7. Competitive, Integrated Employment.** This subpart is necessary to define Competitive, Integrated Employment. There are three employment settings by which the Extended Employment program is administered: Competitive, Integrated Employment, Community Employment, and Center-Based Employment. All three are defined in this rule. An employment setting is where an individual works and receives Extended Employment services. The employment settings correspond with a subprogram. The Extended Employment provider reports an Extended Employment individual's work hours to a specific subprogram or subprograms. The Department reimburses work hours at a rate specific to the particular subprogram.

The employment settings defined in this rule are distinguished by: 1) if the location where an individual in the Extended Employment program works is owned or operated by their Extended Employment service provider; 2) if an individual in the Extended Employment program receives wages and benefits from an employer who is also their Extended Employment service provider; 3) if an individual in the Extended Employment program interacts, for the purposes of performing job duties, with people without disabilities; and 4) if an individual in the Extended Employment program is paid at or above minimum wage and compensated at or above customary wage.

Competitive, Integrated Employment is defined as employment where: 1) the location where the individual works is not owned or operated by their Extended Employment service provider; 2) the individual receives wages and benefits from an employer who is not their Extended Employment service provider; 3) the individual interacts, for the purposes of performing job duties, with people without disabilities; and 4) if the individual is paid at or above minimum wage and compensated at or above customary wage.

The proposed definition of Competitive, Integrated Employment clarifies that, for a job to be truly competitive and integrated, the employer of record cannot be an individual's service provider. The department refers to this clarification as the "employer of record" provision. The clarification makes the interpretation of integrated employment consistent throughout the Extended Employment program. Without this distinction in rule, what employment settings are considered integrated is interpreted on a case-by-case basis. The proposed definition of Competitive, Integrated Employment aligns with the definitions found in the Workforce Innovation and Opportunity Act and Home and Community Based Services.

An actual, potential, or perceived conflict of interest may exist when a Community Rehabilitation Provider (CRP) is both an individual's employer of record and the individual's provider of Extended Employment services.

If the Community Rehabilitation Provider is the employer of record, work hours must be submitted for payment from either the Community Employment subprogram or from the Center-Based Employment subprogram, even if an individual is making minimum wage or higher, and/or the individual or Extended Employment provider would attest that their position is integrated.

The employer of record provision will affect the Supported Employment subprogram contract allocation for some Extended Employment providers starting with their state fiscal year 2020 contracts. Extended Employment providers will need to determine if they have individuals whose employment would no longer meet the definition of Competitive, Integrated Employment and therefore, cannot be reported in the Supported Employment subprogram. Extended Employment providers will need to decide if they will continue providing services to those individuals through the Community Employment or Center-Based subprograms. A shift from the Supported Employment subprogram to the Community Employment or Center-Based subprograms may be necessary to accommodate this provision and the proposed rule will allow such a shift before May 1, 2020.

It is reasonable to define this term as it is used throughout the rule.

**Subp. 8. Customary Wage and Benefits or Customary Rate.** This subpart is necessary to define customary wage and benefits. The term means that an employer provides the same wage and level of benefits to an individual with disabilities as an individual without disabilities performing the same or similar work with comparable training, skills, and experience with that employer. Customary wage and benefits is a term commonly used in the broader disability services system and is widely understood by stakeholders for this rule. The definition is consistent with the usage in the Vocational Rehabilitation program. Customary wage and benefits or customary rate is a key metric for determining if an individual is working in Competitive, Integrated Employment. It is reasonable to define this term as it is used throughout the rule.

**Subp. 9. Department.** This subpart is necessary to identify the Department of Employment and Economic Development as the state agency that administers the Extended Employment rule. It is reasonable to define this term as it is used throughout the rule.

**Subp. 10. Employer.** This subpart is necessary to define employer. Employer has the meaning given in United States Code, title 29, section 203(d). It is reasonable to define this term as it is used throughout the rule.

**Subp. 11. Extended Employment Provider or Provider.** This subpart is necessary to define an Extended Employment provider. This definition outlines the distinction between a Community Rehabilitation Provider and a Community Rehabilitation Provider that receives funding through the Extended Employment program. It is reasonable to define this term as it is used throughout the rule.

**Subp. 12. Extended Employment Services.** This subpart is necessary to define Extended Employment services. The definition clarifies that activities of the Extended Employment

program include both the development of an Extended Employment support plan and the delivery of ongoing employment support services. It is reasonable to define this term as it is used throughout the rule.

**Subp. 13. Individual receiving Extended Employment services or individual.** This subpart is necessary to define an individual receiving Extended Employment services. The 1998 rule used the terms “Extended Employment worker” or “worker” and the proposed rule instead uses “individual receiving Extended Employment services” or “individual.” The language change is consistent with the Department’s commitment to person-centered practices. It is reasonable to define this term as it is used throughout the rule.

**Subp. 14. Minimum Wage.** This subpart is necessary to define minimum wage. Minimum wage is a key metric for determining employment as Competitive, Integrated Employment. It is reasonable to define this term as it is used throughout the rule.

**Subp. 15. Ongoing employment support services.** This subpart is necessary to define ongoing employment support services. These services represent the foundation of the Extended Employment program and how the program helps an individual maintain or advance in their employment. It is important to clearly identify ongoing employment support services for stakeholders of the rule to understand the scope and purpose of the program. It is reasonable to define this term as it is used throughout the rule.

**Subp. 16. Qualified Professional.** This subpart is necessary to define which professionals are allowed to diagnose and document an individual’s disability or disabilities for the purposes of the Extended Employment program. A diagnosed disability or disabilities is one of the requirements for an individual to receive Extended Employment services. The 1998 rule has a vague definition. The proposed definition mirrors the policy and guidance used by the Vocational Rehabilitation program. It is reasonable to define this term as it is used throughout the rule.

**Subp. 17. Serious Functional Limitations to Employment.** This subpart is necessary to define serious functional limitations to employment. Having serious functional limitations in three or more functional areas is one of the requirements for an individual to receive Extended Employment services. The proposed definition mirrors the definition, policy, and guidance used by the Vocational Rehabilitation program. It is reasonable to define this term as it is used throughout the rule.

**Subp. 18. Supported Employment Subprogram.** This subpart is necessary to define the Supported Employment subprogram. There are three subprograms by which the program is administered: the Supported Employment subprogram, the Community Employment subprogram, and the Center-Based Employment subprogram. Each subprogram represents a different employment setting and work hours reported in each subprogram are reimbursed at specific rate. The Supported Employment and Community Employment subprograms are defined in this rule and the Center-Based subprogram is defined in Minnesota Statute 268A.

The Supported Employment subprogram is the service category for individuals working in an employment setting that meets the definition Competitive, Integrated Employment.

It is reasonable to define this term as it is used throughout the rule.

**Subp. 19. Work hours.** This subpart is necessary to define work hours. Work hours are the unit of measurement that is the basis for payment to the Extended Employment providers under the rule. This unit of measurement is used to establish uniform reimbursement rates for the various subprograms. It is reasonable to define this term as it is used throughout the rule.

### ***3300.6005: INDIVIDUAL ELIGIBILITY***

The elements of this part are largely unchanged from the 1998 rule, though the proposed rule pulls the elements into a more cohesive and concise section.

**Subp. 1. Individual Eligibility.** This subpart is necessary to identify who is eligible for Extended Employment services. It is reasonable to list the requirements for individuals to be eligible for participation in the Extended Employment program.

### ***3300.6010: EXTENDED EMPLOYMENT SERVICE DELIVERY***

This part is necessary to create a section detailing the requirements for service delivery in the Extended Employment program. The 1998 rule lacks clarity in the expectations of service delivery and this section provides those clear expectations.

**Subp. 1. Person-centered practices.** This subpart is necessary to identify the expectation that Extended Employment services be delivered in a manner that is consistent with “person-centered practices.” Person-centered practices are best practices in service delivery and it is reasonable that they be used when providing services to individuals with disabilities in the Extended Employment program. Minnesota state agencies and service providers are implementing person-centered approaches to their work. It is reasonable to provide services in the Extended Employment program consistent with best practices and services offered across state government.

**Subp. 2. Employment First.** This subpart is necessary to align the delivery of Extended Employment services with the State of Minnesota’s Employment First policy. State agencies adopted the Employment First policy as part of Minnesota’s Olmstead Plan in 2014. The Employment First framework is a best practice used across the nation and asserts that Competitive, Integrated Employment is the first and preferred outcome for all working-age individuals with disabilities. It is reasonable to provide services in the Extended Employment program consistent with best practices and services offered across state government.

**Subp. 3. Informed Choice.** This subpart is necessary to specify the process by which individuals make an informed decision about their work options in the Extended Employment program. The Informed Choice process allows an individual to evaluate their current employment and receive information on the full array of employment options available to them. For all individuals in the Extended Employment program, the review and development of the

employment support plan is the primary venue for discussions leading to an informed choice about their employment. For individuals earning less than minimum wage, the Informed Choice process references and aligns with the Career Counseling, Information, and Referral process required by the Workforce Innovation and Opportunity Act, Section 511, part 397 regulations. Facilitating an individual's informed choice is a best practice across the nation and required by law or regulation in certain situations. It is reasonable to provide services in the Extended Employment program consistent with best practices and services offered across state government.

### **3300.6015: EXTENDED EMPLOYMENT SUPPORT PLANS**

The elements of this part are largely unchanged from the 1998 rule. The 1998 rule required an Extended Employment Support Plan and for it to be reviewed on an annual basis. The proposed rule explicitly encourages person-centered practices, Employment First, and Informed Choice. Further, the proposed rule underscores that employment support plans are to be developed each year and clarifies what is required in the development of the plan.

**Subp. 1. Extended Employment Support Plan.** This subpart is necessary to state the requirement for development of the Extended Employment Support Plan. The Extended Employment Support Plan is the foundation of the interaction between the Extended Employment provider and individual; its development must be facilitated using person-centered practices, employment first, and result in an individual being able to make an informed choice about the services they would like to receive. Further, it identifies the specific ongoing employment support services agreed upon that will be provided to an individual. It is reasonable to set the requirement in rule to ensure program quality.

**Subp. 2. Requirements of the Extended Employment Support Plan.** This subpart is necessary to describe what elements must be included in the Extended Employment Support Plan. As previously stated, the plan is the foundation of Extended Employment services. The development of the plan must consider the individual's goals and objectives; the individual's vocational strengths, education, and work skills; the individual's interests and preferences for jobs and work environments; the individual's serious functional limitations to employment; and the specific ongoing employment support services that will be provided. It is reasonable to clearly identify what is expected and required in a support plan to ensure program quality.

**Subp. 3. Annual review and development of the Extended Employment Support Plan.** This subpart is necessary to clarify that the Extended Employment Support Plan must be reviewed and a new plan developed on an annual basis. It is important to review the existing plan and develop a new one at least once a year to ensure that the ongoing employment support services continue to meet an individual's needs. It is also important to identify an individual's interest in changing or advancing in employment and to determine if support services are still needed to maintain or advance in employment. It is reasonable to review and create a new plan on an annual basis because individual's needs for support services likely change over time. It is reasonable to set the expectation and requirement to review and develop a new Extended Employment Support Plan on an annual basis to ensure program quality.



### **3300.6020: CASE RECORD DOCUMENTATION**

The elements of this part are largely unchanged from the 1998 rule, though the proposed rule pulls the elements into a more cohesive and concise section.

**Subp. 1. Case Records.** This subpart is necessary to specify that case records must be maintained for each individual served in the Extended Employment program and for how long. The case record preserves documentation of eligibility and services provided. It is reasonable for the Department to require case records in order to ensure the quality of services and the integrity of the program.

**Subp. 2. Case Records Elements.** This subpart is necessary to identify what is required to be maintained in case records of each individual served in the Extended Employment program. The proposed rule continues to require documentation of an individual's disability, three or more serious functional limitations to employment, and source documentation from the individual's payroll agent.

This subpart retains the ability of the Extended Employment provider to determine an individual's functional limitations to employment for the purposes of determining eligibility for Extended Employment services. If an individual is referred from an entity other than the Vocational Rehabilitation program they might not have documentation of their serious functional limitations to employment. This is often because other referral sources don't have expertise in serious functional limitations to employment. DEED Extended Employment program staff and the Extended Employment Rule Advisory Committee considered requiring a third party to determine an individual's serious functional limitations to employment. DEED Extended Employment program staff asserts that Extended Employment providers are well situated to make such determinations, given the proper training. The Extended Employment program will provide technical assistance and training so Extended Employment providers can develop the expertise to make determinations in line with the standards of the Vocational Rehabilitation program. The Extended Employment program will institute policies and procedures to ensure proper determinations and documentation.

It is reasonable to specify what is required in the case records to ensure the quality of services and the integrity of the program.

**Subp. 3. WIOA, Section 511.** This subpart is necessary to identify what documentation is required to be kept in the case record for an individual earning less than minimum wage. The Workforce Innovation and Opportunity Act, Section 511, part 397 regulations requires individuals earning less than minimum wage to receive Career Counseling, Information, and Referral services. For an individual required to participate in that consultation, an Extended Employment provider is not required to provide duplicative informed choice information for purposes of the Extended Employment program. It is reasonable to require a copy of the consultation report be retained in the case record as the Extended Employment provider is required per this rule to consider the Career Counseling, Information, and Referral services consultation summary report when developing an individual's Extended Employment Support Plan.

### ***3300.6025: EXTENDED EMPLOYMENT PROVIDER REPORTING REQUIREMENTS***

The elements of this part are largely unchanged from the 1998 rule, though the proposed rule pulls the elements into a more cohesive and concise section.

**Subp. 1. Individual Data.** This subpart is necessary to specify what individual data must be submitted for individuals receiving Extended Employment services. The proposed rule removes some specificity about which demographic data must be reported, as that can change depending on program priorities. Extended Employment program staff will communicate what is required to Extended Employment providers with other methods. It is reasonable that the Department requests data on individuals served by the Extended Employment program to ensure the quality of services and the integrity of the program.

**Subp. 2. Work Record Data.** This subpart is necessary to specify what work-related data Extended Employment providers must submit in order to receive payment through the Extended Employment program. Each work hour submitted is reimbursed at the subprogram rate referenced in part 3300.6050. The data required includes hours worked, wages paid, subprogram, payroll agent, pay period and job type. It is reasonable that the Department requests specific information to be documented in order to reimburse Extended Employment providers to ensure the quality of services and the integrity of the program.

**Subp. 3. Monitoring.** This subpart is necessary to give the Department affirmative authority to monitor the accuracy of reported data as part of the contracting process. It is reasonable to provide this authority to ensure quality of services and the integrity of the program.

### ***3300.6030: REQUIREMENTS FOR EXTENDED EMPLOYMENT FUNDING***

The proposed rule creates a section to define the requirements for funding. In the 1998 rule the Extended Employment provider requirements for funding are in different parts of the rule which is difficult to follow.

**Subp. 1. Requirements for funding.** This subpart is necessary to make clear requirements for Community Rehabilitation Providers to receive Extended Employment funding while simplifying the funding process..

Under the 1998 rule, the Department was required to administer an annual certification process for Community Rehabilitation Providers to distribute funding. The proposed rule would eliminate the certification process and clarify the requirements of Community Rehabilitation Providers to receive funding. The certification process is unique within the Extended Employment program, and not necessary for funding. The current certification process requires a separate application and paperwork to complete that process; it is cumbersome and unnecessary. Under the proposed rule, the Department will still gather the required information, but without a cumbersome superfluous process. Department staff are confident that proper rigor can be applied through this simplified and streamlined process.

It is reasonable to set requirements of Community Rehabilitation Providers to receive funding and, further, it is reasonable to streamline processes while maintaining program integrity.

**Subp. 2. Funding in special circumstances.** This subpart is necessary to identify when a Community Rehabilitation Provider is eligible for funding in special circumstances. The proposed rule streamlines this process while maintaining program integrity.

The 1998 rule provides for the following distinct certifications: provisional certification, probationary certification, and certification extension. The proposed rule removes those various certifications and instead outlines when a Community Rehabilitation Provider is able to receive funding in special circumstances. Those special circumstances are unchanged from the 1998 rule and include: while an Extended Employment provider waits for their CARF survey to occur, while an Extended Employment provider waits to receive their CARF survey results, if there is an occurrence of a natural disaster, or if a Community Rehabilitation Provider is a not a current Extended Employment provider and has demonstrated the likelihood that the Community Rehabilitation Provider will meet the requirements for accreditation by CARF within one year.

It is reasonable to grant funding to a Community Rehabilitation Provider in these select circumstances and further, it is reasonable to streamline processes while maintaining program integrity.

### ***3300.6035: FUNDING***

This part is necessary to provide clarity in funding mechanisms and to bring the rule into alignment with identified best practices for program administration. The level of detail added to the funding provisions in the proposed rule adds transparency and accountability to the administration of the program.

**Subp. 1. Continuation Funding.** This subpart is necessary to define Extended Employment providers who are eligible for annual Extended Employment contract funding. It is reasonable to provide information to Extended Employment providers on how to continue their Extended Employment funding from year to year.

**Subp. 2. Starting Point for Initial Extended Employment Contract Allocations.** This subpart is necessary to determine the starting point for each Extended Employment provider's contract allocations to begin the state fiscal year. It is reasonable provide information as to how contract allocations are determined each year.

**Subp. 3. Contracted Allocation Subprogram Distribution.** This subpart is necessary to clarify the mechanism for distributing funds among the subprograms. One of the stated goals of the proposed rule is to prioritize funding for services supporting individuals working in Competitive, Integrated Employment settings; this provision furthers that goal. It is reasonable to ensure that Extended Employment providers prioritize their funds to support individuals working in Competitive, Integrated Employment settings.

**Subp. 4. Cap on Funding For Certain Employment.** This subpart is necessary to cap funding for services supporting individuals in employment settings that do not meet the definition of Competitive, Integrated Employment. One of the stated goals of the proposed rule is to

prioritize funding for services supporting individuals working in Competitive, Integrated Employment settings; this provision is one of the primary tools to accomplish that goal.

The cap on funding for employment that does not meet the definition of Competitive, Integrated Employment will be set individually for each Extended Employment provider. The cap for each Extended Employment provider will be set as the sum of an Extended Employment provider's state fiscal year 2020 Center-Based Employment subprogram contract allocation and their state fiscal year 2020 Community Employment subprogram contract allocation. It is reasonable to institute this funding cap in order to prioritize Extended Employment program funds for services supporting individuals working in Competitive, Integrated Employment settings.

**Subp. 5. Center-Based Employment Subprogram Phase-Out.** This subpart is necessary to eliminate Center-Based Employment subprogram funding over a five-year period. One of the stated goals of the proposed rule is to prioritize funding for services supporting individuals working in Competitive, Integrated Employment settings; this provision is one of the primary tools to accomplish that goal.

The elimination of the Center-Based Employment subprogram has been discussed at length and determined reasonable in consultation with the Extended Employment Rule Advisory Committee and each of the twenty-seven Extended Employment providers. Public Forums were held on likely changes to the current 1998 rule to solicit input from the broader community of impacted individuals. The elimination of the Center-Based Employment subprogram will happen over five years and not start until the state fiscal year 2021 contracts. Specifically, the phase-out begins with the state fiscal year 2021 contracts and dollar reductions increase and continue until state fiscal year 2025, after which time there will be no funding for the Center-Based Employment subprogram. This gradual phase-out will give Extended Employment providers time to make necessary adjustments to their business model and allow individuals in the subprogram to make the transition. The proposed elimination does not reduce an Extended Employment provider's overall contract allocation, but instead redirects their funds to the Supported Employment subprogram and the Community Employment subprogram.

It is reasonable to phase out the Center-Based Employment subprogram in order to prioritize Extended Employment program funds for services supporting individuals working in Competitive, Integrated Employment settings.

### ***3300.6040: CONTRACT ADJUSTMENTS***

This part is necessary to state the circumstances under which contracts are adjusted.

**Subp. 1. Voluntary Shifts.** This subpart is necessary to specify how an Extended Employment provider may adjust the distribution of their total funding allocation among the subprograms. One of the stated goals of the proposed rule is to prioritize funding for services supporting individuals working in Competitive, Integrated Employment settings; this provision furthers that goal. It is reasonable to prioritize Extended Employment funds to support individuals working in Competitive, Integrated Employment settings.

**Subp. 2. Underproduction Penalty.** This subpart is necessary to specify when a downward adjustment to an Extended Employment provider’s contract is required due to the Extended Employment provider’s inability to fully utilize contract allocation funds. The Extended Employment program was built to operate under a “Pay for Performance” model as well as a “Use it or Lose It” model. If a provider does not meet their contracted allocation in the fiscal year, this subpart defines the mechanism by which their allocation is adjusted downward in the subsequent fiscal year. There is no substantive change to this provision from the 1998 rule. It is reasonable to structure the program in a “Pay for Performance” model and reasonable to do so using the mechanism laid out in this subpart.

**Subp. 3. Waiver from Underproduction Penalty.** This subpart is necessary to specify the procedure by which the Department can grant a waiver from the underproduction penalty described in subpart 2. As proposed, if an Extended Employment provider earns 90 percent or greater of their contracted Supported Employment subprogram allocation, the Department can grant a one-year waiver from their contract being adjusted downward without an application process. An Extended Employment provider is eligible for the one-year waiver in each particular subprogram. This is a simplification from the current 1998 procedure known as the Consideration of Economic Conditions (Hardship Variance).

While the proposed rule simplifies the waiver process, it still allows the Department to take action if an Extended Employment provider repeatedly does not earn their allocated contract amount. In addition, the proposed rule language allows for an Extended Employment provider to request an additional one-year waiver in the case of extraordinary and catastrophic circumstances.

The underproduction waiver has been discussed at length and determined reasonable in consultation with the Extended Employment Rule Advisory Committee and each of the twenty-seven Extended Employment providers.

It is reasonable to structure the program in a “Pay for Performance” model and reasonable to allow for a mechanism by which an Extended Employment provider can receive a waiver from the underproduction penalty in certain circumstances.

### ***3300.6045: DISTRIBUTION OF AVAILABLE FUNDS***

This part is necessary to simplify and streamline how available funds are distributed beyond the standard continuation funding provided for in part 3300.6035. The 1998 rule attempts to stipulate what funding distribution mechanism is used under particular conditions, but does so in a way that is confusing to both state program staff and Community Rehabilitation Providers. Further, current DEED Extended Employment program staff interpretation of the 1998 rule finds conflicting provisions for the distribution of program funds. The confusing and conflicting provisions restrict transparency and accountability in program administration. It is reasonable to clarify the mechanisms for distribution and the factors that must be considered in making distribution decisions.

**Subp. 1. Available Funds.** This subpart is necessary to specify what happens when there are available funds within the Extended Employment program. Funds may be available from time to time primarily due to the underproduction penalty outlined in part 3300.6040. Additionally, funds could be available due to a general increase in the state appropriation or if an Extended Employment provider's contract is terminated. The proposed rule provides for four methods by which to distribute available funds: 1) Supported Employment Subprogram Overproduction; 2) Supported Employment Incentive; 3) New or Expanded Services; or 4) Supported Employment Subprogram Rate Adjustment. It is reasonable to outline how and when additional funds may become available for redistribution.

**Subp. 2. Distribution of Available Funds; Considerations.** This subpart is necessary to specify the process for determining how funds are to be distributed. This subpart requires that decisions regarding distribution of available funds must be made primarily by considering the needs of individuals currently receiving Extended Employment services and the needs of individuals who would benefit from ongoing employment support services. These needs include geographic access, availability of services, how services are best provided, and types of services offered. In addition, decisions should be made by considering the current landscape of the broader disability service delivery system including the perspectives of current Extended Employment providers, other Community Rehabilitation Providers, representatives of county social service agencies, vocational rehabilitation staff, and representatives from advocacy organizations. Lastly, the amount of available funds and whether or not funds are available on a one-time basis are key factors to determine which distribution mechanism(s) is(are) the best for a given situation. It is reasonable to outline the factors the Department is required to consider when making funding distribution decisions.

**Subp. 3. Distribution Method; Supported Employment Subprogram Overproduction.** This subpart is necessary to specify the process by which available funds are distributed through the Supported Employment Subprogram Overproduction provision. This provision would allow the Department to redistribute available funds to providers that overproduce in the Supported Employment subprogram. The 1998 rule had no clear mechanism for increasing allocations for providers who produce above their contract. Extended Employment program staff, the Extended Employment Rule Advisory Committee, and the twenty-seven current Extended Employment providers want the ability to increase allocations in order to increase service capacity for current Extended Employment providers.

The proposed rule situates this provision in the funding distribution part to make clear it is one of four mechanisms for distributing available funds.

It is reasonable to provide additional funds to Extended Employment providers that have overproduced in the Supported Employment subprogram as they have demonstrated a need for increased service capacity.

**Subp. 4. Distribution Method; Supported Employment Incentive.** This subpart is necessary to specify the process by which available funds are distributed through the Supported Employment Incentive provision. The proposed rule modifies the wage level incentive outlined

in the 1998 rule to the Supported Employment Incentive. Under the 1998 rule, unearned production dollars can be distributed to Extended Employment providers based on a proportionate share of work hours paid at or above minimum wage. Instead, the proposed rule allows the Department to distribute available funds to Extended Employment providers based on the Extended Employment provider's audited work hours in the Supported Employment subprogram divided by the total audited supported employment hours of all Extended Employment providers in the audited fiscal year.

The proposed rule situates this provision in the funding distribution part to make clear it is one of four mechanisms for distributing available funds.

It is reasonable to provide additional funds to Extended Employment providers that have reported work hours in the Supported Employment subprogram to incentivize services to individuals working in Competitive, Integrated Employment.

**Subp. 5. Distribution Method; New or Expanded Services.** This subpart is necessary to specify the process by which available funds are distributed through the New or Expanded Services provision. The proposed rule clarifies the process by which New or Expanded Services are administered and removes redundancy with current state grant law and policies found in the 1998 rule.

The proposed rule situates this provision in the funding distribution part to make clear it is one of four mechanisms for distributing available funds.

Historically, the New or Expanded Services grants have been used as a tool for ensuring access to individuals across Minnesota and for innovation in service delivery. To continue that precedent, the proposed rule allows waiving program requirements to conduct pilot projects. As previously discussed, there are new policy, funding, service delivery, and operational practices in the broader disability services system driven by changing rules and requirements the federal Home and Community Based Services rule, the federal Workforce Innovation and Opportunity Act, and stepped up enforcement of the Olmstead decision. In light of these new policy, funding, service delivery, and operational practices, pieces of the disability services system continue to shift and other pieces will continue to shift in the coming years. Minnesotans with disabilities will be best served if the program has the flexibility to test best practices for service delivery.

The challenges in service delivery are well documented in the discussions of the Extended Employment Rule Advisory Committee. Full notes of the committee's meetings can be found at <https://mn.gov/deed/job-seekers/disabilities/extend-employment/rule-change>. Below are some particularly useful comments from the September 3, 2014 meeting.

"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."

“We want to develop a revision that anticipates and facilitates continued advancement in services for EE workers in the future.”

“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.”

“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.”

“How can we anticipate and encourage the potential of partnerships to developing employment services capacity and access for eligible Minnesotans with disabilities.”

“Providers present concur that VRS oversight of the Extended Employment program is important to help ensure provider programs meet and/or exceed their legal requirements and program expectations.”

Further, the Department’s data shows that in the metro area, there is much more emphasis on Competitive, Integrated Employment. In greater Minnesota, however, there is much greater use of Community Employment and Center-Based Employment. As the Department strategizes about how best to incentivize and encourage access for services in greater Minnesota, there may be need to explore service delivery options to respond to the different needs in different regions.

It is reasonable to provide opportunities for Community Rehabilitation Providers to employ innovative and state-of-the-art best practices for providing ongoing employment support services individuals with disabilities in Competitive, Integrated Employment.

**Subp. 6. Distribution Method; Supported Employment Subprogram Rate Adjustment.** This subpart is necessary to specify the process by which available funds are distributed through the Supported Employment Subprogram Rate Adjustment provision. It is reasonable to increase rates for the Supported Employment subprogram as providing services in a Competitive, Integrated Employment setting is the most costly setting for Extended Employment providers. The proposed rule situates this provision in the funding distribution part to make clear it is one of four mechanisms for distributing available funds. It is reasonable to increase reimbursement rates to Extended Employment providers serving individuals in the Supported Employment subprogram. It is reasonable to incentivize services to individuals working in Competitive, Integrated Employment.

### ***3300.6050: RATES***

This part is necessary to specify how Extended Employment providers are paid. The part defines the unit of distribution for payment as one work hour and that the statewide uniform reimbursement rates apply for each reported work hour up to the maximum contracted allocation for a particular subprogram. The proposed rule only allows rate increases for the



Supported Employment subprogram. This change will further direct resources to Competitive, Integrated Employment. The change was discussed and supported by the Extended Employment Rule Advisory Committee. The proposed rule removes specific rate amounts in rule as the rates change year to year. In place of the specific rates, the proposed rule adds language establishing that rates are determined by adjusting the rates of the previous fiscal year in proportion to available funding. It is reasonable to define the mechanisms by which Extended Employment providers are paid in rule.

### ***3300.6055: WITHDRAWAL OF FUNDS***

The elements of this part are largely unchanged from the 1998 rule.

**Subp. 1. Criteria for withdrawal of allocated state funds.** This subpart is necessary and reasonable to explain under what circumstances the Department could withdraw allocated state funds from an Extended Employment provider.

**Subp. 2. Notice of withdrawal.** This subpart is necessary and reasonable to provide guidance on how the Department communicates with an Extended Employment provider to notify them of any intent to withdraw funds.

### ***3300.6060: EXTENDED EMPLOYMENT PROVIDER COMPLIANCE AUDITS***

The elements of the Extended Employment Provider Compliance Audits are largely unchanged from the 1998 rule, though the proposed rule organizes the information in a manner that results in a more cohesive and concise section. In the 1998 rule the requirements and processes are embedded with funding information and lack clarity. The proposed rule adds language to reflect current business practices and increase transparency and accountability of program administration.

**Subp. 1. Compliance Audit Conducted.** This subpart is necessary to specify when and how compliance audits are conducted. It is reasonable to require compliance audits as they are a primary mechanism to ensure program integrity.

**Subp. 2. Reconciliation Payments.** This subpart is necessary and reasonable to specify how the compliance audit reconciliation payments are determined and paid.

### ***3300.6065: PAY AND BENEFITS***

The elements of this part are largely unchanged from the 1998 rule. This part is necessary and reasonable to specify the required level of fundamental personnel benefits must be provided to individuals when the Extended Employment provider is the employer of record. This part is also necessary and reasonable to specify the requirements for individuals who are self-employed.

### ***3300.6070: APPEAL PROCEDURE***

The elements of this part are largely unchanged from the 1998 rule. It is necessary and reasonable to provide stakeholders appeal options for any decisions made by the Department.

**Subp. 1. Notice of intent to appeal.** This subpart is necessary and reasonable to provide guidance on how to submit an appeal to the Department.

**Subp. 2. Informal review.** This subpart is necessary and reasonable to specify guidance regarding the Department’s responsibilities during an informal review, the timeframe the Department has to review the appeal, and what action steps would be taken.

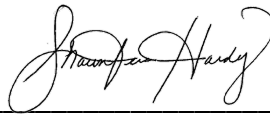
**Supp. 3. Contested case.** This subpart is necessary and reasonable to specify the steps if a party requests a contested case hearing and what steps they must take to do so.

**Sup. 4. Decision.** This subpart is necessary and reasonable to specify that any decision from the administrative law judge on an appeal is final.

## Conclusion

Based on the foregoing, the proposed rules are both needed and reasonable.

8/29/18



Date

Shawntera Hardy  
Commissioner  
Department of Employment and Economic Development