

January 18, 2019

VIA EFILING ONLY

Kim Babine
Minnesota Department of Employment and
Economic Development
1st National Bank Bldg
332 Minnesota Street, Ste E-200
Saint Paul, MN 55101
kim.babine@state.mn.us

**Re: In the Matter of the Proposed Permanent Rules Relating to Extended
Employment Services
OAH 60-9044-35198; Revisor 4245**

Dear Ms. Babine:

Enclosed herewith and served upon you is the **ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.26** in the above-entitled matter. The Administrative Law Judge has determined there are no negative findings in these rules.

The Office of Administrative Hearings has closed this file and is returning the rule record so that the Minnesota Department of Employment and Economic Development can maintain the official rulemaking record in this matter as required by Minn. Stat. § 14.365 (2018). Please ensure that the agency's signed order adopting the rules is filed with our office. The Office of Administrative Hearings will request the finalized rules from the Revisor's Office following receipt of that order. Our office will then file the adopted rules with the Secretary of State, who will forward one copy to the Revisor of Statutes, one copy to the Governor, and one to the agency for its rulemaking record. The Department will then receive from the Revisor's Office three copies of the Notice of Adoption of the rules.

The Department's next step is to arrange for publication of the Notice of Adoption in the State Register. Two copies of the Notice of Adoption provided by the Revisor's Office should be submitted to the *State Register* for publication. A permanent rule without a hearing does not become effective until five working days after a Notice of Adoption is published in the *State Register* in accordance with Minn. Stat. § 14.27 (2018).

Kim Babine
January 18, 2019
Page 2

If you have any questions regarding this matter, please contact Ian Lewenstein at (651) 361-7857, ian.lewenstein@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



IAN LEWENSTEIN
Legal Assistant

Enclosure

cc: Office of the Governor
Legislative Coordinating Commission
Revisor of Statutes

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW SECTION
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

In the Matter of the Proposed Permanent Rules Relating to Extended Employment Services	OAH 60-9044-35198 Revisor 4245
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Ian Lewenstein certifies that on January 18, 2019, he served a true and correct copy of the attached **ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.26** by placing it in the United States mail or by courier service with postage prepaid, addressed to the following individuals:

VIA EFILING ONLY

Kim Babine
Minnesota Department of Employment
and Economic Development
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Saint Paul, MN 55101
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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Permanent Rules Governing the Extended Employment program, *Minnesota Rules*, chapters 3300.6000 to 3300.6070 and repeal of existing Rules Governing the Extended Employment program, *Minnesota Rules*, chapters 3300.2005 to 3300.2055

**ORDER ON REVIEW OF
RULES UNDER
MINN. STAT. § 14.26**

The Minnesota Department of Employment and Economic Development (Department) is seeking review and approval of these rules, which were adopted by the agency pursuant to Minn. Stat. § 14.26 (2018). On January 4, 2019, the Office of Administrative Hearings (OAH) received the documents that must be filed by the Department under Minn. Stat. § 14.26 and Minn. R. 1400.2310 (2017). Based upon a review of the written submissions and filings, Minnesota Statutes, and Minnesota Rules,

IT IS HEREBY DETERMINED:

1. The Department has the statutory authority to adopt the rules.
2. The rules were adopted in compliance with the procedural requirements of Minn. Stat. §§ 14.01-.69 (2018), and Minn. R. 1400.2000-.8612 (2017).
3. The modifications to the rules made by the Department following publication of the proposed rules in the *State Register* do not result in a substantially different rule, as defined in Minn. Stat. § 14.05, subd. 2 (b), (c).
4. The record demonstrates the rules are needed and reasonable.

IT IS HEREBY ORDERED THAT:

The rules are **APPROVED**.

Dated: January 18, 2019



JAMES E. LAFAVE
Administrative Law Judge

January 4, 2018

The Honorable James LaFave
Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

RECEIVED
By: OAH on 1/4/19 12:59P

Re: In the Matter of the Adopted Rules of the Department of Employment and Economic Development about the Extended Employment program; OAH Docket No. 60-9044-35198; Revisor's ID Number AR4245

Dear Judge LaFave:

The Minnesota Department of Employment and Economic Development requests that the Office of Administrative Hearings review and approve its rules governing the Extended Employment program for legality and form according to Minnesota Statutes, section 14.26. Upon receipt of OAH approval, the Department will adopt the rules. Enclosed for your review are the documents required by Office of Administrative Hearings Rules, part 1400.2310, items A to P. Paragraphs A to P of this letter are keyed to items A to P of part 1400.2310. Each paragraph states whether the document is enclosed and, if the document is not enclosed, the reason that the document is not applicable.

- A. Enclosed: the Request for Comments as published in the State Register on Monday, 06/14/2014, p. 6.
- B. Not enclosed: a petition for rulemaking. This is not enclosed because no petition was filed regarding these rules.
- C. Enclosed: the proposed rules dated 08/15/2018, with the Revisor's certificate of approval, p. 37.
- D. Enclosed: the Statement of Need and Reasonableness, p. 93.
- E. Enclosed: the Dual Notice, as mailed, and the Dual Notice, as published in the State Register on Monday, September 10, 2018, p. 13.
- F. Not enclosed: a letter from the Chief Administrative Law Judge authorizing the Department to omit the text of the proposed rules from the Notice of Intent to Adopt Rules published in the State Register. This is not enclosed because the Department

included the text of the proposed rules with the Notice of Intent to Adopt Rules published in the State Register.

- G. Enclosed: the Certificate of Mailing the Dual Notice and the Certificate of Accuracy of the Mailing List, p. 144.
- H. Enclosed: the Certificate of Additional Notice or a copy of the transmittal letter, p. 143.
 - Flyer to individuals impacted by rule change
 - Public Summary of proposed changes
 - Access Press advertisement
 - Emails to public regarding open public comment period
- I. Enclosed: the Certificate of Mailing the Statement of Need and Reasonableness to the Legislative Reference Library, p. 138.
- J. Enclosed: all written comments and submissions on the proposed rules that the Department received during the comment period, requests for hearing and withdrawals of requests for hearing, except those that only requested copies of documents, p. 149.
- K. Enclosed: the notice of withdrawal of hearing request and evidence that the Department sent notice of withdrawal to all persons who requested a hearing. Not enclosed: No responsive comments received, p. 130.
- L. Enclosed: a copy of the adopted rules dated 11/20/18. The modifications to the proposed rules are reflected in the rules as adopted and are approved by the Revisor of Statutes, p. 65.
- M. Not enclosed: a notice of adopting substantially different rules that was sent to persons or groups who commented during the comment period and evidence that the notice was sent to those persons or groups. This is not enclosed because the Department did not adopt substantially different rules.
- N. Enclosed: the unsigned Order Adopting Rules that complies with the requirements in part 1400.2090, p. 147.
- O. Not enclosed: a notice of submission of rules to the Office of Administrative Hearings and a copy of a transmittal letter or certificate of mailing the notice of submission of rules to the Office of Administrative Hearings. No persons requested notification of the submission of the rules to the Office of Administrative Hearings.

- P. Enclosed: any other document or evidence to show compliance with any other law or rule that the Department is required to follow in adopting these rules. These are:
- P.1. A copy of the transmittal letter (email) showing the agency sent notice to Legislators per Minnesota Statutes, section 14.116, p. 139.
 - P.2. A copy of the transmittal letter (email) showing the agency consulted with the Department of MMB per Minnesota Statutes, section 14.131, and MMB's memo dated 08/03/18 in response, p. 135.

If you have questions or wish to discuss anything with me, please contact me by phone at 651-259-7349 or by email at kim.babine@state.mn.us. After you complete your review, please send any correspondence to me via email or at the following address:

Kim Babine
Minnesota Department of Employment and Economic Development
First National Bank Building
332 Minnesota Street, Suite E200
St. Paul, MN 55101

Sincerely,



Kim Babine
Director of Community Partnerships
DEED Vocational Rehabilitation Services

RULE SUBMISSION TO THE OFFICE OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT

**2018 EXTENDED EMPLOYMENT RULES, CHAPTER 3300
REVISOR'S ID NUMBER AR4245**

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RULE SUBMISSION TO THE OFFICE OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT

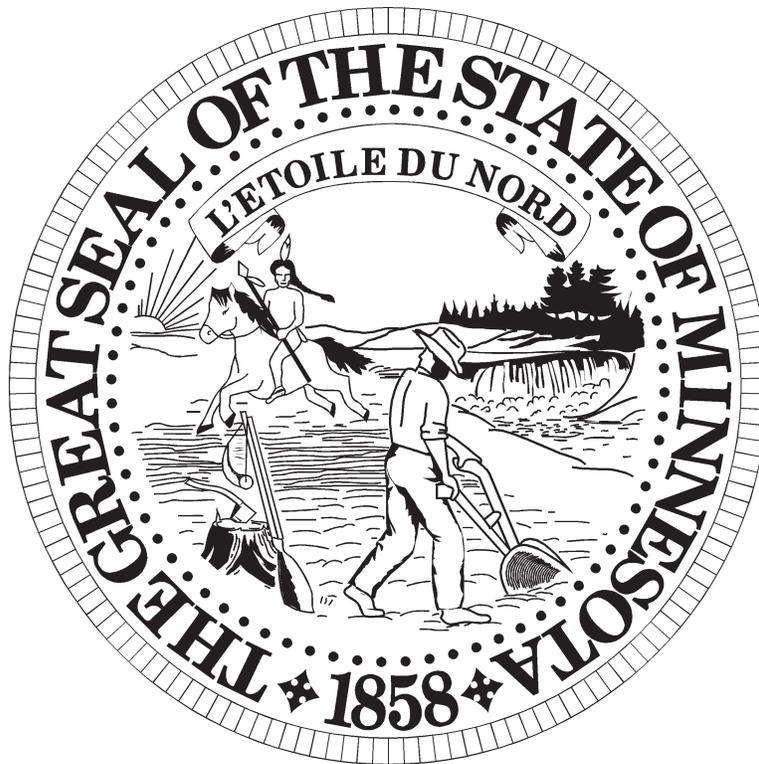
**2018 EXTENDED EMPLOYMENT RULES, CHAPTER 3300
REVISOR'S ID NUMBER AR4245**

STATE REGISTER DOCUMENTS

Minnesota

State Register

(Published every Monday (Tuesday when Monday is a holiday).)



**Proposed, Adopted, Emergency, Expedited, Withdrawn, Vetoed Rules;
Executive Orders; Appointments; Commissioners' Orders; Revenue Notices;
Official Notices; State Grants & Loans; State Contracts;
Non-State Public Bids, Contracts & Grants**

**Monday 16 June 2014
Volume 38, Number 51
Pages 1629 - 1672**

Minnesota State Register

Judicial Notice Shall Be Taken of Material Published in the *Minnesota State Register*

The *Minnesota State Register* is the official publication of the State of Minnesota's Executive Branch of government, published weekly to fulfill the legislative mandate set forth in *Minnesota Statutes*, Chapter 14, and *Minnesota Rules*, Chapter 1400. It contains:

- Proposed Rules
- Adopted Rules
- Exempt Rules
- Expedited Rules
- Withdrawn Rules
- Vetoed Rules
- Executive Orders of the Governor
- Appointments
- Proclamations
- Commissioners' Orders
- Revenue Notices
- Official Notices
- State Grants and Loans
- Contracts for Professional, Technical and Consulting Services
- Non-State Public Bids, Contracts and Grants

Printing Schedule and Submission Deadlines

Vol. 38 Issue Number	PUBLISH DATE (BOLDFACE shows altered publish date)	Deadline for: all Short Rules, Executive and Commissioner's Orders, Revenue and Official Notices, State Grants, Professional-Technical-Consulting Contracts, Non-State Bids and Public Contracts	Deadline for LONG, Complicated Rules (contact the editor to negotiate a deadline)
# 52	Monday 23 June	Noon Tuesday 17 June	Noon Thursday 12 June
# 53	Monday 30 June	Noon Tuesday 24 June	Noon Thursday 19 June
Vol. 39, # 1 -	Monday 7 July (FY-15)	Noon Tuesday 1 July (FY-15)	Noon Thursday 26 June
# 2	Monday 14 July	Noon Tuesday 8 July	Noon Thursday 3 July (FY-15)

PUBLISHING NOTICES: We need to receive your submission **ELECTRONICALLY in Microsoft WORD format**. Submit ONE COPY of your notice via e-mail to: robin.panlener@state.mn.us. State agency submissions must include a "State Register Printing Order" form, and with contracts, a "Contract Certification" form. Non-State Agencies should submit **ONE COPY in Microsoft WORD**, with a letter on your letterhead stationery requesting publication and date to be published. Costs are \$10.20 per tenth of a page (columns are seven inches wide). One typewritten, double-spaced page = 4/10s of a page in the *State Register*, or \$40.80. About 2-1/2 pages typed, double-spaced, on 8-1/2"x11" paper = one typeset page in the *State Register*. Contact editor if you have questions (651) 297-7963, or **e-mail:** robin.panlener@state.mn.us.

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Minnesota Legislative Information

Senate Public Information Office (651) 296-0504
State Capitol, Room 231, St. Paul, MN 55155
Website: www.senate.mn

House Public Information Services (651) 296-2146
State Office Building, Room 175,
100 Rev. Dr. Martin Luther King Jr Blvd., St. Paul, MN 55155
Website: www.house.leg.state.mn.us/hinfo/hinfo.htm

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Court Information Office (651) 296-6043
MN Judicial Center, Rm. 135,
25 Rev. Dr. Martin Luther King Jr Blvd.,
St. Paul, MN 55155 **Website:** www.mncourts.gov

Federal Register

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U.S. Government Printing Office – Fax: (202) 512-1262
Website: http://www.access.gpo.gov/su_docs/aces/aces140.html

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For additional grants go to the Office of Grants Management (OGM) at: <http://www.grants.state.mn.us/public/>

Revisor of Statutes - *RULES STATUS*:
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Minnesota Rules: Amendments and Additions

NOTICE: How to Follow State Agency Rulemaking in the State Register

The *State Register* is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the *State Register*. Published every Monday, the *State Register* makes it easy to follow and participate in the important rulemaking process. Approximately 80 state agencies have the authority to issue rules. Each agency is assigned specific **Minnesota Rule** chapter numbers. Every odd-numbered year the **Minnesota Rules** are published. Supplements are published to update this set of rules. Generally speaking, proposed and adopted exempt rules do not appear in this set because of their short-term nature, but are published in the *State Register*.

An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, or within 60 days of the effective date of any new statutory grant of required rulemaking.

When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or a notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules, and withdrawn proposed rules, are also published in the *State Register*. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the *State Register* as **Adopted Rules**. These final adopted rules are not printed in their entirety, but only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the *State Register*, the issue the rule appeared in as proposed, and later as adopted.

The *State Register* features partial and cumulative listings of rules in this section on the following schedule: issues #1-13 inclusive; issues #14-25 inclusive (issue #26 cumulative for issues #1-26); issues #27-38 inclusive (issue #39, cumulative for issues #1-39); issues #40-52 inclusive, with final index (#1-52, or 53 in some years). An annual subject matter index for rules was separately printed usually in August, but starting with Volume 19 now appears in the final issue of each volume. For copies or subscriptions to the *State Register*, contact Minnesota's Bookstore, 660 Olive Street (one block east of I-35E and one block north of University Ave), St. Paul, MN 55155, phone: (612) 297-3000, or toll-free 1-800-657-3757. TTY relay service phone number: (800) 627-3529

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Official Notices

Pursuant to *Minnesota Statutes* §§ 14.101, an agency must first solicit comments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

The *State Register* also publishes other official notices of state agencies and non-state agencies, including notices of meetings and matters of public interest.

Minnesota State Colleges and Universities (MnSCU) State Department of Administration (Admin) State Designer Selection Board Project No. 14-05 Notice of Availability of Request for Proposal (RFP) for Designer Selection for Central Lakes College, Staples - Campus Renovation

The State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of Central Lakes College, through the State Designer Selection Board, is soliciting proposals from interested, qualified consultants for architectural and engineering design services for the above referenced project.

A full Request for Proposals is available on the Minnesota Department of Administration's website at <http://mn.gov/admin/government/construction-projects/sdsb/sdsb-projects.jsp> (click 14-05).

A **MANDATORY** informational meeting is scheduled for **Tuesday June 24, 2014 at 11:00 AM** Central Time at Central Lakes College, Staples Campus, room B103, 1830 Airport Road, Staples, MN 56479

Any questions should be directed by email only, to Kari Christiansen at kchristi@clcmn.edu. Project questions will be taken by this individual only. Questions regarding this RFP must be received by **Thursday, June 26, 2014** no later than **4:00 PM** Central Time.

Proposals must be delivered to Talia Landucci Owen, Executive Secretary, State Designer Selection Board, Real Estate and Construction Services, Room 309, Administration Building, 50 Sherburne Ave., St. Paul, MN 55155, **phone:** (651) 201-2372 not later than **12:00 noon on Tuesday, July 8, 2014**. Late responses will not be considered.

Minnesota State Colleges and Universities is not obligated to complete the proposed project and reserves the right to cancel the solicitation if it is considered to be in its best interest.

Minnesota Department of Employment and Economic Development (DEED) Vocational Rehabilitation Services, Extended Employment Program REQUEST FOR COMMENTS on Possible Amendment to Rules Governing Extended Employment Services Authorized in MN Statute 268A.15; *Minnesota Rules:* 3300.2005 – 3300.2055; Revisor's ID Number R-04245

Subject of Rules. The Minnesota Department of Employment and Economic Development requests comments on possible amendments to the Extended Employment Program and Funding Rules. The Department is considering rules amendments and changes that align the services and outcomes of the Extended Employment program to meet the objectives contained in Minnesota's Olmstead plan. Specifically, the amendments would seek to 1) align services and outcomes with support services that meet federal standards for Vocational Rehabilitation; 2) align services and outcomes with support services that meet federal standards for Medicaid-funded employment services; 3) set standards for eligible employment support services; 4) realign payments made to providers to support desired outcomes;

Official Notices

and 5) eliminate archaic language and consider other items that may be relevant to agency policies if time is available.

Persons Affected. The amendment to the rules would likely affect persons with significant disabilities who currently receive, or will in the future receive, ongoing, long-term employment supports; families or guardians of those receiving services; and community rehabilitation providers who deliver long-term employment supports. Other groups or organizations that may be affected include organizations advocating for persons with disabilities, state agencies, county social service agencies, and workforce development programs.

Statutory Authority. *Minnesota Statutes*, 268A.15

Subd. 3. Rule authority.

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.

Public Comment. Individuals or groups with an interest in the possible rule changes may submit their comments or information in writing until notice is published in the *State Register* that the Department intends to adopt or withdraw the rules. The Department will not publish a notice of intent to adopt the rules until at least 60 days have elapsed from the date of this request for comments.

The Department requests comments on the cumulative effect of the rule with other federal and state regulations.

The Department will select and appoint members of an advisory committee to comment on the possible rules. The Department will accept requests to serve on the advisory committee. Membership may include, but is not necessarily limited to: representatives from community rehabilitation programs, persons receiving extended employment supports, advocacy organizations representing persons with disabilities, state agencies, and county social service agencies. It is anticipated that the advisory committee will begin meeting within one month of this announcement and will meet biweekly in Saint Paul. There may be public hearings outside Saint Paul which coincide with meetings of the advisory committee. The committee will review current and historic performance of the extended employment program, the recommendations contained in the state Olmstead plan, and draft rule language. The committee will operate throughout the period reserved for comments and may continue to meet during the adoption period of any amendments to the rule.

Rules Drafts. The Department has not yet drafted possible amendments.

Agency Contact Person. Written comments, questions, requests to receive a draft of the rules when it has been prepared], and requests for more information on these possible rules should be directed to: John Sherman, Vocational Rehabilitation Services, 332 Minnesota Street, Suite E200, Saint Paul, MN 55101. **Phone:** (651) 259-7349, **toll-free:** 1-800-328-9095. **fax:** (651) 297-5159. **e-mail:** john.sherman@state.mn.us.

Alternative Format. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the agency contact person at the address or telephone number listed above.

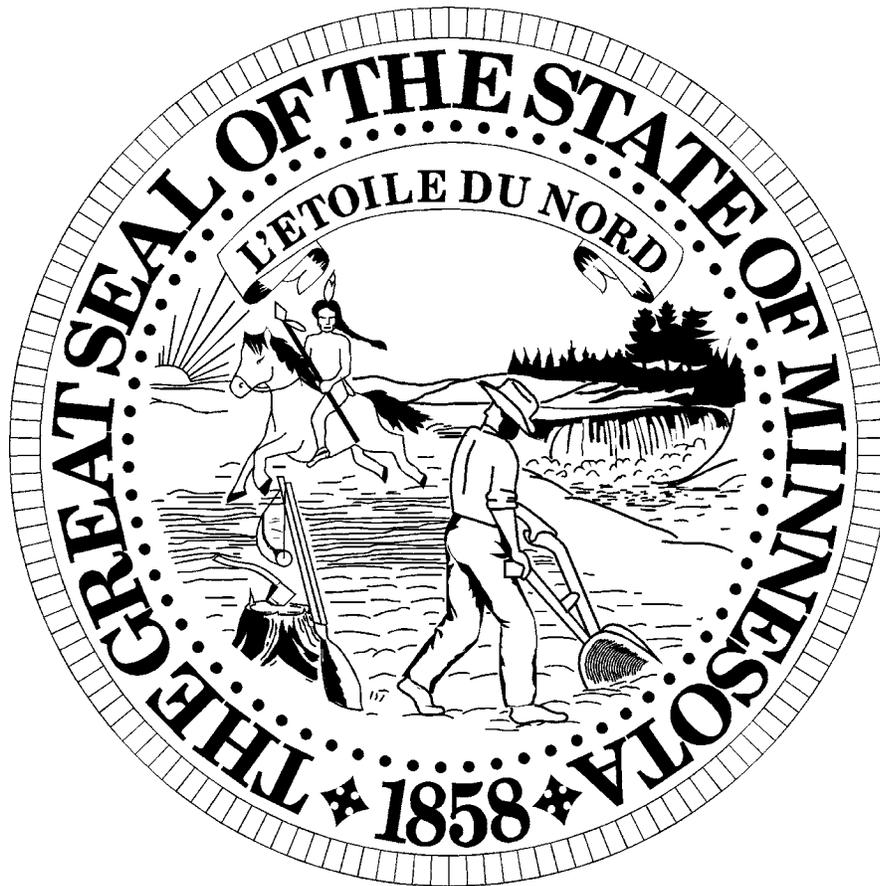
NOTE: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Dated: [???

Commissioner, Katie Sieben Clark
Department of Employment and
Economic Development

Minnesota State Register

Published every Monday (Tuesday when Monday is a holiday)



**Proposed, Adopted, Emergency, Expedited, Withdrawn, Vetoed Rules;
Executive Orders; Appointments; Commissioners' Orders; Revenue Notices;
Official Notices; State Grants & Loans; State Contracts;
Non-State Public Bids, Contracts and Grants**

**Monday 10 September 2018
Volume 43, Number 11
Pages 311 - 342**

Minnesota State Register

Judicial Notice Shall Be Taken of Material Published in the *Minnesota State Register*

The *Minnesota State Register* is the official publication of the State of Minnesota's Executive Branch of government, published weekly to fulfill the legislative mandate set forth in *Minnesota Statutes*, Chapter 14, and *Minnesota Rules*, Chapter 1400. It contains:

- Proposed Rules
- Adopted Rules
- Exempt Rules
- Expedited Rules
- Withdrawn Rules
- Executive Orders of the Governor
- Appointments
- Proclamations
- Vetoed Rules
- Commissioners' Orders
- Revenue Notices
- Official Notices
- State Grants and Loans
- Contracts for Professional, Technical and Consulting Services
- Non-State Public Bids, Contracts and Grants

Printing Schedule and Submission Deadlines

Vol. 43 Issue Number	PUBLISH DATE (BOLDFACE shows altered publish date)	Deadline for: all Short Rules, Executive and Commissioner's Orders, Revenue and Official Notices, State Grants, Professional-Technical- Consulting Contracts, Non-State Bids and Public Contracts	Deadline for LONG, Complicated Rules (contact the editor to negotiate a deadline)
# 12	Monday 17 September	Noon Tuesday 11 September	Noon Thursday 6 September
# 13	Monday 24 September	Noon Tuesday 18 September	Noon Thursday 13 September
# 14	Monday 1 October	Noon Tuesday 25 September	Noon Thursday 20 September
# 15	Monday 8 October	Noon Tuesday 2 October	Noon Thursday 27 September

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(651) 296-0504
State Capitol, Room 231, St. Paul, MN 55155
<http://www.senate.mn>

Minnesota State Court System

Court Information Office (651) 296-6043
MN Judicial Center, Rm. 135,
25 Rev. Dr. Martin Luther King Jr Blvd., St. Paul, MN 55155
<http://www.mncourts.gov>

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100 Rev. Dr. Martin Luther King Jr Blvd., St. Paul, MN 55155
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Federal Register

Office of the Federal Register (202) 512-1530; or (888) 293-6498
U.S. Government Printing Office – Fax: (202) 512-1262
http://www.access.gpo.gov/su_docs/aces/aces140.html

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Minnesota Rules: Amendments and Additions

NOTICE: How to Follow State Agency Rulemaking in the State Register

The State Register is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the State Register. Published every Monday, the State Register makes it easy to follow and participate in the important rulemaking process. Approximately 80 state agencies have the authority to issue rules. Each agency is assigned specific Minnesota Rule chapter numbers. Every odd-numbered year the Minnesota Rules are published. Supplements are published to update this set of rules. Generally speaking, proposed and adopted exempt rules do not appear in this set because of their short-term nature, but are published in the State Register.

An agency must first solicit Comments on Planned Rules or Comments on Planned Rule Amendments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (Minnesota Statutes §§ 14.101). It does this by publishing a notice in the State Register at least 60 days before publication of a notice to adopt or a notice of hearing, or within 60 days of the effective date of any new statutory grant of required rulemaking.

When rules are first drafted, state agencies publish them as Proposed Rules, along with a notice of hearing, or a notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules, and withdrawn proposed rules, are also published in the State Register. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the State Register as Adopted Rules. These final adopted rules are not printed in their entirety, but only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the State Register, the issue the rule appeared in as proposed, and later as adopted.

The State Register features partial and cumulative listings of rules in this section on the following schedule: issues #1-13 inclusive; issues #14-25 inclusive (issue #26 cumulative for issues #1-26); issues #27-38 inclusive (issue #39, cumulative for issues #1-39); issues #40-52 inclusive, with final index (#1-52, or 53 in some years). An annual subject matter index for rules was separately printed usually in August, but starting with Volume 19 now appears in the final issue of each volume. For copies or subscriptions to the State Register, contact Minnesota's Bookstore, 660 Olive Street (one block east of I-35E and one block north of University Ave), St. Paul, MN 55155, phone: (612) 297-3000, or toll-free 1-800-657-3757. TTY relay service phone number: (800) 627-3529.

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(Rules Appearing in Vol. 42 Issues #27-52 are
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Comments on Planned Rules or Rule Amendments. An agency must first solicit Comments on Planned Rules or Comments on Planned Rule Amendments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

Rules to be Adopted After a Hearing. After receiving comments and deciding to hold a public hearing on the rule, an agency drafts its rule. It then publishes its rules with a notice of hearing. All persons wishing to make a statement must register at the hearing. Anyone who wishes to submit written comments may do so at the hearing, or within five working days of the close of the hearing. Administrative law judges may, during the hearing, extend the period for receiving comments up to 20 calendar days. For five business days after the submission period the agency and interested persons may respond to any new information submitted during the written submission period and the record then is closed. The administrative law judge prepares a report within 30 days, stating findings of fact, conclusions and recommendations. After receiving the report, the agency decides whether to adopt, withdraw or modify the proposed rule based on consideration of the comments made during the rule hearing procedure and the report of the administrative law judge. The agency must wait five days after receiving the report before taking any action.

Rules to be Adopted Without a Hearing. Pursuant to *Minnesota Statutes* § 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing. An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public. The agency then publishes a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.1414.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

KEY: Proposed Rules - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated “all new material.” **Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

Department of Employment and Economic Development (DEED)

Vocational Rehabilitation Services – Extended Employment Program

Proposed Permanent Rules Relating to Extended Employment Services; DUAL NOTICE: Notice of Intent to Adopt Rules without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; OAH Docket No. 60-9044-35198; Revisor’s ID Number RD-4245

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.

Introduction. The Department of Employment and Economic Development (DEED) intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on Wednesday, October 10, 2018, the Department will hold a public hearing in the Minnesota Room at DEED Headquarters, First National Bank Building, Suite E200, 332 Minnesota Street, St. Paul, MN 55101, starting at 2:00 p.m. on Wednesday, October 24, 2018. To find out whether the Department will adopt the rules without a hearing or if it will hold the hearing, you should contact the agency contact person after Wednesday, October 10, 2018 and before Wednesday, October 24, 2018.

Proposed Rules

Agency Contact Person. Submit any comments or questions on the rules or written requests for a public hearing to the agency contact person. The agency contact person is: Kim Babine, Director of Community Partnerships, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101, 651-379-7349, kim.babine@state.mn.us.

You may also review the proposed rule and submit written comments via the Office of Administrative Hearings Rulemaking e-comments website at <https://minnesotaoah.granicusideas.com/discussions>.

You may also review more information regarding the proposed rule and sign up for email updates at mn.gov/deed/eerule.

Subject of Rules and Statutory Authority. The proposed rule govern the Extended Employment program. The proposed rule codifies updated rules governing the Extended Employment program, Minnesota Rules, chapters 3300.6000 – 3300.6070 and repeals existing rules governing the Extended Employment program, Minnesota Rules, chapters 3300.2005 – 3300.3100. The statutory authority to adopt the rules is *Minnesota Statutes*, section 268A.15.

Minnesota Department of Employment and Economic Development | Vocational Rehabilitation Services 332 Minnesota Street, Suite E200 | St. Paul, MN 55101

The proposed changes to the Extended Employment rule prioritize funding for competitive, integrated employment, align the program with new practices in the broader disability service system, and reflect principles such as person-centered practices and informed choice.

A copy of the proposed rule is published on the Department of Employment and Economic Development's website: mn.gov/deed/eerule.

Comments. You have until 4:30 p.m. on Wednesday, October 10, 2018, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that the Department hold a hearing on the rules. You must make your request for a public hearing in writing, which the agency contact person must receive by 4:30 p.m. on Wednesday, October 10, 2018. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the Department will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

Modifications. The Department might modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the agency or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the Department follows the

Proposed Rules

procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Department encourages you to participate in the rulemaking process.

Cancellation of Hearing. The Department will cancel the hearing scheduled for Wednesday, October 24, 2018, if the agency does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the agency will notify you before the scheduled hearing whether the hearing will be held. You may also call the agency contact person at 651-259-7349 after Wednesday, October 10, 2018 to find out whether the hearing will be held. On the scheduled day, you may check for whether the hearing will be held by calling 651-259-7349 or going on-line at mn.gov/deed/eerule.

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, the Department will hold a hearing following the procedures in Minnesota Statutes, sections 14.131 to 14.20. This public hearing will be held in the Minnesota Room at DEED Headquarters, First National Bank Building, Suite E200, 332 Minnesota Street, St. Paul, MN 55101, starting at 2:00 p.m. on Wednesday, October 24, 2018. The hearing will continue until all interested persons have been heard. Administrative Law Judge James LaFave is assigned to conduct the hearing. Judge LaFave's Legal Assistant Denise Collins can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7900 and FAX 651-539-0310 ordenise.collins@state.mn.us.

Hearing Procedure. If the Department holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the Administrative Law Judge may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the agency and any interested person may respond in writing to any new information submitted. No one may submit new evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge via the Office of Administrative Hearings Rulemaking e-comments website at <https://minnesotaoah.granicusideas.com/discussions> no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Department of Employment and Economic Development or on the agency's website at mn.gov/deed/eerule. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge. The agency requests that any person submitting written views or data to the Administrative Law Judge before the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

Statement of Need and Reasonableness. The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person. You may review or obtain copies for the cost of reproduction by contacting the agency contact person. A copy of the SONAR is published on the Department of Employment and Economic Development's website: mn.gov/deed/eerule

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, or by telephone: 651-539- 1180 or 1-800-657-3889.

Adoption Procedure if No Hearing. If no hearing is required, the agency may adopt the rules after the end of the comment period. The Department will submit the rules and supporting documents to the Office of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the office. If you want either to receive notice of this, to receive a copy of the adopted rules, or to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

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Adoption Procedure after a Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the agency adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the agency contact person stated above.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

Date: 8/29/2018

Shawntera Hardy
Commissioner
Department of Employment and Economic Development

3300.6000 DEFINITIONS.

Subpart 1. Scope. When used in parts 3300.6000 to 3300.6070, the terms defined in this part have the meanings given them.

Subp. 2. CARE. "CARF" means CARF International, the independent, nonprofit organization that sets standards and provides accreditation for service and quality of community rehabilitation providers.

Subp. 3. Center-based employment. "Center-based employment" means employment for which an individual:

- A. works at a location that is owned or operated by the individual's extended employment provider;
- B. receives wages and benefits from an employer who is, directly or indirectly, the individual's extended employment provider;
- C. performs work that does not meet all of the conditions of either the supported employment subprogram or the community employment subprogram.

Subp. 4. Commissioner. "Commissioner" means the commissioner of the Department of Employment and Economic Development or the commissioner's designee.

Subp. 5. Community employment. "Community employment" means employment for which an individual:

- A. works at a location that is not owned or operated by the individual's extended employment provider;
- B. receives wages and benefits from an employer who is or is not, directly or indirectly, the individual's extended employment provider;
- C. performs work that does not meet all the conditions of the supported employment subprogram.

Subp. 6. Community employment subprogram. "Community employment subprogram" means the commissioner's service category for individuals in community employment under subpart 5.

Subp. 7. Competitive, integrated employment. "Competitive, integrated employment" means work performed on a full- or part-time basis, with or without supports, for which an individual:

A. works at a location that:

- (1) for state fiscal year 2019, is or is not owned or operated by the individual's service provider, and where the

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individual with a disability interacts, for purpose of performing job duties, with people without disabilities in similar positions within the work unit and the entire work site, not including supervisors or individuals providing services to the employee; and

(2) for state fiscal year 2020 and thereafter, is not owned or operated by the individual's extended employment provider, and where the individual with a disability interacts, for purpose of performing job duties, with people without disabilities in similar positions within the work unit and the entire work site, not including supervisors or individuals providing services to the employee;

B. receives wages and benefits from an employer who:

(1) for state fiscal year 2019, is or is not, directly or indirectly, the individual's extended employment provider;
and

(2) for state fiscal year 2020 and thereafter, is not, directly or indirectly, the individual's extended employment provider;

C. is paid at or above the federal, state, or local minimum wage, whichever is highest, as defined in this chapter;
and

D. is compensated at or above the customary wage and benefits as defined in subpart 9.

Subp. 8. **Customary wage and benefits or customary rate.** “Customary wage and benefits” or “customary rate” means the wage paid and the level of benefits provided by the employer to an individual without disabilities performing the same or similar work with comparable training, skills, and experiences with that employer.

Subp. 9. **Department.** “Department” means the Department of Employment and Economic Development.

Subp. 10. **Employer.** “Employer” has the meaning given in United States Code, title 29, section 203(d).

Subp. 11. **Extended employment provider or provider.** “Extended employment provider” or “provider” means a community rehabilitation provider that receives funding through the extended employment program.

Subp. 12. **Extended employment services.** “Extended employment services” means the development of an extended employment support plan and the delivery of ongoing employment support services.

Subp. 13. **Individual receiving extended employment services or individual.** “Individual receiving extended employment services” or “individual” means an individual who meets the eligibility requirements in this chapter and who receives extended employment services under the extended employment program. Any reference in parts 3300.6000 to 3300.6070 to an individual receiving extended employment services includes the individual's legal representative.

Subp. 14. **Minimum wage.** “Minimum wage” means an hourly wage rate not less than the higher of the rate specified in section 6(a)(1) of the United States Fair Labor Standards Act of 1938, United States Code, title 29, section 206(a)(1), or the rate specified in the Minnesota Fair Labor Standards Act, Minnesota Statutes, section 177.24, or local minimum wage law, and that is not less than the customary wage and benefits.

Subp. 15. **Ongoing employment support services.**

A. “Ongoing employment support services” means any of the services in item B that are:

(1) identified in the individual's extended employment support plan;

(2) related to the individual's serious functional limitations to employment; and

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(3) necessary and required to maintain or advance the individual's current employment.

B. Ongoing employment support services include:

(1) rehabilitation technology, job redesign, or environmental adaptations;

(2) disability awareness training for the individual, the individual's employer, supervisor, or coworkers, including related services to increase the individual's inclusion at the work site;

(3) job skill training at the work site;

(4) regular observation or supervision of the individual;

(5) behavior management;

(6) coordination of support services;

(7) job-related safety training;

(8) job-related self-advocacy skills training to advance employment;

(9) training in independent living skills including money management, grooming and personal care, social skills, orientation and mobility, and using public transportation or drivers' training;

(10) communication skills training including sign language training, Braille, speech reading, and the use of communication devices or other adaptive methods for the individual, or the individual's employer, supervisor, or coworkers;

(11) follow-up services including contact with the individual's employer, supervisor, or coworkers; the individual's parents, family members, advocates, or legal representatives; and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(12) training in job-seeking skills;

(13) career planning to advance in employment; and

(14) any other service that is identified in the individual's extended employment support plan related to the individual's serious functional limitations to employment that is needed to maintain or advance the employment of an individual in the extended employment program.

Subp. 16. Qualified professional.

A. "Qualified professional" means the professionals listed in item B who are licensed, certified, or registered in the state where the professional practices, and who provide a diagnosis of a disability or disabilities within the scope of the professional's license, certification, or registration for an individual in the extended employment program.

B. The following are qualified professionals:

(1) a physician or psychologist;

(2) a physician's assistant practicing under the supervision of a physician;

(3) an advanced practice registered nurse;

- (4) clinical specialists in psychiatric or mental health nursing;
- (5) an audiologist;
- (6) a chiropractor;
- (7) a licensed chemical dependency counselor;
- (8) a social worker from a county mental health or county developmental disabilities program;
- (9) a licensed independent clinical social worker (LICSW); and

(10) a licensed graduate social worker (LGSW) or a licensed independent social worker (LISW) practicing under the supervision of a LICSW.

Subp. 17. **Serious functional limitations to employment.** “Serious functional limitations to employment” means an individual experiences significant barriers to employment in three or more of the functional areas listed in items A to G that affect an individual’s ability to maintain or advance in employment, and the individual requires ongoing employment support services to mitigate the effect of the limitations and achieve the individual’s employment goals.

A. “Communication” means the ability to effectively give and receive information through words or concepts, using methods such as reading, writing, speaking, listening, sign language, or other adaptive methods.

B. “Interpersonal skills” means the ability to establish and maintain personal, family, and community relationships as it affects, or is likely to affect, job performance and security.

C. “Mobility” means the physical and psychological ability to move about from place to place inside and outside the home, including travel to and from usual destinations in the community for activities of daily living, training, or work.

D. “Self-care” means the skills needed to manage self or living environment, including eating, toileting, grooming, dressing, money management, and management of special health or safety needs, including medication management, as they affect an individual’s ability to participate in training or work-related activities.

E. “Self-direction” means the ability to plan, initiate, organize, or carry out goal-directed activities or solve problems related to working.

F. “Work skills” means:

- (1) the ability to do specific tasks required to carry out job functions; and
- (2) the capacity to benefit from training in how to perform tasks required to carry out job functions.

G. “Work tolerance” means the capacity or endurance to effectively and efficiently perform jobs requiring various levels of physical demands, psychological demands, or both.

Subp. 18. **Supported employment subprogram.** “Supported employment subprogram” means the commissioner’s service category for individuals who are in competitive, integrated employment.

Subp. 19. **Work hours.** “Work hours” means the hours for which an individual performs paid work, including hours of paid holidays, paid sick, paid vacation, and other paid leaves of absence. The payment of a bonus or commission is not included in the computation of work hours.

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3300.6005 INDIVIDUAL ELIGIBILITY.

Subpart 1. Individual eligibility.

A. An individual is eligible for extended employment services if the individual:

(1) is a Minnesota resident;

(2) has documentation of a diagnosed disability or disabilities by a qualified professional according to part 3300.6000, subpart 16;

(3) has a serious functional limitation to employment in three or more functional areas according to part 3300.6000, subpart 17; and

(4) requires ongoing employment support services to maintain and advance in employment.

B. An individual on a medical assistance waiver, regardless of the waiver service the individual is receiving, is not eligible to receive extended employment services through the extended employment program.

3300.6010 EXTENDED EMPLOYMENT SERVICES DELIVERY.

Subpart 1. **Person-centered practices.** A provider must deliver extended employment services in the extended employment program using person-centered practices. “Person-centered practices” means practices that help an individual set goals and develop action steps that enhance the individual’s quality of life, where control over decisions rests with the individual. The provider must not influence an individual’s decision making but instead serve as a facilitator of decision making.

Subp. 2. **Employment first.** A provider must consider employment first in delivering extended employment services in the extended employment program. “Employment first” means the expectation that a working age Minnesotan with a disability can work, wants to work, and can achieve competitive employment, and each person must be offered the opportunity to work and earn a competitive wage before being offered other supports and services.

Subp. 3. Informed choice.

A. The provider must facilitate an individual’s ability to make an informed choice about the individual’s employment. “Informed choice” means the individual is able to make decisions regarding the individual’s employment. Informed choice requires:

(1) that the individual understands all employment options, methods to overcome barriers to employment, and the potential risks and benefits of those decisions;

(2) employment options that are not limited to only disability-specific programs;

(3) community resources and supports are included in options; and

(4) the individual is provided community-based experiences on which to base employment choices on an ongoing basis using person-centered practices.

B. For an individual required to participate in a career counseling, information, and referral services consultation by the Workforce Innovation and Opportunity Act (WIOA), section 511, part 397, a provider is not required to provide duplicative informed choice information for purposes of the extended employment program. A provider must consider the career counseling, information, and referral services consultation summary report when developing an individual’s extended employment support plan and retain a copy in the case record.

3300.6015 EXTENDED EMPLOYMENT SUPPORT PLANS.

Subpart 1. **Extended employment support plan.** The provider must develop an extended employment support plan for each individual in the extended employment program.

Subp. 2. **Requirements of the extended employment support plan.** The plan must include the following:

A. the individual's employment goals and objectives, including:

(1) employment goals and goals for career advancement;

(2) the individual's preferences for employment setting, integration, range or level of pay, work hours, work schedules, and benefits, including reference to the individual's decision from the career counseling, information, and referral meeting regarding whether an individual expressed interest in pursuing competitive, integrated employment; and

(3) the timeline for reaching the individual's employment goals;

B. the individual's vocational strengths, education, and work skills;

C. the individual's interests and preferences for jobs and work environments;

D. the individual's serious functional limitations to employment and how they impact an individual's ability to maintain employment;

E. the individual's preferences for when, where, and how the required two per month in-person meetings will occur;

F. identification of the specific ongoing employment support services that will be provided;

G. the person or persons who will be providing the ongoing employment support services, and a plan that describes how the individual will be notified and the impact on scheduled services in the event the identified person or persons are absent or unavailable to provide scheduled services;

H. the individual's decision to disclose or not disclose disability-related information to the individual's employer and how supports will be provided in either scenario;

I. the names of the participants in the planning and preparation of the individual's extended employment support plan; and

J. the signature of the individual.

Subp. 3. **Annual review and development of the extended employment support plan.** A provider must facilitate a review of an individual's extended employment support plan and development of a new extended employment support plan at least once per year. The new extended employment support plan shall be maintained in the case file. The review and development shall include the individual, the provider, and anyone else the individual would like involved. The review and development must include a discussion of each element of the extended employment support plan and must itemize each of the following:

A. the individual's satisfaction with his or her employment and the ongoing employment support services that are being provided;

B. the effectiveness of the individual's extended employment support plan in achieving the individual's vocational goals;

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C. the individual's interest in changing or advancing in employment; and

D. the individual's continuing need for ongoing employment support services to maintain or advance in employment going forward.

3300.6020 CASE RECORD DOCUMENTATION.

Subpart 1. **Case records.** An extended employment provider must maintain a current confidential case record for each individual served in the extended employment program. The provider shall retain each case record for a minimum of three years after the completion of the compliance audit process.

Subp. 2. **Case record elements.** Case records must include the following information:

A. personal identification data, including the individual's legal name, Social Security number, legal status, date of birth, residential status and address, and, if applicable, the name and contact information of the individual's legal representative;

B. documentation of eligibility for extended employment, including:

(1) independent source documentation of the individual's diagnosed disability by a qualified professional; and

(2) documentation identifying the individual's specific significant functional limitations to employment by one of the following:

(a) a disability examiner, employed by the department's Disability Determination Services, or another state's department who evaluates claims for disability benefits using Social Security Administration guidelines to determine the significant functional limitations to employment of individuals;

(b) a vocational rehabilitation professional, employed by a state department or county unit, who is authorized by the government unit to determine the significant functional limitations to employment of individuals; or

(c) an extended employment provider, as provided in the intake paperwork;

C. pay statements from the individual's payroll agent demonstrating:

(1) start and end dates of the pay period;

(2) hours worked during the pay period;

(3) hours of paid leave used in the pay period;

(4) amount of gross wages paid in the pay period;

(5) payroll agent of record; and

(6) the individual's and the employer's contribution to the individual's federal Social Security program;

D. the date the individual was referred to the extended employment provider for extended employment services, the referral source, and the name and contact information of the person who made the referral;

E. employment data, including contact information for supervisors, job duties, work schedules, rate of pay, benefits, start dates, and termination dates;

F. the current extended employment support plan updated annually; and

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G. the ongoing employment support services provided to the individual including, at a minimum, the date and services provided to the individual by the provider during the two in-person meetings per month.

Subp. 3. **WIOA, section 511.** If an individual's employment requires an annual WIOA, section 511, career counseling session, then the case record must include documentation of that session.

3300.6025 PROVIDER REPORTING REQUIREMENTS.

Subpart 1. **Individual data.** A provider must submit data requested by the commissioner, including identification and contact information, eligibility information, demographic information, intake and exit information, and work record data in a manner prescribed by the commissioner on each individual reported to the extended employment program.

Subp. 2. **Work record data.** A provider must submit work record data evidenced by pay statements from an individual's employer in order to receive payment. Work record data must include:

- A. start and end dates of the pay period or the month;
- B. hours worked during the pay period or the month;
- C. amount of gross wages paid during the pay period or the month;
- D. type of subprogram where hours are reported;
- E. payroll agent of record; and
- F. job type, as an O*Net code.

Subp. 3. **Monitoring.** The commissioner is authorized to conduct monitoring visits as a part of the contracting process to ensure the accuracy of reported data. The provider must make individual records and performance data available to the commissioner for monitoring. A provider may appeal the loss of hours and earnings resulting from the commissioner's assessment of allowable hours under part 3300.6065.

3300.6030 REQUIREMENTS FOR EXTENDED EMPLOYMENT FUNDING.

Subpart 1. **Requirements for funding.** To receive funding under the extended employment program, a community rehabilitation provider must:

- A. be a public or nonprofit entity registered with the Minnesota secretary of state;
- B. comply with Minnesota Statutes, sections 268A.06 to 268A.085, regarding requirements of the board;
- C. hold accreditation in the CARF standards in this item.

(1) To provide services through the supported employment subprogram, the community employment subprogram, or the center-based employment subprogram, a community rehabilitation provider must hold accreditation in the CARF administrative and program standards for community employment services, including job development and employment supports.

(2) To provide services through the center-based employment subprogram, a community rehabilitation provider must hold accreditation in the CARF administrative and program standards for organizational employment services; and

- D. maintain CARF conformance between CARF surveys.

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Subp. 2. Funding in special circumstances.

A. If a community rehabilitation provider submits evidence of any of the circumstances listed in item B, the commissioner must grant funding under the extended employment program even if the requirements for funding in subpart 1 are not met. Funding under this subpart is only valid for up to one year and cannot be used in any two consecutive fiscal years.

B. The following are special circumstances warranting grant funding:

(1) CARF cannot schedule a timely survey;

(2) CARF has completed a survey but has not delivered the results of the survey to the provider; or

(3) An extraordinary and catastrophic circumstance has occurred. For the purposes of this part, an “extraordinary and catastrophic circumstance” means a fire or other natural disaster that is beyond the control of a provider that has adversely affected or completely halted operations such that the extended employment provider has been unable to maintain the requirements for funding.

C. If a community rehabilitation provider is not a current extended employment provider and has been awarded a contract for new or expanded extended employment services and is in compliance with all requirements for funding except the requirement for accreditation by CARF, then the commissioner must grant funding under the extended employment program even if the CARF requirement for funding in subpart 1 is not met. If the provider is not accredited by CARF, the provider must demonstrate the likelihood that the provider will meet the requirements for accreditation by CARF and will receive accreditation within one year.

3300.6035 FUNDING.

Subpart 1. Continuation funding.

A. Each fiscal year, a provider who held a contract with the commissioner for extended employment funding in the previous fiscal year, and maintains compliance with the requirements for funding, is eligible for continuation of their funding within the limits of available appropriations for this purpose.

B. If a community rehabilitation provider held a contract for new or expanded services in the previous fiscal year, has met the identified outcomes of the new or expanded services within the time frame specified in the contract, and maintains compliance with the requirements for funding, then the provider is eligible for continuation of their funding within the limits of available appropriations for this purpose.

Subp. 2. Starting point for initial extended employment contract allocations. The starting point for a provider’s initial extended employment contract allocation for each subprogram in a particular fiscal year must be determined by the provider’s prior fiscal year extended employment contract allocation for each subprogram, as amended.

Subp. 3. Contracted allocation subprogram distribution.

A. The commissioner must specify a provider’s funding allocation amount by subprogram in the provider’s contract.

B. The starting point for a provider’s allocation amount by subprogram in a new fiscal year contract is a provider’s allocation amount by subprogram in the previous fiscal year contract.

C. A provider may adjust the distribution of the provider’s total funding allocation among the subprograms in developing the new fiscal year contract as follows:

(1) a provider may shift a portion of the provider’s center-based employment subprogram allocation to the

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provider's community employment subprogram allocation or the provider's supported employment subprogram allocation, or both:

(2) a provider may shift a portion of the provider's community employment subprogram allocation to the provider's supported employment subprogram allocation;

(3) before May 1, 2020, a provider may make one request to shift a portion of any of the provider's subprogram allocations to any other subprogram allocation; and

(4) in state fiscal year 2021 and thereafter, a provider must not shift a portion of the provider's supported employment subprogram allocation to the provider's community employment subprogram allocation or the provider's center-based subprogram allocation. A provider must not shift a portion of the provider's community employment subprogram allocation to the provider's center-based employment subprogram allocation.

Subp. 4. **Cap on funding for certain employment.** Beginning in fiscal year 2020, the commissioner must set a cap on employment that does not meet the definition of competitive, integrated employment for each provider. The cap for each provider is set as the sum of a provider's fiscal year 2020 contract allocations for the center-based employment subprogram and the community employment subprogram.

Subp. 5. **Center-based employment subprogram phaseout.**

A. Beginning in fiscal year 2021, the commissioner must reduce each provider's center-based employment subprogram contract allocation as described in this subpart. The basis for each provider's reduction each year is the provider's fiscal year 2020 center-based employment subprogram contract allocation.

B. A provider may shift the funds reduced from the center-based employment subprogram to either its community employment subprogram contract allocation or its supported employment subprogram contract allocation. The provider may also forfeit the funds. Of the funds reduced from the center-based employment subprogram allocation each year, no more than 50 percent of the funds can be shifted to the community employment subprogram.

(1) In fiscal year 2021, a provider's center-based employment subprogram contract allocation must be reduced by at least five percent of the provider's center-based employment subprogram fiscal year 2020 contract allocation.

(2) In fiscal year 2022, a provider's center-based employment subprogram contract allocation must be reduced by at least 15 percent of the provider's center-based employment subprogram fiscal year 2020 contract allocation.

(3) In fiscal year 2023, a provider's center-based employment subprogram contract allocation must be reduced by at least 20 percent of the provider's center-based employment subprogram fiscal year 2020 contract allocation.

(4) In fiscal year 2024, a provider's center-based employment subprogram contract allocation must be reduced by at least 25 percent of the provider's center-based employment subprogram fiscal year 2020 contract allocation.

(5) In fiscal year 2025, a provider's center-based employment subprogram contract allocation must be reduced by at least 35 percent of the provider's center-based employment subprogram fiscal year 2020 contract allocation.

(6) The commissioner must not provide funding to a provider for the center-based employment subprogram in fiscal year 2026 and later.

3300.6040 CONTRACT ADJUSTMENTS.

Subpart 1. **Voluntary shifts.** After the extended employment contract has been executed, a provider may request voluntary shifts in the distribution of the total allocation amount among the subprograms. Voluntary shifts may be made according to the parameters in part 3300.6035, subpart 3, item C. A shift in the distribution of the allocation requires a renegotiated provider contract.

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Subp. 2. Underproduction penalty.

A. After the compliance audit reconciliation process under part 3300.6060 for a previous fiscal year is complete, the commissioner must determine if a provider is subject to an underproduction penalty for a particular subprogram.

B. A provider is subject to an underproduction penalty for a particular subprogram when the provider's audited production for a particular subprogram in a fiscal year is less than 95 percent of the provider's allocation for that subprogram in the fiscal year.

C. An underproduction penalty means the commissioner must adjust a provider's subprogram allocation for that subprogram in the subsequent fiscal year's contract downward, except as provided by subpart 3.

D. The downward adjustment for that subprogram's allocation must be the audited subprogram production in the audited fiscal year plus five percent of the audited fiscal year's subprogram contract allocation.

Subp. 3. Waiver from underproduction penalty. If a provider is subject to an underproduction penalty in a particular subprogram as described in subpart 2, the provider is eligible for either a one-year waiver or a catastrophic waiver from the underproduction penalty.

A. If a provider earns 90 percent to 95 percent of a subprogram allocation, the provider is eligible for a one-year waiver from the underproduction penalty for a particular subprogram. The commissioner must provide the waiver without a request process. A provider is ineligible to receive the one-year waiver for a particular subprogram in any two consecutive fiscal years. A provider is eligible for the one-year waiver in each particular subprogram.

B. If a provider earns less than 90 percent of a subprogram allocation and demonstrates it is experiencing an extraordinary and catastrophic circumstance under this item, the commissioner may issue a catastrophic waiver from the underproduction penalty.

(1) For purposes of this subpart, an "extraordinary and catastrophic circumstance" means a fire or other natural disaster that is beyond the control of the provider that has adversely affected or completely halted operations such that extended employment individuals have been unable to work or extended employment provider staff have been unable to provide extended employment services.

(2) A provider seeking a catastrophic waiver to the contract starting point must request this variance in a manner prescribed by the commissioner and shall:

(a) state the reasons for the request;

(b) submit independent documentation of the extraordinary and catastrophic circumstances;

(c) demonstrate how the extraordinary and catastrophic circumstances resulted in the loss of work hours of extended employment individuals; and

(d) submit a measurable work plan for corrective action to meet contracted hours during the next contract period.

(3) A provider is eligible for the catastrophic waiver in each particular subprogram. A provider is ineligible for the catastrophic waiver for a particular subprogram in any two consecutive fiscal years.

3300.6045 DISTRIBUTION OF AVAILABLE FUNDS.

Subpart 1. Available funds. The commissioner must distribute funds that become available due to any of the following:

- A. a general increase in the state appropriation;
- B. the underproduction penalty process as described in part 3300.6040; or
- C. unspent funds due to termination of a contract.

Subp. 2. Distribution of available funds; considerations.

A. The commissioner must consider the factors in this subpart when determining which method of distribution of additional available funds under subpart 3 will be used.

(1) Priority for allocation of funds must go toward the service needs of individuals who would benefit from ongoing employment support services.

(2) The commissioner must consider input from stakeholders such as current extended employment providers, other community rehabilitation providers, representatives of county social service agencies, vocational rehabilitation staff, and representatives from advocacy organizations.

(3) The commissioner must consider the amount of onetime funds or ongoing funds available for distribution.

(4) The commissioner must consider the relationship of additional extended employment services to current services.

(5) The commissioner must consider the performance of current extended employment services.

(6) The commissioner must consider the geographic distribution of current extended employment services and the distribution method's ability to respond to needs for geographic distribution of extended employment services.

B. When funds are available for distribution, the commissioner must distribute funds on a onetime basis, a time-limited basis, or by adding to a provider's subsequent year initial extended employment contract starting point.

Subp. 3. Distribution method; supported employment overproduction. If the commissioner distributes available funds through the supported employment overproduction provision, the commissioner must distribute funds to extended employment providers that have overproduced in the supported employment subprogram based on a proportionate share of the total supported employment subprogram overproduction by all extended employment providers. Overproduction means an extended employment provider's audited supported employment subprogram hours exceed the provider's supported employment contract allocation in a given fiscal year.

Subp. 4. Distribution method; supported employment incentive. If the commissioner distributes available funds through the supported employment incentive provision, the commissioner must distribute funds to extended employment providers based on each provider's audited supported employment hours divided by the total audited supported employment hours of all extended employment providers in the audited fiscal year.

Subp. 5. Distribution method; new or expanded services. If the commissioner distributes available funds through the new or expanded services provision, the commissioner must develop and publish a request for proposals for new or expanded services. New or expanded services must only be to provide ongoing employment support services to individuals in competitive, integrated employment. Community rehabilitation providers may apply for distribution of available funds by responding to a request for proposals for new or expanded services issued by the commissioner.

A. In developing the request for proposals for new or expanded extended employment services, the commissioner shall consider how to foster innovation and promote state-of-the-art best practices in providing ongoing employment support services to individuals in competitive, integrated employment. The commissioner may waive program requirements as outlined in this chapter to conduct pilot projects, foster innovation, and promote state-of-the-art best practices in

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competitive, integrated employment.

B. The underproduction penalty in part 3300.6040 does not apply to a new or expanded services contract allocation. A contract for new or expanded services must include production goals within identified time frames. If a provider's audited production for the new or expanded services in an audited fiscal year is less than the production goals identified in the contract for new or expanded services, the provider must develop and implement a corrective action plan to meet the goals in the contract. The commissioner must approve and monitor the corrective action plan. If the provider does not administer extended employment services according to the corrective action plan approved by the commissioner, the commissioner must withdraw allocated state funds for new and expanded services under part 3300.6055.

Subp. 6. **Distribution method; supported employment subprogram rate adjustment.** If the commissioner distributes available funds through a supported employment subprogram rate adjustment, the commissioner must use the available funds to adjust the statewide uniform reimbursement rates for the supported employment subprogram as provided under part 3300.6050.

3300.6050 RATES.

A. The unit of distribution of extended employment program funding is the payment for one work hour performed by an eligible individual and reported to the commissioner in the extended employment program.

B. For each subprogram, the statewide uniform reimbursement rates apply for each reported work hour up to the maximum contracted allocation for that subprogram.

C. The commissioner must set statewide uniform reimbursement rates each fiscal year. The commissioner must determine rates by adjusting rates of the previous fiscal year in proportion to available funding. Rate increases are available for the supported employment subprogram only.

D. The commissioner must publish statewide uniform reimbursement rates for each subprogram as part of the information provided during the contracting process.

3300.6055 WITHDRAWAL OF FUNDS.

Subpart 1. **Criteria for withdrawal of allocated state funds.** The commissioner must withdraw allocated state funds from a provider when:

A. extended employment services are not being administered according to:

- (1) this chapter and Minnesota Statutes, chapter 268A;
- (2) the terms, conditions, or duties of the extended employment program grant contract; or
- (3) a corrective action plan approved by the commissioner; or

B. the provider has not complied with the commissioner's written requests to implement changes to extended employment services.

An extended employment provider must submit information requested by the commissioner to carry out the duties in this chapter.

Subp. 2. **Notice of withdrawal.** Except where there is an imminent danger to the health or safety of individuals, the commissioner must give written notice at least 45 days before allocated state funds may be withdrawn from a provider. The notice must state the reasons for the withdrawal of funds.

3300.6060 PROVIDER COMPLIANCE AUDIT.

Subpart 1. Compliance audit examinations conducted.

A. After June 30 of each year, each provider must undergo a compliance audit for the previous fiscal year. The audit must be conducted according to the requirements of this subpart and the commissioner's Compliance Audit Standards, which are incorporated by reference, not subject to frequent change, and available at <https://mn.gov/deed/job-seekers/disabilities/extend-employment/service-providers/>. The commissioner must review the compliance audit standards on an annual basis and seek the input of providers and independent auditors in the review of the standards. The commissioner must make updated standards available on the department's Web site no later than May 31 of each year.

B. The audit must be performed by independent auditors at the provider's expense.

C. The provider must submit a completed compliance audit report to the commissioner by October 31 of each year.

Subp. 2. Reconciliation payments. Based on the results of the compliance audit, the commissioner must reconcile the value of reported work hours previously paid but found ineligible or work hours previously not paid but found eligible according to the provider's independent auditor's compliance audit report.

3300.6065 PAY AND BENEFITS.

A. An individual in the extended employment program who is self-employed must realize net income that is the equivalent or in excess of the hourly rate of pay required under the Minnesota Fair Labor Standards Act, Minnesota Statutes, chapter 177, and the federal Fair Labor Standards Act, when the number of hours worked is compared with the income realized. Self-employed individuals must pay timely self-employment taxes on income from employment and, if necessary during the provider's compliance examination, provide documentation of reported self-employment tax obligation.

B. An extended employment provider that is the employer of record for an individual must provide the following minimum personnel benefits:

(1) either:

(a) vacation, sick leave, and holidays, provided on a proportional basis as provided to the nonexempt, full-time staff of the provider agency, provided that, at a minimum, individuals are entitled to five days of paid vacation, five days of paid sick leave, and five paid holidays per calendar year; or

(b) flexible paid leave, provided in lieu of vacation and sick leaves, that is provided on a proportional basis as provided to the nonexempt, full-time staff of the provider agency, provided that, at a minimum, individuals must be entitled to ten days of paid leave and five paid holidays per calendar year; and

(2) other mandated state and federal leave benefits.

3300.6070 APPEAL PROCEDURE.

Subpart 1. Notice of intent to appeal. A community rehabilitation provider appealing commissioner decisions must provide a written notice of intent to appeal to the commissioner. The written notice of intent to appeal must be received by the commissioner within 30 days from the date that the community rehabilitation provider received notice from the commissioner of the action that the community rehabilitation provider wishes to appeal. If the notice of intent to appeal is not received from the provider within the 30-day period, the decision of the commissioner is final. The notice of intent to appeal must state the grounds for the appeal, including facts and issues that will be addressed at a contested case hearing.

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Subp. 2. **Informal review.** Within 30 days after the commissioner receives a notice of intent to appeal, the commissioner shall contact the community rehabilitation provider and informally review the reasons for the appeal. The informal review by the commissioner may be oral or written. Before the end of the 30-day period for informal review, the commissioner must make a written decision regarding the community rehabilitation provider's appeal. The decision by the commissioner must state the commissioner's position on the issue under appeal, the basis of that position, and the community rehabilitation provider's right to request a contested case hearing.

Subp. 3. **Contested case.** After the informal review under subpart 2, the community rehabilitation provider may make a written request for a contested case hearing before an administrative law judge as provided in Minnesota Statutes, sections 14.57 to 14.62. The written request for a contested case hearing must be received by the commissioner no more than 30 days after the date when the community rehabilitation provider received written notice of the decision of the commissioner following the informal review. Within 15 days from the date the commissioner receives a community rehabilitation provider's request for a contested case hearing, the commissioner must request the Office of Administrative Hearings to assign an administrative law judge to hear the appeal and schedule a hearing. The contested case hearing must be initiated and conducted according to Minnesota Statutes, sections 14.57 to 14.62.

Subp. 4. **Decision.** The decision of the administrative law judge must be recommended for the commissioner's adoption. The commissioner's decision on the issue under appeal is the final decision.

REPEALER. Minnesota Rules, parts 3300.2005; 3300.2010; 3300.2015; 3300.2020; 3300.2025; 3300.2030; 3300.2035; 3300.2040; 3300.2045; 3300.2052; and 3300.2055, are repealed.

Official Notices

Pursuant to *Minnesota Statutes* §§ 14.101, an agency must first solicit comments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

The *State Register* also publishes other official notices of state agencies and non-state agencies, including notices of meetings and matters of public interest.

Department of Administration Notice of Donation Opportunity

Pursuant to Minnesota Session Laws 2018, Regular Session, Chapter No. 214 HF4425 Article 2 Sec 44. Subd. 3, the Commissioner of Administration may accept an offer of funds and/or services for no cost for the new Minnesota Veterans Homes in Bemidji, Montevideo, and Preston.

Work is proposed to start in the autumn of 2018 and anticipated to continue through mid-2021.

This notice provides the opportunity for interested parties to express an offer to donate funds or no cost services for the described above with no favor or advantage granted or expected in return from the state.

Also, parties expressing an offer to donate services for the described above understand the in-kind services need to be reviewed and approved by the state.

Written offers to donate funds and/or in-kind services may be submitted through email by **September 28, 2018**. In the event additional offers are received and verified after September 28, 2018, the state may accept funds or in-kind services but would strongly prefer to have the fund pledges and in-kind services by September 28, 2018 to be effectively worked into the project budget and design or know the potential in-kind service opportunities. Please direct offers and communications to:

August 29, 2018

Minnesota Department of Employment and Economic Development

Vocational Rehabilitation Services, Extended Employment Program

DUAL NOTICE: Notice of Intent to Adopt Rules without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; OAH Docket No. 60-9044-35198; Revisor's ID Number RD-4245.

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.

Introduction. The Department of Employment and Economic Development (DEED) intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on Wednesday, October 10, 2018, the Department will hold a public hearing in the Minnesota Room at DEED Headquarters, First National Bank Building, Suite E200, 332 Minnesota Street, St. Paul, MN 55101, starting at 2:00 p.m. on Wednesday, October 24, 2018. To find out whether the Department will adopt the rules without a hearing or if it will hold the hearing, you should contact the agency contact person after Wednesday, October 10, 2018 and before Wednesday, October 24, 2018.

Agency Contact Person. Submit any comments or questions on the rules or written requests for a public hearing to the agency contact person. The agency contact person is: Kim Babine, Director of Community Partnerships, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101, 651-379-7349, kim.babine@state.mn.us.

You may also review the proposed rule and submit written comments via the Office of Administrative Hearings Rulemaking e-comments website at <https://minnesotaoah.granicusideas.com/discussions>.

You may also review more information regarding the proposed rule and sign up for email updates at mn.gov/deed/eerule.

Subject of Rules and Statutory Authority. The proposed rule govern the Extended Employment program. The proposed rule codifies updated rules governing the Extended Employment program, *Minnesota Rules*, chapters 3300.6000 – 3300.6070 and repeals existing rules governing the Extended Employment program, *Minnesota Rules*, chapters 3300.2005 – 3300.3100. The statutory authority to adopt the rules is *Minnesota Statutes*, section 268A.15.



RULE SUBMISSION TO THE OFFICE OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT

**2018 EXTENDED EMPLOYMENT RULES, CHAPTER 3300
REVISOR'S ID NUMBER AR4245**

OFFICE OF ADMINISTRATIVE HEARINGS DOCUMENTS

1.1 **Department of Employment and Economic Development**

1.2 **Proposed Permanent Rules Relating to Extended Employment Services**

1.3 **3300.6000 DEFINITIONS.**

1.4 Subpart 1. **Scope.** When used in parts 3300.6000 to 3300.6070, the terms defined in
1.5 this part have the meanings given them.

1.6 Subp. 2. **CARF.** "CARF" means CARF International, the independent, nonprofit
1.7 organization that sets standards and provides accreditation for service and quality of
1.8 community rehabilitation providers.

1.9 Subp. 3. **Center-based employment.** "Center-based employment" means employment
1.10 for which an individual:

1.11 A. works at a location that is owned or operated by the individual's extended
1.12 employment provider;

1.13 B. receives wages and benefits from an employer who is, directly or indirectly,
1.14 the individual's extended employment provider;

1.15 C. performs work that does not meet all of the conditions of either the supported
1.16 employment subprogram or the community employment subprogram.

1.17 Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department
1.18 of Employment and Economic Development or the commissioner's designee.

1.19 Subp. 5. **Community employment.** "Community employment" means employment
1.20 for which an individual:

1.21 A. works at a location that is not owned or operated by the individual's extended
1.22 employment provider;

1.23 B. receives wages and benefits from an employer who is or is not, directly or
1.24 indirectly, the individual's extended employment provider;

2.1 C. performs work that does not meet all the conditions of the supported
2.2 employment subprogram.

2.3 Subp. 6. **Community employment subprogram.** "Community employment
2.4 subprogram" means the commissioner's service category for individuals in community
2.5 employment under subpart 5.

2.6 Subp. 7. **Competitive, integrated employment.** "Competitive, integrated employment"
2.7 means work performed on a full- or part-time basis, with or without supports, for which an
2.8 individual:

2.9 A. works at a location that:

2.10 (1) for state fiscal year 2019, is or is not owned or operated by the individual's
2.11 service provider, and where the individual with a disability interacts, for purpose of
2.12 performing job duties, with people without disabilities in similar positions within the work
2.13 unit and the entire work site, not including supervisors or individuals providing services to
2.14 the employee; and

2.15 (2) for state fiscal year 2020 and thereafter, is not owned or operated by the
2.16 individual's extended employment provider, and where the individual with a disability
2.17 interacts, for purpose of performing job duties, with people without disabilities in similar
2.18 positions within the work unit and the entire work site, not including supervisors or
2.19 individuals providing services to the employee;

2.20 B. receives wages and benefits from an employer who:

2.21 (1) for state fiscal year 2019, is or is not, directly or indirectly, the individual's
2.22 extended employment provider; and

2.23 (2) for state fiscal year 2020 and thereafter, is not, directly or indirectly, the
2.24 individual's extended employment provider;

3.1 C. is paid at or above the federal, state, or local minimum wage, whichever is
3.2 highest, as defined in this chapter; and

3.3 D. is compensated at or above the customary wage and benefits as defined in
3.4 subpart 9.

3.5 Subp. 8. **Customary wage and benefits or customary rate.** "Customary wage and
3.6 benefits" or "customary rate" means the wage paid and the level of benefits provided by the
3.7 employer to an individual without disabilities performing the same or similar work with
3.8 comparable training, skills, and experiences with that employer.

3.9 Subp. 9. **Department.** "Department" means the Department of Employment and
3.10 Economic Development.

3.11 Subp. 10. **Employer.** "Employer" has the meaning given in United States Code, title
3.12 29, section 203(d).

3.13 Subp. 11. **Extended employment provider or provider.** "Extended employment
3.14 provider" or "provider" means a community rehabilitation provider that receives funding
3.15 through the extended employment program.

3.16 Subp. 12. **Extended employment services.** "Extended employment services" means
3.17 the development of an extended employment support plan and the delivery of ongoing
3.18 employment support services.

3.19 Subp. 13. **Individual receiving extended employment services or**
3.20 **individual.** "Individual receiving extended employment services" or "individual" means
3.21 an individual who meets the eligibility requirements in this chapter and who receives
3.22 extended employment services under the extended employment program. Any reference in
3.23 parts 3300.6000 to 3300.6070 to an individual receiving extended employment services
3.24 includes the individual's legal representative.

4.1 Subp. 14. **Minimum wage.** "Minimum wage" means an hourly wage rate not less
4.2 than the higher of the rate specified in section 6(a)(1) of the United States Fair Labor
4.3 Standards Act of 1938, United States Code, title 29, section 206(a)(1), or the rate specified
4.4 in the Minnesota Fair Labor Standards Act, Minnesota Statutes, section 177.24, or local
4.5 minimum wage law, and that is not less than the customary wage and benefits.

4.6 Subp. 15. **Ongoing employment support services.**

4.7 A. "Ongoing employment support services" means any of the services in item B
4.8 that are:

4.9 (1) identified in the individual's extended employment support plan;

4.10 (2) related to the individual's serious functional limitations to employment;

4.11 and

4.12 (3) necessary and required to maintain or advance the individual's current
4.13 employment.

4.14 B. Ongoing employment support services include:

4.15 (1) rehabilitation technology, job redesign, or environmental adaptations;

4.16 (2) disability awareness training for the individual, the individual's employer,
4.17 supervisor, or coworkers, including related services to increase the individual's inclusion
4.18 at the work site;

4.19 (3) job skill training at the work site;

4.20 (4) regular observation or supervision of the individual;

4.21 (5) behavior management;

4.22 (6) coordination of support services;

4.23 (7) job-related safety training;

5.1 (8) job-related self-advocacy skills training to advance employment;

5.2 (9) training in independent living skills including money management,
5.3 grooming and personal care, social skills, orientation and mobility, and using public
5.4 transportation or drivers' training;

5.5 (10) communication skills training including sign language training, Braille,
5.6 speech reading, and the use of communication devices or other adaptive methods for the
5.7 individual, or the individual's employer, supervisor, or coworkers;

5.8 (11) follow-up services including contact with the individual's employer,
5.9 supervisor, or coworkers; the individual's parents, family members, advocates, or legal
5.10 representatives; and other suitable professional and informed advisors, in order to reinforce
5.11 and stabilize the job placement;

5.12 (12) training in job-seeking skills;

5.13 (13) career planning to advance in employment; and

5.14 (14) any other service that is identified in the individual's extended
5.15 employment support plan related to the individual's serious functional limitations to
5.16 employment that is needed to maintain or advance the employment of an individual in the
5.17 extended employment program.

5.18 Subp. 16. **Qualified professional.**

5.19 A. "Qualified professional" means the professionals listed in item B who are
5.20 licensed, certified, or registered in the state where the professional practices, and who provide
5.21 a diagnosis of a disability or disabilities within the scope of the professional's license,
5.22 certification, or registration for an individual in the extended employment program.

5.23 B. The following are qualified professionals:

5.24 (1) a physician or psychologist;

- 6.1 (2) a physician's assistant practicing under the supervision of a physician;
6.2 (3) an advanced practice registered nurse;
6.3 (4) clinical specialists in psychiatric or mental health nursing;
6.4 (5) an audiologist;
6.5 (6) a chiropractor;
6.6 (7) a licensed chemical dependency counselor;
6.7 (8) a social worker from a county mental health or county developmental
6.8 disabilities program;
6.9 (9) a licensed independent clinical social worker (LICSW); and
6.10 (10) a licensed graduate social worker (LGSW) or a licensed independent
6.11 social worker (LISW) practicing under the supervision of a LICSW.

6.12 **Subp. 17. Serious functional limitations to employment.** "Serious functional
6.13 limitations to employment" means an individual experiences significant barriers to
6.14 employment in three or more of the functional areas listed in items A to G that affect an
6.15 individual's ability to maintain or advance in employment, and the individual requires
6.16 ongoing employment support services to mitigate the effect of the limitations and achieve
6.17 the individual's employment goals.

6.18 A. "Communication" means the ability to effectively give and receive information
6.19 through words or concepts, using methods such as reading, writing, speaking, listening,
6.20 sign language, or other adaptive methods.

6.21 B. "Interpersonal skills" means the ability to establish and maintain personal,
6.22 family, and community relationships as it affects, or is likely to affect, job performance and
6.23 security.

7.1 C. "Mobility" means the physical and psychological ability to move about from
7.2 place to place inside and outside the home, including travel to and from usual destinations
7.3 in the community for activities of daily living, training, or work.

7.4 D. "Self-care" means the skills needed to manage self or living environment,
7.5 including eating, toileting, grooming, dressing, money management, and management of
7.6 special health or safety needs, including medication management, as they affect an
7.7 individual's ability to participate in training or work-related activities.

7.8 E. "Self-direction" means the ability to plan, initiate, organize, or carry out
7.9 goal-directed activities or solve problems related to working.

7.10 F. "Work skills" means:

7.11 (1) the ability to do specific tasks required to carry out job functions; and

7.12 (2) the capacity to benefit from training in how to perform tasks required to
7.13 carry out job functions.

7.14 G. "Work tolerance" means the capacity or endurance to effectively and efficiently
7.15 perform jobs requiring various levels of physical demands, psychological demands, or both.

7.16 Subp. 18. **Supported employment subprogram.** "Supported employment subprogram"
7.17 means the commissioner's service category for individuals who are in competitive, integrated
7.18 employment.

7.19 Subp. 19. **Work hours.** "Work hours" means the hours for which an individual
7.20 performs paid work, including hours of paid holidays, paid sick, paid vacation, and other
7.21 paid leaves of absence. The payment of a bonus or commission is not included in the
7.22 computation of work hours.

8.1 **3300.6005 INDIVIDUAL ELIGIBILITY.**

8.2 **Subpart 1. Individual eligibility.**

8.3 **A. An individual is eligible for extended employment services if the individual:**

8.4 **(1) is a Minnesota resident;**

8.5 **(2) has documentation of a diagnosed disability or disabilities by a qualified**
8.6 **professional according to part 3300.6000, subpart 16;**

8.7 **(3) has a serious functional limitation to employment in three or more**
8.8 **functional areas according to part 3300.6000, subpart 17; and**

8.9 **(4) requires ongoing employment support services to maintain and advance**
8.10 **in employment.**

8.11 **B. An individual on a medical assistance waiver, regardless of the waiver service**
8.12 **the individual is receiving, is not eligible to receive extended employment services through**
8.13 **the extended employment program.**

8.14 **3300.6010 EXTENDED EMPLOYMENT SERVICES DELIVERY.**

8.15 **Subpart 1. Person-centered practices. A provider must deliver extended employment**
8.16 **services in the extended employment program using person-centered practices.**

8.17 **"Person-centered practices" means practices that help an individual set goals and develop**
8.18 **action steps that enhance the individual's quality of life, where control over decisions rests**
8.19 **with the individual. The provider must not influence an individual's decision making but**
8.20 **instead serve as a facilitator of decision making.**

8.21 **Subp. 2. Employment first. A provider must consider employment first in delivering**
8.22 **extended employment services in the extended employment program. "Employment first"**
8.23 **means the expectation that a working age Minnesotan with a disability can work, wants to**
8.24 **work, and can achieve competitive employment, and each person must be offered the**

9.1 opportunity to work and earn a competitive wage before being offered other supports and
9.2 services.

9.3 Subp. 3. **Informed choice.**

9.4 A. The provider must facilitate an individual's ability to make an informed choice
9.5 about the individual's employment. "Informed choice" means the individual is able to make
9.6 decisions regarding the individual's employment. Informed choice requires:

9.7 (1) that the individual understands all employment options, methods to
9.8 overcome barriers to employment, and the potential risks and benefits of those decisions;

9.9 (2) employment options that are not limited to only disability-specific
9.10 programs;

9.11 (3) community resources and supports are included in options; and

9.12 (4) the individual is provided community-based experiences on which to base
9.13 employment choices on an ongoing basis using person-centered practices.

9.14 B. For an individual required to participate in a career counseling, information,
9.15 and referral services consultation by the Workforce Innovation and Opportunity Act (WIOA),
9.16 section 511, part 397, a provider is not required to provide duplicative informed choice
9.17 information for purposes of the extended employment program. A provider must consider
9.18 the career counseling, information, and referral services consultation summary report when
9.19 developing an individual's extended employment support plan and retain a copy in the case
9.20 record.

9.21 **3300.6015 EXTENDED EMPLOYMENT SUPPORT PLANS.**

9.22 Subpart 1. **Extended employment support plan.** The provider must develop an
9.23 extended employment support plan for each individual in the extended employment program.

10.1 Subp. 2. Requirements of the extended employment support plan. The plan must
10.2 include the following:

10.3 A. the individual's employment goals and objectives, including:

10.4 (1) employment goals and goals for career advancement;

10.5 (2) the individual's preferences for employment setting, integration, range or
10.6 level of pay, work hours, work schedules, and benefits, including reference to the individual's
10.7 decision from the career counseling, information, and referral meeting regarding whether
10.8 an individual expressed interest in pursuing competitive, integrated employment; and

10.9 (3) the timeline for reaching the individual's employment goals;

10.10 B. the individual's vocational strengths, education, and work skills;

10.11 C. the individual's interests and preferences for jobs and work environments;

10.12 D. the individual's serious functional limitations to employment and how they
10.13 impact an individual's ability to maintain employment;

10.14 E. the individual's preferences for when, where, and how the required two per
10.15 month in-person meetings will occur;

10.16 F. identification of the specific ongoing employment support services that will be
10.17 provided;

10.18 G. the person or persons who will be providing the ongoing employment support
10.19 services, and a plan that describes how the individual will be notified and the impact on
10.20 scheduled services in the event the identified person or persons are absent or unavailable
10.21 to provide scheduled services;

10.22 H. the individual's decision to disclose or not disclose disability-related information
10.23 to the individual's employer and how supports will be provided in either scenario;

11.1 I. the names of the participants in the planning and preparation of the individual's
11.2 extended employment support plan; and

11.3 J. the signature of the individual.

11.4 **Subp. 3. Annual review and development of the extended employment support**
11.5 **plan.** A provider must facilitate a review of an individual's extended employment support
11.6 plan and development of a new extended employment support plan at least once per year.
11.7 The new extended employment support plan shall be maintained in the case file. The review
11.8 and development shall include the individual, the provider, and anyone else the individual
11.9 would like involved. The review and development must include a discussion of each element
11.10 of the extended employment support plan and must itemize each of the following:

11.11 A. the individual's satisfaction with his or her employment and the ongoing
11.12 employment support services that are being provided;

11.13 B. the effectiveness of the individual's extended employment support plan in
11.14 achieving the individual's vocational goals;

11.15 C. the individual's interest in changing or advancing in employment; and

11.16 D. the individual's continuing need for ongoing employment support services to
11.17 maintain or advance in employment going forward.

11.18 **3300.6020 CASE RECORD DOCUMENTATION.**

11.19 **Subpart 1. Case records.** An extended employment provider must maintain a current
11.20 confidential case record for each individual served in the extended employment program.
11.21 The provider shall retain each case record for a minimum of three years after the completion
11.22 of the compliance audit process.

11.23 **Subp. 2. Case record elements.** Case records must include the following information:

12.1 A. personal identification data, including the individual's legal name, Social
12.2 Security number, legal status, date of birth, residential status and address, and, if applicable,
12.3 the name and contact information of the individual's legal representative;

12.4 B. documentation of eligibility for extended employment, including:

12.5 (1) independent source documentation of the individual's diagnosed disability
12.6 by a qualified professional; and

12.7 (2) documentation identifying the individual's specific significant functional
12.8 limitations to employment by one of the following:

12.9 (a) a disability examiner, employed by the department's Disability
12.10 Determination Services, or another state's department who evaluates claims for disability
12.11 benefits using Social Security Administration guidelines to determine the significant
12.12 functional limitations to employment of individuals;

12.13 (b) a vocational rehabilitation professional, employed by a state
12.14 department or county unit, who is authorized by the government unit to determine the
12.15 significant functional limitations to employment of individuals; or

12.16 (c) an extended employment provider, as provided in the intake
12.17 paperwork;

12.18 C. pay statements from the individual's payroll agent demonstrating:

12.19 (1) start and end dates of the pay period;

12.20 (2) hours worked during the pay period;

12.21 (3) hours of paid leave used in the pay period;

12.22 (4) amount of gross wages paid in the pay period;

12.23 (5) payroll agent of record; and

13.1 (6) the individual's and the employer's contribution to the individual's federal
13.2 Social Security program;

13.3 D. the date the individual was referred to the extended employment provider for
13.4 extended employment services, the referral source, and the name and contact information
13.5 of the person who made the referral;

13.6 E. employment data, including contact information for supervisors, job duties,
13.7 work schedules, rate of pay, benefits, start dates, and termination dates;

13.8 F. the current extended employment support plan updated annually; and

13.9 G. the ongoing employment support services provided to the individual including,
13.10 at a minimum, the date and services provided to the individual by the provider during the
13.11 two in-person meetings per month.

13.12 Subp. 3. WIOA, section 511. If an individual's employment requires an annual WIOA,
13.13 section 511, career counseling session, then the case record must include documentation of
13.14 that session.

13.15 **3300.6025 PROVIDER REPORTING REQUIREMENTS.**

13.16 Subpart 1. Individual data. A provider must submit data requested by the
13.17 commissioner, including identification and contact information, eligibility information,
13.18 demographic information, intake and exit information, and work record data in a manner
13.19 prescribed by the commissioner on each individual reported to the extended employment
13.20 program.

13.21 Subp. 2. Work record data. A provider must submit work record data evidenced by
13.22 pay statements from an individual's employer in order to receive payment. Work record
13.23 data must include:

13.24 A. start and end dates of the pay period or the month;

- 14.1 B. hours worked during the pay period or the month;
- 14.2 C. amount of gross wages paid during the pay period or the month;
- 14.3 D. type of subprogram where hours are reported;
- 14.4 E. payroll agent of record; and
- 14.5 F. job type, as an O*Net code.

14.6 Subp. 3. **Monitoring.** The commissioner is authorized to conduct monitoring visits
14.7 as a part of the contracting process to ensure the accuracy of reported data. The provider
14.8 must make individual records and performance data available to the commissioner for
14.9 monitoring. A provider may appeal the loss of hours and earnings resulting from the
14.10 commissioner's assessment of allowable hours under part 3300.6065.

14.11 **3300.6030 REQUIREMENTS FOR EXTENDED EMPLOYMENT FUNDING.**

14.12 Subpart 1. **Requirements for funding.** To receive funding under the extended
14.13 employment program, a community rehabilitation provider must:

- 14.14 A. be a public or nonprofit entity registered with the Minnesota secretary of state;
- 14.15 B. comply with Minnesota Statutes, sections 268A.06 to 268A.085, regarding
14.16 requirements of the board;
- 14.17 C. hold accreditation in the CARF standards in this item.

14.18 (1) To provide services through the supported employment subprogram, the
14.19 community employment subprogram, or the center-based employment subprogram, a
14.20 community rehabilitation provider must hold accreditation in the CARF administrative and

15.1 program standards for community employment services, including job development and
15.2 employment supports.

15.3 (2) To provide services through the center-based employment subprogram, a
15.4 community rehabilitation provider must hold accreditation in the CARF administrative and
15.5 program standards for organizational employment services; and

15.6 D. maintain CARF conformance between CARF surveys.

15.7 Subp. 2. Funding in special circumstances.

15.8 A. If a community rehabilitation provider submits evidence of any of the
15.9 circumstances listed in item B, the commissioner must grant funding under the extended
15.10 employment program even if the requirements for funding in subpart 1 are not met. Funding
15.11 under this subpart is only valid for up to one year and cannot be used in any two consecutive
15.12 fiscal years.

15.13 B. The following are special circumstances warranting grant funding:

15.14 (1) CARF cannot schedule a timely survey;

15.15 (2) CARF has completed a survey but has not delivered the results of the
15.16 survey to the provider; or

15.17 (3) An extraordinary and catastrophic circumstance has occurred. For the
15.18 purposes of this part, an "extraordinary and catastrophic circumstance" means a fire or other
15.19 natural disaster that is beyond the control of a provider that has adversely affected or
15.20 completely halted operations such that the extended employment provider has been unable
15.21 to maintain the requirements for funding.

15.22 C. If a community rehabilitation provider is not a current extended employment
15.23 provider and has been awarded a contract for new or expanded extended employment
15.24 services and is in compliance with all requirements for funding except the requirement for

16.1 accreditation by CARF, then the commissioner must grant funding under the extended
16.2 employment program even if the CARF requirement for funding in subpart 1 is not met. If
16.3 the provider is not accredited by CARF, the provider must demonstrate the likelihood that
16.4 the provider will meet the requirements for accreditation by CARF and will receive
16.5 accreditation within one year.

16.6 **3300.6035 FUNDING.**

16.7 **Subpart 1. Continuation funding.**

16.8 A. Each fiscal year, a provider who held a contract with the commissioner for
16.9 extended employment funding in the previous fiscal year, and maintains compliance with
16.10 the requirements for funding, is eligible for continuation of their funding within the limits
16.11 of available appropriations for this purpose.

16.12 B. If a community rehabilitation provider held a contract for new or expanded
16.13 services in the previous fiscal year, has met the identified outcomes of the new or expanded
16.14 services within the time frame specified in the contract, and maintains compliance with the
16.15 requirements for funding, then the provider is eligible for continuation of their funding
16.16 within the limits of available appropriations for this purpose.

16.17 **Subp. 2. Starting point for initial extended employment contract allocations.** The
16.18 starting point for a provider's initial extended employment contract allocation for each
16.19 subprogram in a particular fiscal year must be determined by the provider's prior fiscal year
16.20 extended employment contract allocation for each subprogram, as amended.

16.21 **Subp. 3. Contracted allocation subprogram distribution.**

16.22 A. The commissioner must specify a provider's funding allocation amount by
16.23 subprogram in the provider's contract.

17.1 B. The starting point for a provider's allocation amount by subprogram in a new
17.2 fiscal year contract is a provider's allocation amount by subprogram in the previous fiscal
17.3 year contract.

17.4 C. A provider may adjust the distribution of the provider's total funding allocation
17.5 among the subprograms in developing the new fiscal year contract as follows:

17.6 (1) a provider may shift a portion of the provider's center-based employment
17.7 subprogram allocation to the provider's community employment subprogram allocation or
17.8 the provider's supported employment subprogram allocation, or both;

17.9 (2) a provider may shift a portion of the provider's community employment
17.10 subprogram allocation to the provider's supported employment subprogram allocation;

17.11 (3) before May 1, 2020, a provider may make one request to shift a portion
17.12 of any of the provider's subprogram allocations to any other subprogram allocation; and

17.13 (4) in state fiscal year 2021 and thereafter, a provider must not shift a portion
17.14 of the provider's supported employment subprogram allocation to the provider's community
17.15 employment subprogram allocation or the provider's center-based subprogram allocation.

17.16 A provider must not shift a portion of the provider's community employment subprogram
17.17 allocation to the provider's center-based employment subprogram allocation.

17.18 Subp. 4. **Cap on funding for certain employment.** Beginning in fiscal year 2020,
17.19 the commissioner must set a cap on employment that does not meet the definition of
17.20 competitive, integrated employment for each provider. The cap for each provider is set as
17.21 the sum of a provider's fiscal year 2020 contract allocations for the center-based employment
17.22 subprogram and the community employment subprogram.

17.23 Subp. 5. **Center-based employment subprogram phaseout.**

17.24 A. Beginning in fiscal year 2021, the commissioner must reduce each provider's
17.25 center-based employment subprogram contract allocation as described in this subpart. The

18.1 basis for each provider's reduction each year is the provider's fiscal year 2020 center-based
18.2 employment subprogram contract allocation.

18.3 B. A provider may shift the funds reduced from the center-based employment
18.4 subprogram to either its community employment subprogram contract allocation or its
18.5 supported employment subprogram contract allocation. The provider may also forfeit the
18.6 funds. Of the funds reduced from the center-based employment subprogram allocation each
18.7 year, no more than 50 percent of the funds can be shifted to the community employment
18.8 subprogram.

18.9 (1) In fiscal year 2021, a provider's center-based employment subprogram
18.10 contract allocation must be reduced by at least five percent of the provider's center-based
18.11 employment subprogram fiscal year 2020 contract allocation.

18.12 (2) In fiscal year 2022, a provider's center-based employment subprogram
18.13 contract allocation must be reduced by at least 15 percent of the provider's center-based
18.14 employment subprogram fiscal year 2020 contract allocation.

18.15 (3) In fiscal year 2023, a provider's center-based employment subprogram
18.16 contract allocation must be reduced by at least 20 percent of the provider's center-based
18.17 employment subprogram fiscal year 2020 contract allocation.

18.18 (4) In fiscal year 2024, a provider's center-based employment subprogram
18.19 contract allocation must be reduced by at least 25 percent of the provider's center-based
18.20 employment subprogram fiscal year 2020 contract allocation.

18.21 (5) In fiscal year 2025, a provider's center-based employment subprogram
18.22 contract allocation must be reduced by at least 35 percent of the provider's center-based
18.23 employment subprogram fiscal year 2020 contract allocation.

18.24 (6) The commissioner must not provide funding to a provider for the
18.25 center-based employment subprogram in fiscal year 2026 and later.

19.1 **3300.6040 CONTRACT ADJUSTMENTS.**

19.2 Subpart 1. **Voluntary shifts.** After the extended employment contract has been
19.3 executed, a provider may request voluntary shifts in the distribution of the total allocation
19.4 amount among the subprograms. Voluntary shifts may be made according to the parameters
19.5 in part 3300.6035, subpart 3, item C. A shift in the distribution of the allocation requires a
19.6 renegotiated provider contract.

19.7 Subp. 2. **Underproduction penalty.**

19.8 A. After the compliance audit reconciliation process under part 3300.6060 for a
19.9 previous fiscal year is complete, the commissioner must determine if a provider is subject
19.10 to an underproduction penalty for a particular subprogram.

19.11 B. A provider is subject to an underproduction penalty for a particular subprogram
19.12 when the provider's audited production for a particular subprogram in a fiscal year is less
19.13 than 95 percent of the provider's allocation for that subprogram in the fiscal year.

19.14 C. An underproduction penalty means the commissioner must adjust a provider's
19.15 subprogram allocation for that subprogram in the subsequent fiscal year's contract downward,
19.16 except as provided by subpart 3.

19.17 D. The downward adjustment for that subprogram's allocation must be the audited
19.18 subprogram production in the audited fiscal year plus five percent of the audited fiscal year's
19.19 subprogram contract allocation.

19.20 Subp. 3. **Waiver from underproduction penalty.** If a provider is subject to an
19.21 underproduction penalty in a particular subprogram as described in subpart 2, the provider
19.22 is eligible for either a one-year waiver or a catastrophic waiver from the underproduction
19.23 penalty.

19.24 A. If a provider earns 90 percent to 95 percent of a subprogram allocation, the
19.25 provider is eligible for a one-year waiver from the underproduction penalty for a particular

20.1 subprogram. The commissioner must provide the waiver without a request process. A
20.2 provider is ineligible to receive the one-year waiver for a particular subprogram in any two
20.3 consecutive fiscal years. A provider is eligible for the one-year waiver in each particular
20.4 subprogram.

20.5 B. If a provider earns less than 90 percent of a subprogram allocation and
20.6 demonstrates it is experiencing an extraordinary and catastrophic circumstance under this
20.7 item, the commissioner may issue a catastrophic waiver from the underproduction penalty.

20.8 (1) For purposes of this subpart, an "extraordinary and catastrophic
20.9 circumstance" means a fire or other natural disaster that is beyond the control of the provider
20.10 that has adversely affected or completely halted operations such that extended employment
20.11 individuals have been unable to work or extended employment provider staff have been
20.12 unable to provide extended employment services.

20.13 (2) A provider seeking a catastrophic waiver to the contract starting point
20.14 must request this variance in a manner prescribed by the commissioner and shall:

20.15 (a) state the reasons for the request;

20.16 (b) submit independent documentation of the extraordinary and
20.17 catastrophic circumstances;

20.18 (c) demonstrate how the extraordinary and catastrophic circumstances
20.19 resulted in the loss of work hours of extended employment individuals; and

20.20 (d) submit a measurable work plan for corrective action to meet
20.21 contracted hours during the next contract period.

20.22 (3) A provider is eligible for the catastrophic waiver in each particular
20.23 subprogram. A provider is ineligible for the catastrophic waiver for a particular subprogram
20.24 in any two consecutive fiscal years.

21.1 **3300.6045 DISTRIBUTION OF AVAILABLE FUNDS.**

21.2 Subpart 1. Available funds. The commissioner must distribute funds that become
21.3 available due to any of the following:

21.4 A. a general increase in the state appropriation;

21.5 B. the underproduction penalty process as described in part 3300.6040; or

21.6 C. unspent funds due to termination of a contract.

21.7 Subp. 2. Distribution of available funds; considerations.

21.8 A. The commissioner must consider the factors in this subpart when determining
21.9 which method of distribution of additional available funds under subpart 3 will be used.

21.10 (1) Priority for allocation of funds must go toward the service needs of
21.11 individuals who would benefit from ongoing employment support services.

21.12 (2) The commissioner must consider input from stakeholders such as current
21.13 extended employment providers, other community rehabilitation providers, representatives
21.14 of county social service agencies, vocational rehabilitation staff, and representatives from
21.15 advocacy organizations.

21.16 (3) The commissioner must consider the amount of onetime funds or ongoing
21.17 funds available for distribution.

21.18 (4) The commissioner must consider the relationship of additional extended
21.19 employment services to current services.

21.20 (5) The commissioner must consider the performance of current extended
21.21 employment services.

21.22 (6) The commissioner must consider the geographic distribution of current
21.23 extended employment services and the distribution method's ability to respond to needs for
21.24 geographic distribution of extended employment services.

22.1 B. When funds are available for distribution, the commissioner must distribute
22.2 funds on a onetime basis, a time-limited basis, or by adding to a provider's subsequent year
22.3 initial extended employment contract starting point.

22.4 Subp. 3. **Distribution method; supported employment overproduction.** If the
22.5 commissioner distributes available funds through the supported employment overproduction
22.6 provision, the commissioner must distribute funds to extended employment providers that
22.7 have overproduced in the supported employment subprogram based on a proportionate share
22.8 of the total supported employment subprogram overproduction by all extended employment
22.9 providers. Overproduction means an extended employment provider's audited supported
22.10 employment subprogram hours exceed the provider's supported employment contract
22.11 allocation in a given fiscal year.

22.12 Subp. 4. **Distribution method; supported employment incentive.** If the commissioner
22.13 distributes available funds through the supported employment incentive provision, the
22.14 commissioner must distribute funds to extended employment providers based on each
22.15 provider's audited supported employment hours divided by the total audited supported
22.16 employment hours of all extended employment providers in the audited fiscal year.

22.17 Subp. 5. **Distribution method; new or expanded services.** If the commissioner
22.18 distributes available funds through the new or expanded services provision, the commissioner
22.19 must develop and publish a request for proposals for new or expanded services. New or
22.20 expanded services must only be to provide ongoing employment support services to
22.21 individuals in competitive, integrated employment. Community rehabilitation providers
22.22 may apply for distribution of available funds by responding to a request for proposals for
22.23 new or expanded services issued by the commissioner.

22.24 A. In developing the request for proposals for new or expanded extended
22.25 employment services, the commissioner shall consider how to foster innovation and promote
22.26 state-of-the-art best practices in providing ongoing employment support services to

23.1 individuals in competitive, integrated employment. The commissioner may waive program
23.2 requirements as outlined in this chapter to conduct pilot projects, foster innovation, and
23.3 promote state-of-the-art best practices in competitive, integrated employment.

23.4 B. The underproduction penalty in part 3300.6040 does not apply to a new or
23.5 expanded services contract allocation. A contract for new or expanded services must include
23.6 production goals within identified time frames. If a provider's audited production for the
23.7 new or expanded services in an audited fiscal year is less than the production goals identified
23.8 in the contract for new or expanded services, the provider must develop and implement a
23.9 corrective action plan to meet the goals in the contract. The commissioner must approve
23.10 and monitor the corrective action plan. If the provider does not administer extended
23.11 employment services according to the corrective action plan approved by the commissioner,
23.12 the commissioner must withdraw allocated state funds for new and expanded services under
23.13 part 3300.6055.

23.14 Subp. 6. **Distribution method; supported employment subprogram rate**
23.15 **adjustment.** If the commissioner distributes available funds through a supported employment
23.16 subprogram rate adjustment, the commissioner must use the available funds to adjust the
23.17 statewide uniform reimbursement rates for the supported employment subprogram as
23.18 provided under part 3300.6050.

23.19 **3300.6050 RATES.**

23.20 A. The unit of distribution of extended employment program funding is the
23.21 payment for one work hour performed by an eligible individual and reported to the
23.22 commissioner in the extended employment program.

23.23 B. For each subprogram, the statewide uniform reimbursement rates apply for
23.24 each reported work hour up to the maximum contracted allocation for that subprogram.

24.1 C. The commissioner must set statewide uniform reimbursement rates each fiscal
24.2 year. The commissioner must determine rates by adjusting rates of the previous fiscal year
24.3 in proportion to available funding. Rate increases are available for the supported employment
24.4 subprogram only.

24.5 D. The commissioner must publish statewide uniform reimbursement rates for
24.6 each subprogram as part of the information provided during the contracting process.

24.7 **3300.6055 WITHDRAWAL OF FUNDS.**

24.8 Subpart 1. Criteria for withdrawal of allocated state funds. The commissioner must
24.9 withdraw allocated state funds from a provider when:

24.10 A. extended employment services are not being administered according to:

24.11 (1) this chapter and Minnesota Statutes, chapter 268A;

24.12 (2) the terms, conditions, or duties of the extended employment program
24.13 grant contract; or

24.14 (3) a corrective action plan approved by the commissioner; or

24.15 B. the provider has not complied with the commissioner's written requests to
24.16 implement changes to extended employment services.

24.17 An extended employment provider must submit information requested by the commissioner
24.18 to carry out the duties in this chapter.

24.19 Subp. 2. Notice of withdrawal. Except where there is an imminent danger to the
24.20 health or safety of individuals, the commissioner must give written notice at least 45 days
24.21 before allocated state funds may be withdrawn from a provider. The notice must state the
24.22 reasons for the withdrawal of funds.

25.1 **3300.6060 PROVIDER COMPLIANCE AUDIT.**

25.2 **Subpart 1. Compliance audit examinations conducted.**

25.3 A. After June 30 of each year, each provider must undergo a compliance audit
25.4 for the previous fiscal year. The audit must be conducted according to the requirements of
25.5 this subpart and the commissioner's Compliance Audit Standards, which are incorporated
25.6 by reference, not subject to frequent change, and available at [https://mn.gov/deed/](https://mn.gov/deed/job-seekers/disabilities/extend-employment/service-providers/)
25.7 job-seekers/disabilities/extend-employment/service-providers/. The commissioner must
25.8 review the compliance audit standards on an annual basis and seek the input of providers
25.9 and independent auditors in the review of the standards. The commissioner must make
25.10 updated standards available on the department's Web site no later than May 31 of each year.

25.11 B. The audit must be performed by independent auditors at the provider's expense.

25.12 C. The provider must submit a completed compliance audit report to the
25.13 commissioner by October 31 of each year.

25.14 **Subp. 2. Reconciliation payments.** Based on the results of the compliance audit, the
25.15 commissioner must reconcile the value of reported work hours previously paid but found
25.16 ineligible or work hours previously not paid but found eligible according to the provider's
25.17 independent auditor's compliance audit report.

25.18 **3300.6065 PAY AND BENEFITS.**

25.19 A. An individual in the extended employment program who is self-employed must
25.20 realize net income that is the equivalent or in excess of the hourly rate of pay required under
25.21 the Minnesota Fair Labor Standards Act, Minnesota Statutes, chapter 177, and the federal
25.22 Fair Labor Standards Act, when the number of hours worked is compared with the income
25.23 realized. Self-employed individuals must pay timely self-employment taxes on income from
25.24 employment and, if necessary during the provider's compliance examination, provide
25.25 documentation of reported self-employment tax obligation.

26.1 B. An extended employment provider that is the employer of record for an
26.2 individual must provide the following minimum personnel benefits:

26.3 (1) either:

26.4 (a) vacation, sick leave, and holidays, provided on a proportional basis
26.5 as provided to the nonexempt, full-time staff of the provider agency, provided that, at a
26.6 minimum, individuals are entitled to five days of paid vacation, five days of paid sick leave,
26.7 and five paid holidays per calendar year; or

26.8 (b) flexible paid leave, provided in lieu of vacation and sick leaves, that
26.9 is provided on a proportional basis as provided to the nonexempt, full-time staff of the
26.10 provider agency, provided that, at a minimum, individuals must be entitled to ten days of
26.11 paid leave and five paid holidays per calendar year; and

26.12 (2) other mandated state and federal leave benefits.

26.13 **3300.6070 APPEAL PROCEDURE.**

26.14 Subpart 1. Notice of intent to appeal. A community rehabilitation provider appealing
26.15 commissioner decisions must provide a written notice of intent to appeal to the commissioner.
26.16 The written notice of intent to appeal must be received by the commissioner within 30 days
26.17 from the date that the community rehabilitation provider received notice from the
26.18 commissioner of the action that the community rehabilitation provider wishes to appeal. If
26.19 the notice of intent to appeal is not received from the provider within the 30-day period, the
26.20 decision of the commissioner is final. The notice of intent to appeal must state the grounds
26.21 for the appeal, including facts and issues that will be addressed at a contested case hearing.

26.22 Subp. 2. Informal review. Within 30 days after the commissioner receives a notice
26.23 of intent to appeal, the commissioner shall contact the community rehabilitation provider
26.24 and informally review the reasons for the appeal. The informal review by the commissioner
26.25 may be oral or written. Before the end of the 30-day period for informal review, the

27.1 commissioner must make a written decision regarding the community rehabilitation provider's
27.2 appeal. The decision by the commissioner must state the commissioner's position on the
27.3 issue under appeal, the basis of that position, and the community rehabilitation provider's
27.4 right to request a contested case hearing.

27.5 Subp. 3. **Contested case.** After the informal review under subpart 2, the community
27.6 rehabilitation provider may make a written request for a contested case hearing before an
27.7 administrative law judge as provided in Minnesota Statutes, sections 14.57 to 14.62. The
27.8 written request for a contested case hearing must be received by the commissioner no more
27.9 than 30 days after the date when the community rehabilitation provider received written
27.10 notice of the decision of the commissioner following the informal review. Within 15 days
27.11 from the date the commissioner receives a community rehabilitation provider's request for
27.12 a contested case hearing, the commissioner must request the Office of Administrative
27.13 Hearings to assign an administrative law judge to hear the appeal and schedule a hearing.
27.14 The contested case hearing must be initiated and conducted according to Minnesota Statutes,
27.15 sections 14.57 to 14.62.

27.16 Subp. 4. **Decision.** The decision of the administrative law judge must be recommended
27.17 for the commissioner's adoption. The commissioner's decision on the issue under appeal is
27.18 the final decision.

27.19 **REPEALER.** Minnesota Rules, parts 3300.2005; 3300.2010; 3300.2015; 3300.2020;
27.20 3300.2025; 3300.2030; 3300.2035; 3300.2040; 3300.2045; 3300.2052; and 3300.2055, are
27.21 repealed.

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Relating to Extended Employment Services

AGENCY: Department of Employment and Economic Development

REVISOR ID: R-4245

MINNESOTA RULES: Chapter 3300

INCORPORATIONS BY REFERENCE:

Part 3300.6060, subpart 1: Compliance Audit Standards is not subject to frequent change and is available through the Department of Employment and Economic Development website at <https://mn.gov/deed/job-seekers/disabilities/extend-employment/service-providers/>.

The attached rules are approved for
publication in the State Register

A handwritten signature in cursive script that reads "Sheree Speer". The signature is written over a horizontal line.

Sheree Speer
Assistant Deputy Revisor

1.1 **Department of Employment and Economic Development**

1.2 **Adopted Permanent Rules Relating to Extended Employment Services**

1.3 **3300.6000 DEFINITIONS.**

1.4 Subpart 1. **Scope.** When used in parts 3300.6000 to 3300.6070, the terms defined in
1.5 this part have the meanings given them.

1.6 Subp. 2. **CARF.** "CARF" means CARF International, the independent, nonprofit
1.7 organization that sets standards and provides accreditation for service and quality of
1.8 community rehabilitation providers.

1.9 Subp. 3. **Center-based employment.** "Center-based employment" means employment
1.10 for which an individual:

1.11 A. works at a location that is owned or operated by the individual's extended
1.12 employment provider;

1.13 B. receives wages and benefits from an employer who is, directly or indirectly,
1.14 the individual's extended employment provider;

1.15 C. performs work that does not meet all of the conditions of either the supported
1.16 employment subprogram or the community employment subprogram.

1.17 Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department
1.18 of Employment and Economic Development or the commissioner's designee.

1.19 Subp. 5. **Community employment.** "Community employment" means employment
1.20 for which an individual:

1.21 A. works at a location that is not owned or operated by the individual's extended
1.22 employment provider;

1.23 B. receives wages and benefits from an employer who is or is not, directly or
1.24 indirectly, the individual's extended employment provider;

2.1 C. performs work that does not meet all the conditions of the supported
2.2 employment subprogram.

2.3 Subp. 6. **Community employment subprogram.** "Community employment
2.4 subprogram" means the commissioner's service category for individuals in community
2.5 employment under subpart 5.

2.6 Subp. 7. **Competitive, integrated employment.** "Competitive, integrated employment"
2.7 means work performed on a full- or part-time basis, with or without supports, for which an
2.8 individual:

2.9 A. works at a location that:

2.10 (1) for state fiscal ~~year~~ years 2019 and 2020, is or is not owned or operated
2.11 by the individual's service provider, and where the individual with a disability interacts, for
2.12 purpose of performing job duties, with people without disabilities in similar positions within
2.13 the work unit and the entire work site, not including supervisors or individuals providing
2.14 services to the employee; and

2.15 (2) for state fiscal year ~~2020~~ 2021 and thereafter, is not owned or operated
2.16 by the individual's extended employment provider, and where the individual with a disability
2.17 interacts, for purpose of performing job duties, with people without disabilities in similar
2.18 positions within the work unit and the entire work site, not including supervisors or
2.19 individuals providing services to the employee;

2.20 B. receives wages and benefits from an employer who:

2.21 (1) for state fiscal ~~year~~ years 2019 and 2020, is or is not, directly or indirectly,
2.22 the individual's extended employment provider; and

2.23 (2) for state fiscal year ~~2020~~ 2021 and thereafter, is not, directly or indirectly,
2.24 the individual's extended employment provider;

3.1 C. is paid at or above the federal, state, or local minimum wage, whichever is
3.2 highest, as defined in this chapter; and

3.3 D. is compensated at or above the customary wage and benefits as defined in
3.4 subpart ~~9~~ 8.

3.5 Subp. 8. **Customary wage and benefits or customary rate.** "Customary wage and
3.6 benefits" or "customary rate" means the wage paid and the level of benefits provided by the
3.7 employer to an individual without disabilities performing the same or similar work with
3.8 comparable training, skills, and experiences with that employer.

3.9 Subp. 9. **Department.** "Department" means the Department of Employment and
3.10 Economic Development.

3.11 Subp. 10. **Employer.** "Employer" has the meaning given in United States Code, title
3.12 29, section 203(d).

3.13 Subp. 11. **Extended employment provider or provider.** "Extended employment
3.14 provider" or "provider" means a community rehabilitation provider that receives funding
3.15 through the extended employment program.

3.16 Subp. 12. **Extended employment services.** "Extended employment services" means
3.17 the development of an extended employment support plan and the delivery of ongoing
3.18 employment support services.

3.19 Subp. 13. **Individual receiving extended employment services or**
3.20 **individual.** "Individual receiving extended employment services" or "individual" means
3.21 an individual who meets the eligibility requirements in this chapter and who receives
3.22 extended employment services under the extended employment program. Any reference in
3.23 parts 3300.6000 to 3300.6070 to an individual receiving extended employment services
3.24 includes the individual's legal representative.

4.1 Subp. 14. **Minimum wage.** "Minimum wage" means an hourly wage rate not less
4.2 than the higher of the rate specified in section 6(a)(1) of the United States Fair Labor
4.3 Standards Act of 1938, United States Code, title 29, section 206(a)(1), or the rate specified
4.4 in the Minnesota Fair Labor Standards Act, Minnesota Statutes, section 177.24, or local
4.5 minimum wage law, and that is not less than the customary wage and benefits.

4.6 Subp. 15. **Ongoing employment support services.**

4.7 A. "Ongoing employment support services" means any of the services in item B
4.8 that are:

4.9 (1) identified in the individual's extended employment support plan;

4.10 (2) related to the individual's serious functional limitations to employment;

4.11 and

4.12 (3) necessary and required to maintain or advance the individual's current
4.13 employment.

4.14 B. Ongoing employment support services include:

4.15 (1) rehabilitation technology, job redesign, or environmental adaptations;

4.16 (2) disability awareness and accommodations training for the individual, the
4.17 individual's employer, supervisor, or coworkers, including related services to increase the
4.18 individual's inclusion at the work site;

4.19 (3) job skill training at the work site;

4.20 (4) regular observation or supervision of the individual;

4.21 (5) behavior and symptom management;

4.22 (6) coordination of support services;

4.23 (7) job-related safety training;

5.1 (8) job-related self-advocacy skills training to advance employment;

5.2 (9) training in independent living skills including money management,
5.3 grooming and personal care, social skills, orientation and mobility, and using public
5.4 transportation or drivers' training;

5.5 (10) communication skills training including sign language training, Braille,
5.6 speech reading, and the use of communication devices or other adaptive methods for the
5.7 individual, or the individual's employer, supervisor, or coworkers;

5.8 (11) follow-up services including contact with the individual's employer,
5.9 supervisor, or coworkers; the individual's parents, family members, advocates, or legal
5.10 representatives; and other suitable professional and informed advisors, in order to reinforce
5.11 and stabilize the job placement;

5.12 (12) training in job-seeking skills;

5.13 (13) career planning to advance in employment; and

5.14 (14) any other service that is identified in the individual's extended
5.15 employment support plan related to the individual's serious functional limitations to
5.16 employment that is needed to maintain or advance the employment of an individual in the
5.17 extended employment program.

5.18 Subp. 16. **Qualified professional.**

5.19 ~~A. "Qualified professional" means the professionals listed in item B~~ a professional
5.20 ~~who are~~ is licensed, certified, or registered in the state where the professional practices, and
5.21 ~~who provide~~ provides a diagnosis of a disability or disabilities within the scope of the
5.22 professional's license, certification, or registration for an individual in the extended
5.23 employment program.

5.24 ~~B. The following are qualified professionals:~~

- 6.1 ~~(1) a physician or psychologist;~~
- 6.2 ~~(2) a physician's assistant practicing under the supervision of a physician;~~
- 6.3 ~~(3) an advanced practice registered nurse;~~
- 6.4 ~~(4) clinical specialists in psychiatric or mental health nursing;~~
- 6.5 ~~(5) an audiologist;~~
- 6.6 ~~(6) a chiropractor;~~
- 6.7 ~~(7) a licensed chemical dependency counselor;~~
- 6.8 ~~(8) a social worker from a county mental health or county developmental~~
- 6.9 ~~disabilities program;~~
- 6.10 ~~(9) a licensed independent clinical social worker (LICSW); and~~
- 6.11 ~~(10) a licensed graduate social worker (LGSW) or a licensed independent~~
- 6.12 ~~social worker (LISW) practicing under the supervision of a LICSW.~~

6.13 Subp. 17. **Serious functional limitations to employment.** "Serious functional

6.14 limitations to employment" means an individual experiences significant barriers to

6.15 employment in three or more of the functional areas listed in items A ~~to~~ through G that

6.16 affect an individual's ability to maintain or advance in employment, and the individual

6.17 requires ongoing employment support services to mitigate the effect of the limitations and

6.18 achieve the individual's employment goals.

6.19 A. "Communication" means the ability to effectively give and receive information

6.20 through words or concepts, using methods such as reading, writing, speaking, listening,

6.21 sign language, or other adaptive methods.

7.1 B. "Interpersonal skills" means the ability to establish and maintain personal,
7.2 family, and community relationships as it affects, or is likely to affect, job performance and
7.3 security.

7.4 C. "Mobility" means the physical and psychological ability to move about from
7.5 place to place inside and outside the home, including travel to and from usual destinations
7.6 in the community for activities of daily living, training, or work.

7.7 D. "Self-care" means the skills needed to manage self or living environment,
7.8 including eating, toileting, grooming, dressing, money management, and management of
7.9 special health or safety needs, including medication management, as they affect an
7.10 individual's ability to participate in training or work-related activities.

7.11 E. "Self-direction" means the ability to plan, initiate, organize, or carry out
7.12 goal-directed activities or solve problems related to working.

7.13 F. "Work skills" means:

7.14 (1) the ability to do specific tasks required to carry out job functions; and

7.15 (2) the capacity to benefit from training in how to perform tasks required to
7.16 carry out job functions.

7.17 G. "Work tolerance" means the capacity or endurance to effectively and efficiently
7.18 perform jobs requiring various levels of physical demands, psychological demands, or both.

7.19 Subp. 18. **Supported employment subprogram.** "Supported employment subprogram"
7.20 means the commissioner's service category for individuals who are in competitive, integrated
7.21 employment.

7.22 Subp. 19. **Work hours.** "Work hours" means the hours for which an individual
7.23 performs paid work, including hours of paid holidays, paid sick time, paid vacation time,

8.1 and other paid leaves of absence. The payment of a bonus or commission is not included
8.2 in the computation of work hours.

8.3 **3300.6005 INDIVIDUAL ELIGIBILITY.**

8.4 Subpart 1. **Individual eligibility.**

8.5 A. An individual is eligible for extended employment services if the individual:

8.6 (1) is a Minnesota resident;

8.7 (2) has documentation of a diagnosed disability or disabilities by a qualified
8.8 professional according to part 3300.6000, subpart 16;

8.9 (3) has a serious functional limitation to employment in three or more
8.10 functional areas according to part 3300.6000, subpart 17; and

8.11 (4) requires ongoing employment support services to maintain and advance
8.12 in employment.

8.13 B. For state fiscal year 2021 and thereafter, an individual on a medical assistance
8.14 waiver, regardless of the waiver service the individual is receiving, is not eligible to receive
8.15 extended employment services through the extended employment program. Individuals on
8.16 a medical assistance waiver receiving extended employment services prior to state fiscal
8.17 year 2021 are exempt from this provision and remain eligible to receive extended employment
8.18 services.

8.19 **3300.6010 EXTENDED EMPLOYMENT SERVICES DELIVERY.**

8.20 Subpart 1. **Person-centered practices.** A provider must deliver extended employment
8.21 services in the extended employment program using person-centered practices.

8.22 "Person-centered practices" means practices that help an individual set goals and develop
8.23 action steps that enhance the individual's quality of life, where control over decisions rests

9.1 with the individual. The provider must not influence an individual's decision making but
9.2 instead serve as a facilitator of decision making.

9.3 Subp. 2. **Employment first.** A provider must consider employment first in delivering
9.4 extended employment services in the extended employment program. "Employment first"
9.5 means the expectation that a working age Minnesotan with a disability can work, wants to
9.6 work, and can achieve competitive employment, and each person must be offered the
9.7 opportunity to work and earn a competitive wage before being offered other supports and
9.8 services.

9.9 Subp. 3. **Informed choice.**

9.10 A. The provider must facilitate an individual's ability to make an informed choice
9.11 about the individual's employment. "Informed choice" means the individual is able to make
9.12 decisions regarding the individual's employment. Informed choice requires:

9.13 (1) that the individual understands all employment options, methods to
9.14 overcome barriers to employment, and the potential risks and benefits of those decisions;

9.15 (2) employment options that are not limited to ~~only~~ disability-specific
9.16 programs;

9.17 (3) community resources and supports are included in options; and

9.18 (4) the individual is provided community-based experiences on which to base
9.19 employment choices on an ongoing basis using person-centered practices.

9.20 B. For an individual required to participate in a career counseling, information,
9.21 and referral services consultation by the Workforce Innovation and Opportunity Act (WIOA),
9.22 section 511, part 397, a provider is not required to provide duplicative informed choice
9.23 information for purposes of the extended employment program. A provider must consider
9.24 the career counseling, information, and referral services consultation summary report when

10.1 developing an individual's extended employment support plan and retain a copy in the case
10.2 record.

10.3 **3300.6015 EXTENDED EMPLOYMENT SUPPORT PLANS.**

10.4 Subpart 1. **Extended employment support plan.** The provider must develop an
10.5 extended employment support plan ~~for~~ with each individual in the extended employment
10.6 program.

10.7 Subp. 2. **Requirements of the extended employment support plan.** The plan must
10.8 include the following:

10.9 A. the individual's employment goals and objectives, including:

10.10 (1) employment goals and goals for career advancement;

10.11 (2) the individual's preferences for employment setting, integration, range or
10.12 level of pay, work hours, work schedules, and benefits, including reference to the individual's
10.13 decision from the career counseling, information, and referral meeting regarding whether
10.14 an individual expressed interest in pursuing competitive, integrated employment; and

10.15 (3) the timeline for reaching the individual's employment goals;

10.16 B. the individual's vocational strengths, education, and work skills;

10.17 C. the individual's interests and preferences for jobs and work environments;

10.18 D. the individual's serious functional limitations to employment and how they
10.19 impact an individual's ability to maintain employment;

10.20 E. the individual's preferences for when, where, and how the required two per
10.21 month in-person meetings will occur;

10.22 F. identification of the specific ongoing employment support services that will be
10.23 provided;

11.1 G. the person or persons who will be providing the ongoing employment support
11.2 services, and a plan that describes how the individual will be notified and the impact on
11.3 scheduled services in the event the identified person or persons are absent or unavailable
11.4 to provide scheduled services;

11.5 H. the individual's decision to disclose or not disclose disability-related information
11.6 to the individual's employer and how supports will be provided in either scenario;

11.7 I. the names of the participants in the planning and preparation of the individual's
11.8 extended employment support plan; and

11.9 J. the signature of the individual.

11.10 Subp. 3. **Annual review and ~~development~~ update of the extended employment**
11.11 **support plan.** A provider must facilitate a review of an individual's extended employment
11.12 support plan and ~~development of a new extended employment support~~ update the plan at
11.13 least once per year. The new or updated extended employment support plan shall be
11.14 maintained in the case file. The review and ~~development~~ update of the plan shall include
11.15 the individual, the provider, and anyone else the individual would like involved. The review
11.16 and ~~development~~ update of the plan must include a discussion of each element of the extended
11.17 employment support plan and must itemize each of the following:

11.18 A. the individual's satisfaction with his or her employment and the ongoing
11.19 employment support services that are being provided;

11.20 B. the effectiveness of the individual's extended employment support plan in
11.21 achieving the individual's vocational goals;

11.22 C. the individual's interest in changing or advancing in employment; and

11.23 D. the individual's continuing need for ongoing employment support services to
11.24 maintain or advance in employment going forward.

12.1 **3300.6020 CASE RECORD DOCUMENTATION.**

12.2 Subpart 1. **Case records.** An extended employment provider must maintain a current
12.3 confidential case record for each individual served in the extended employment program.
12.4 The provider shall retain each case record for a minimum of three years after the completion
12.5 of the compliance audit process.

12.6 Subp. 2. **Case record elements.** Case records must include the following information:

12.7 A. personal identification data, including the individual's legal name, Social
12.8 Security number, legal status, date of birth, residential status and address, and, if applicable,
12.9 the name and contact information of the individual's legal representative;

12.10 B. documentation of eligibility for extended employment, including:

12.11 (1) independent source documentation of the individual's diagnosed disability
12.12 by a qualified professional; and

12.13 (2) documentation identifying the individual's specific significant functional
12.14 limitations to employment by one of the following:

12.15 (a) a disability examiner, employed by the department's Disability
12.16 Determination Services, or ~~another state's~~ other state department ~~who~~ that evaluates claims
12.17 for disability benefits using Social Security Administration guidelines to determine the
12.18 significant functional limitations to employment of individuals;

12.19 (b) a vocational rehabilitation professional, employed by a state
12.20 department or county unit, who is authorized by the government unit to determine the
12.21 significant functional limitations to employment of individuals; or

12.22 (c) an extended employment provider, as provided in the intake
12.23 paperwork;

12.24 C. pay statements from the individual's payroll agent demonstrating:

- 13.1 (1) start and end dates of the pay period;
- 13.2 (2) hours worked during the pay period;
- 13.3 (3) hours of paid leave used in the pay period;
- 13.4 (4) amount of gross wages paid in the pay period;
- 13.5 (5) payroll agent of record; and
- 13.6 (6) the individual's and the employer's contribution to the individual's federal
- 13.7 Social Security program;

13.8 D. the date the individual was referred to the extended employment provider for

13.9 extended employment services, the referral source, and the name and contact information

13.10 of the person who made the referral;

13.11 E. employment data, including contact information for supervisors, job duties,

13.12 work schedules, rate of pay, benefits, start dates, and termination dates;

13.13 F. the current extended employment support plan updated annually; and

13.14 G. the ongoing employment support services provided to the individual including,

13.15 at a minimum, the date and services provided to the individual by the provider during the

13.16 two in-person meetings per month.

13.17 Subp. 3. **WIOA, section 511.** If an individual's employment requires an annual WIOA,

13.18 section 511, career counseling session, then the case record must include documentation of

13.19 that session.

13.20 **3300.6025 PROVIDER REPORTING REQUIREMENTS.**

13.21 Subpart 1. **Individual data.** A provider must submit data requested by the

13.22 commissioner, including identification and contact information, eligibility information,

13.23 demographic information, intake and exit information, and work record data in a manner

14.1 prescribed by the commissioner on each individual reported to the extended employment
14.2 program.

14.3 Subp. 2. **Work record data.** A provider must submit work record data evidenced by
14.4 pay statements from an individual's employer in order to receive payment. Work record
14.5 data must include:

14.6 A. start and end dates of the pay period or the month;

14.7 B. hours worked during the pay period or the month;

14.8 C. amount of gross wages paid during the pay period or the month;

14.9 D. type of subprogram where hours are reported;

14.10 E. payroll agent of record; and

14.11 F. job type, as an O*Net code.

14.12 Subp. 3. **Monitoring.** The commissioner is authorized to conduct monitoring visits
14.13 as a part of the contracting process to ensure the accuracy of reported data. The provider
14.14 must make individual records and performance data available to the commissioner for
14.15 monitoring. A provider may appeal the loss of hours and earnings resulting from the
14.16 commissioner's assessment of allowable hours under part 3300.6065.

14.17 **3300.6030 REQUIREMENTS FOR EXTENDED EMPLOYMENT FUNDING.**

14.18 Subpart 1. **Requirements for funding.** To receive funding under the extended
14.19 employment program, a community rehabilitation provider must:

14.20 A. be a public or nonprofit entity registered with the Minnesota secretary of state;

14.21 B. comply with Minnesota Statutes, sections 268A.06 to 268A.085, regarding
14.22 requirements of the board;

14.23 C. hold accreditation in the CARF standards in this item.

15.1 (1) To provide services through the supported employment subprogram, the
15.2 community employment subprogram, or the center-based employment subprogram, a
15.3 community rehabilitation provider must hold accreditation in the CARF administrative and
15.4 program standards for community employment services, including job development and
15.5 employment supports.

15.6 (2) To provide services through the center-based employment subprogram, a
15.7 community rehabilitation provider must hold accreditation in the CARF administrative and
15.8 program standards for organizational employment services; and

15.9 D. maintain CARF conformance between CARF surveys.

15.10 **Subp. 2. Funding in special circumstances.**

15.11 A. If a community rehabilitation provider submits evidence of any of the
15.12 circumstances listed in item B, the commissioner must grant funding under the extended
15.13 employment program even if the requirements for funding in subpart 1 are not met. Funding
15.14 under this subpart is only valid for up to one year and cannot be used in any two consecutive
15.15 fiscal years.

15.16 B. The following are special circumstances warranting grant funding:

15.17 (1) CARF cannot schedule a timely survey;

15.18 (2) CARF has completed a survey but has not delivered the results of the
15.19 survey to the provider; or

15.20 (3) An extraordinary and catastrophic circumstance has occurred. For the
15.21 purposes of this part, an "extraordinary and catastrophic circumstance" means a fire or other
15.22 natural disaster that is beyond the control of a provider that has adversely affected or
15.23 completely halted operations such that the extended employment provider has been unable
15.24 to maintain the requirements for funding.

16.1 C. If a community rehabilitation provider is not a current extended employment
16.2 provider and has been awarded a contract for new or expanded extended employment
16.3 services and is in compliance with all requirements for funding except the requirement for
16.4 accreditation by CARF, then the commissioner must grant funding under the extended
16.5 employment program even if the CARF requirement for funding in subpart 1 is not met. If
16.6 the provider is not accredited by CARF, the provider must demonstrate the likelihood that
16.7 the provider will meet the requirements for accreditation by CARF and will receive
16.8 accreditation within one year.

16.9 **3300.6035 FUNDING.**

16.10 Subpart 1. **Continuation funding.**

16.11 A. Each fiscal year, a provider who held a contract with the commissioner for
16.12 extended employment funding in the previous fiscal year, and maintains compliance with
16.13 the requirements for funding, is eligible for continuation of their funding within the limits
16.14 of available appropriations for this purpose.

16.15 B. If a community rehabilitation provider held a contract for new or expanded
16.16 services in the previous fiscal year, has met the identified outcomes of the new or expanded
16.17 services within the time frame specified in the contract, and maintains compliance with the
16.18 requirements for funding, then the provider is eligible for continuation of their funding
16.19 within the limits of available appropriations for this purpose.

16.20 Subp. 2. **Starting point for initial extended employment contract allocations.** The
16.21 starting point for a provider's initial extended employment contract allocation for each
16.22 subprogram in a particular fiscal year must be determined by the provider's prior fiscal year
16.23 extended employment contract allocation for each subprogram, as amended.

17.1 **Subp. 3. Contracted allocation subprogram distribution.**

17.2 A. The commissioner must specify a provider's funding allocation amount by
17.3 subprogram in the provider's contract.

17.4 B. The starting point for a provider's allocation amount by subprogram in a new
17.5 fiscal year contract is a provider's allocation amount by subprogram in the previous fiscal
17.6 year contract.

17.7 C. A provider may adjust the distribution of the provider's total funding allocation
17.8 among the subprograms in developing the new fiscal year contract as follows:

17.9 (1) a provider may shift a portion of the provider's center-based employment
17.10 subprogram allocation to the provider's community employment subprogram allocation or
17.11 the provider's supported employment subprogram allocation, or both;

17.12 (2) a provider may shift a portion of the provider's community employment
17.13 subprogram allocation to the provider's supported employment subprogram allocation;

17.14 (3) before May 1, 2020, a provider may make one request to shift a portion
17.15 of any of the provider's subprogram allocations to any other subprogram allocation; and

17.16 (4) in state fiscal year 2021 and thereafter, a provider must not shift a portion
17.17 of the provider's supported employment subprogram allocation to the provider's community
17.18 employment subprogram allocation or the provider's center-based subprogram allocation.

17.19 A provider must not shift a portion of the provider's community employment subprogram
17.20 allocation to the provider's center-based employment subprogram allocation.

17.21 **Subp. 4. Cap on funding for certain employment.** ~~Beginning in fiscal year 2020,~~
17.22 The commissioner must set a cap on employment that does not meet the definition of
17.23 competitive, integrated employment for each provider. The cap for each provider is set as
17.24 the sum of a provider's fiscal year 2020 contract allocations for the center-based employment

18.1 subprogram and the community employment subprogram. The cap is effective beginning
18.2 in state fiscal year 2021.

18.3 **Subp. 5. Center-based employment subprogram phaseout.**

18.4 A. Beginning in fiscal year 2021, the commissioner must reduce each provider's
18.5 center-based employment subprogram contract allocation as described in this subpart. The
18.6 basis for each provider's reduction each year is the provider's fiscal year 2020 center-based
18.7 employment subprogram contract allocation.

18.8 B. A provider may shift the funds reduced from the center-based employment
18.9 subprogram to either its community employment subprogram contract allocation or its
18.10 supported employment subprogram contract allocation. The provider may also forfeit the
18.11 funds. Of the funds reduced from the center-based employment subprogram allocation each
18.12 year, no more than 50 percent of the funds can be shifted to the community employment
18.13 subprogram.

18.14 (1) In fiscal year 2021, a provider's center-based employment subprogram
18.15 contract allocation must be reduced by at least five percent of the provider's center-based
18.16 employment subprogram fiscal year 2020 contract allocation.

18.17 (2) In fiscal year 2022, a provider's center-based employment subprogram
18.18 contract allocation must be reduced by at least 15 percent of the provider's center-based
18.19 employment subprogram fiscal year 2020 contract allocation.

18.20 (3) In fiscal year 2023, a provider's center-based employment subprogram
18.21 contract allocation must be reduced by at least 20 percent of the provider's center-based
18.22 employment subprogram fiscal year 2020 contract allocation.

18.23 (4) In fiscal year 2024, a provider's center-based employment subprogram
18.24 contract allocation must be reduced by at least 25 percent of the provider's center-based
18.25 employment subprogram fiscal year 2020 contract allocation.

19.1 (5) In fiscal year 2025, a provider's center-based employment subprogram
19.2 contract allocation must be reduced by at least 35 percent of the provider's center-based
19.3 employment subprogram fiscal year 2020 contract allocation.

19.4 (6) The commissioner must not provide funding to a provider for the
19.5 center-based employment subprogram in fiscal year 2026 and later.

19.6 **3300.6040 CONTRACT ADJUSTMENTS.**

19.7 Subpart 1. **Voluntary shifts.** After the extended employment contract has been
19.8 executed, a provider may request voluntary shifts in the distribution of the total allocation
19.9 amount among the subprograms. Voluntary shifts may be made according to the parameters
19.10 in part 3300.6035, subpart 3, item C. A shift in the distribution of the allocation requires a
19.11 renegotiated provider contract.

19.12 Subp. 2. **Underproduction penalty.**

19.13 A. After the compliance audit reconciliation process under part 3300.6060 for a
19.14 previous fiscal year is complete, the commissioner must determine if a provider is subject
19.15 to an underproduction penalty for a particular subprogram.

19.16 B. A provider is subject to an underproduction penalty for a particular subprogram
19.17 when the provider's audited production for a particular subprogram in a fiscal year is less
19.18 than 95 percent of the provider's allocation for that subprogram in the fiscal year.

19.19 C. An underproduction penalty means the commissioner must adjust a provider's
19.20 subprogram allocation for that subprogram in the subsequent fiscal year's contract downward,
19.21 except as provided by subpart 3.

19.22 D. The downward adjustment for that subprogram's allocation must be the audited
19.23 subprogram production in the audited fiscal year plus five percent of the audited fiscal year's
19.24 subprogram contract allocation.

20.1 Subp. 3. **Waiver from underproduction penalty.** If a provider is subject to an
20.2 underproduction penalty in a particular subprogram as described in subpart 2, the provider
20.3 is eligible for either a one-year waiver or a catastrophic waiver from the underproduction
20.4 penalty.

20.5 A. If a provider earns 90 percent to 95 percent of a subprogram allocation, the
20.6 provider is eligible for a one-year waiver from the underproduction penalty for a particular
20.7 subprogram. The commissioner must provide the waiver without a request process. A
20.8 provider is ineligible to receive the one-year waiver for a particular subprogram in any two
20.9 consecutive fiscal years. A provider is eligible for the one-year waiver in each particular
20.10 subprogram.

20.11 B. If a provider earns less than 90 percent of a subprogram allocation and
20.12 demonstrates it is experiencing an extraordinary and catastrophic circumstance under this
20.13 item, the commissioner may issue a catastrophic waiver from the underproduction penalty.

20.14 (1) For purposes of this subpart, an "extraordinary and catastrophic
20.15 circumstance" means a fire or other natural disaster that is beyond the control of the provider
20.16 that has adversely affected or completely halted operations such that extended employment
20.17 individuals have been unable to work or extended employment provider staff have been
20.18 unable to provide extended employment services.

20.19 (2) A provider seeking a catastrophic waiver to the contract starting point
20.20 must request this variance in a manner prescribed by the commissioner and shall:

20.21 (a) state the reasons for the request;

20.22 (b) submit independent documentation of the extraordinary and
20.23 catastrophic circumstances;

20.24 (c) demonstrate how the extraordinary and catastrophic circumstances
20.25 resulted in the loss of work hours of extended employment individuals; and

21.1 (d) submit a measurable work plan for corrective action to meet
21.2 contracted hours during the next contract period.

21.3 (3) A provider is eligible for the catastrophic waiver in each particular
21.4 subprogram. A provider is ineligible for the catastrophic waiver for a particular subprogram
21.5 in any two consecutive fiscal years.

21.6 **3300.6045 DISTRIBUTION OF AVAILABLE FUNDS.**

21.7 Subpart 1. **Available funds.** The commissioner must distribute funds that become
21.8 available due to any of the following:

21.9 A. a general increase in the state appropriation;

21.10 B. the underproduction penalty process as described in part 3300.6040; or

21.11 C. unspent funds due to termination of a contract.

21.12 Subp. 2. **Distribution of available funds; considerations.**

21.13 A. The commissioner must consider the factors in this subpart when determining
21.14 which method of distribution of additional available funds under subpart 3 will be used.

21.15 (1) Priority for allocation of funds must go toward the service needs of
21.16 individuals who would benefit from ongoing employment support services.

21.17 (2) The commissioner must consider input from stakeholders such as current
21.18 extended employment providers, other community rehabilitation providers, representatives
21.19 of county social service agencies, vocational rehabilitation staff, and representatives from
21.20 advocacy organizations.

21.21 (3) The commissioner must consider the amount of ~~onetime~~ one-time funds
21.22 or ongoing funds available for distribution.

22.1 (4) The commissioner must consider the relationship of additional extended
22.2 employment services to current services.

22.3 (5) The commissioner must consider the performance of current extended
22.4 employment services.

22.5 (6) The commissioner must consider the geographic distribution of current
22.6 extended employment services and the distribution method's ability to respond to needs for
22.7 geographic distribution of extended employment services.

22.8 B. When funds are available for distribution, the commissioner must distribute
22.9 funds on a ~~onetime~~ one-time basis, a time-limited basis, or by adding to a provider's
22.10 subsequent year initial extended employment contract starting point.

22.11 Subp. 3. **Distribution method; supported employment overproduction.** If the
22.12 commissioner distributes available funds through the supported employment overproduction
22.13 provision, the commissioner must distribute funds to extended employment providers that
22.14 have overproduced in the supported employment subprogram based on a proportionate share
22.15 of the total supported employment subprogram overproduction by all extended employment
22.16 providers. Overproduction means an extended employment provider's audited supported
22.17 employment subprogram hours exceed the provider's supported employment contract
22.18 allocation in a given fiscal year.

22.19 Subp. 4. **Distribution method; supported employment incentive.** If the commissioner
22.20 distributes available funds through the supported employment incentive provision, the
22.21 commissioner must distribute funds to extended employment providers based on each
22.22 provider's audited supported employment hours divided by the total audited supported
22.23 employment hours of all extended employment providers in the audited fiscal year.

22.24 Subp. 5. **Distribution method; new or expanded services.** If the commissioner
22.25 distributes available funds through the new or expanded services provision, the commissioner

23.1 must develop and publish a request for proposals for new or expanded services. New or
23.2 expanded services must only be to provide ongoing employment support services to
23.3 individuals in competitive, integrated employment. Community rehabilitation providers
23.4 may apply for distribution of available funds by responding to a request for proposals for
23.5 new or expanded services issued by the commissioner.

23.6 A. In developing the request for proposals for new or expanded extended
23.7 employment services, the commissioner shall consider how to foster innovation and promote
23.8 state-of-the-art best practices in providing ongoing employment support services to
23.9 individuals in competitive, integrated employment. The commissioner may waive program
23.10 requirements as outlined in this chapter to conduct pilot projects, foster innovation, and
23.11 promote state-of-the-art best practices in competitive, integrated employment.

23.12 B. The underproduction penalty in part 3300.6040 does not apply to a new or
23.13 expanded services contract allocation. A contract for new or expanded services must include
23.14 production goals within identified time frames. If a provider's audited production for the
23.15 new or expanded services in an audited fiscal year is less than the production goals identified
23.16 in the contract for new or expanded services, the provider must develop and implement a
23.17 corrective action plan to meet the goals in the contract. The commissioner must approve
23.18 and monitor the corrective action plan. If the provider does not administer extended
23.19 employment services according to the corrective action plan approved by the commissioner,
23.20 the commissioner must withdraw allocated state funds for new and expanded services under
23.21 part 3300.6055.

23.22 Subp. 6. **Distribution method; supported employment subprogram rate**
23.23 **adjustment.** If the commissioner distributes available funds through a supported employment
23.24 subprogram rate adjustment, the commissioner must use the available funds to adjust the
23.25 statewide uniform reimbursement rates for the supported employment subprogram as
23.26 provided under part 3300.6050.

24.1 **3300.6050 RATES.**

24.2 A. The unit of distribution of extended employment program funding is the
24.3 payment for one work hour performed by an eligible individual and reported to the
24.4 commissioner in the extended employment program.

24.5 B. For each subprogram, the statewide uniform reimbursement rates apply for
24.6 each reported work hour up to the maximum contracted allocation for that subprogram.

24.7 C. The commissioner must set statewide uniform reimbursement rates each fiscal
24.8 year. The commissioner must determine rates by adjusting rates of the previous fiscal year
24.9 in proportion to available funding. Rate increases are available for the supported employment
24.10 subprogram only.

24.11 D. The commissioner must publish statewide uniform reimbursement rates for
24.12 each subprogram as part of the information provided during the contracting process.

24.13 **3300.6055 WITHDRAWAL OF FUNDS.**

24.14 Subpart 1. **Criteria for withdrawal of allocated state funds.** The commissioner must
24.15 withdraw allocated state funds from a provider when:

24.16 A. extended employment services are not being administered according to:

24.17 (1) this chapter and Minnesota Statutes, chapter 268A;

24.18 (2) the terms, conditions, or duties of the extended employment program
24.19 grant contract; or

24.20 (3) a corrective action plan approved by the commissioner; or

24.21 B. the provider has not complied with the commissioner's written requests to
24.22 implement changes to extended employment services.

24.23 An extended employment provider must submit information requested by the commissioner
24.24 to carry out the duties in this chapter.

25.1 Subp. 2. **Notice of withdrawal.** Except where there is an imminent danger to the
25.2 health or safety of individuals, the commissioner must give written notice at least 45 days
25.3 before allocated state funds may be withdrawn from a provider. The notice must state the
25.4 reasons for the withdrawal of funds.

25.5 **3300.6060 PROVIDER COMPLIANCE AUDIT.**

25.6 Subpart 1. **Compliance audit examinations conducted.**

25.7 A. After June 30 of each year, each provider must undergo a compliance audit
25.8 for the previous fiscal year. The audit must be conducted according to the requirements of
25.9 this subpart and the commissioner's Compliance Audit Standards, which are incorporated
25.10 by reference, not subject to frequent change, and available at ~~https://mn.gov/deed/~~
25.11 ~~job-seekers/disabilities/extend-employment/service-providers/~~ on the department's extended
25.12 employment web page. The commissioner must review the compliance audit standards on
25.13 an annual basis and seek the input of providers and independent auditors in the review of
25.14 the standards. The commissioner must make updated standards available on the department's
25.15 Web site no later than May 31 of each year.

25.16 B. The audit must be performed by independent auditors at the provider's expense.

25.17 C. The provider must submit a completed compliance audit report to the
25.18 commissioner by October 31 of each year.

25.19 Subp. 2. **Reconciliation payments.** Based on the results of the compliance audit, the
25.20 commissioner must reconcile the value of reported work hours previously paid but found
25.21 ineligible or work hours previously not paid but found eligible according to the provider's
25.22 independent auditor's compliance audit report.

25.23 **3300.6065 PAY AND BENEFITS.**

25.24 A. An individual in the extended employment program who is self-employed must
25.25 realize net income that is the equivalent or in excess of the hourly rate of pay required under

26.1 the Minnesota Fair Labor Standards Act, Minnesota Statutes, chapter 177, and the federal
26.2 Fair Labor Standards Act, when the number of hours worked is compared with the income
26.3 realized. Self-employed individuals must pay timely self-employment taxes on income from
26.4 employment and, if necessary during the provider's compliance examination, provide
26.5 documentation of reported self-employment tax obligation.

26.6 B. An extended employment provider that is the employer of record for an
26.7 individual must provide the following minimum personnel benefits:

26.8 (1) either:

26.9 (a) vacation, sick leave, and holidays, provided on a proportional basis
26.10 as provided to the nonexempt, full-time staff of the provider agency, provided that, at a
26.11 minimum, individuals are entitled to five days of paid vacation, five days of paid sick leave,
26.12 and five paid holidays per calendar year; or

26.13 (b) flexible paid leave, provided in lieu of vacation and sick leaves, that
26.14 is provided on a proportional basis as provided to the nonexempt, full-time staff of the
26.15 provider agency, provided that, at a minimum, individuals must be entitled to ten days of
26.16 paid leave and five paid holidays per calendar year; and

26.17 (2) other mandated state and federal leave benefits.

26.18 **3300.6070 APPEAL PROCEDURE.**

26.19 Subpart 1. **Notice of intent to appeal.** A community rehabilitation provider appealing
26.20 commissioner decisions must provide a written notice of intent to appeal to the commissioner.
26.21 The written notice of intent to appeal must be received by the commissioner within 30 days
26.22 from the date that the community rehabilitation provider received notice from the
26.23 commissioner of the action that the community rehabilitation provider wishes to appeal. If
26.24 the notice of intent to appeal is not received from the provider within the 30-day period, the

27.1 decision of the commissioner is final. The notice of intent to appeal must state the grounds
27.2 for the appeal, including facts and issues that will be addressed at a contested case hearing.

27.3 Subp. 2. **Informal review.** Within 30 days after the commissioner receives a notice
27.4 of intent to appeal, the commissioner shall contact the community rehabilitation provider
27.5 and informally review the reasons for the appeal. The informal review by the commissioner
27.6 may be oral or written. Before the end of the 30-day period for informal review, the
27.7 commissioner must make a written decision regarding the community rehabilitation provider's
27.8 appeal. The decision by the commissioner must state the commissioner's position on the
27.9 issue under appeal, the basis of that position, and the community rehabilitation provider's
27.10 right to request a contested case hearing.

27.11 Subp. 3. **Contested case.** After the informal review under subpart 2, the community
27.12 rehabilitation provider may make a written request for a contested case hearing before an
27.13 administrative law judge as provided in Minnesota Statutes, sections 14.57 to 14.62. The
27.14 written request for a contested case hearing must be received by the commissioner no more
27.15 than 30 days after the date when the community rehabilitation provider received written
27.16 notice of the decision of the commissioner following the informal review. Within 15 days
27.17 from the date the commissioner receives a community rehabilitation provider's request for
27.18 a contested case hearing, the commissioner must request the Office of Administrative
27.19 Hearings to assign an administrative law judge to hear the appeal and schedule a hearing.
27.20 The contested case hearing must be initiated and conducted according to Minnesota Statutes,
27.21 sections 14.57 to 14.62.

27.22 Subp. 4. **Decision.** The decision of the administrative law judge must be recommended
27.23 for the commissioner's adoption. The commissioner's decision on the issue under appeal is
27.24 the final decision.

- 28.1 **REPEALER.** Minnesota Rules, parts 3300.2005; 3300.2010; 3300.2015; 3300.2020;
28.2 3300.2025; 3300.2030; 3300.2035; 3300.2040; 3300.2045; 3300.2052; and 3300.2055, are
28.3 repealed.



EXTENDED EMPLOYMENT PROGRAM
RULE REVISION

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

DATE: 08/29/2018

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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.

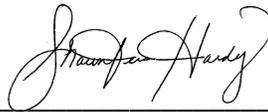
Supp. 3. Contested case. This subpart is necessary and reasonable to specify the steps if a party requests a contested case hearing and what steps they must take to do so.

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

August 29, 2018

VIA EMAIL ONLY

Kim Babine
Department of Employment and Economic Development
First National Bank
332 Minnesota St, Ste E200
Saint Paul, MN 55101
kim.babine@state.mn.us

**Re: *In the Matter of the Proposed Permanent Rules Relating to
Extended Employment Services
OAH 60-9044-35198; Revisor R-4245***

Dear Ms. Babine:

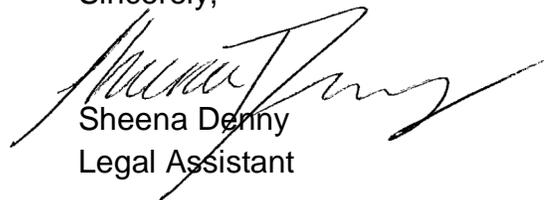
Enclosed herewith and served upon you please find the **ORDER ON REVIEW OF ADDITIONAL NOTICE PLAN AND DUAL NOTICE** in the above-entitled matter.

Prior to publishing the notice in the State Register, please notify the Office of Administrative Hearings (OAH) at katie.lin@state.mn.us in order to activate the agency's eComments page on OAH's website. **Please note that if you do not notify us of the publication, the eComments site will not be available to receive public comments.**

For the convenience of the Office of Administrative Hearings, the Administrative Law Judge requests the Minnesota Department of Employment and Economic Development to change the contact information on page three of the Dual Notice, at lines 7-9 of the paragraph titled Notice of Hearing, to read "Judge LaFave's Legal Assistant Denise Collins can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7900 and FAX 651-539-0310 or denise.collins@state.mn.us."

If you have any questions regarding this matter, please contact Denise Collins at (651) 361-7875, denise.collins@state.mn.us or facsimile at (651) 539-0310.

Sincerely,



Sheena Denny
Legal Assistant

Enclosure

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the 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

**ORDER ON REVIEW OF ADDITIONAL
NOTICE PLAN AND DUAL NOTICE**

This matter came before Administrative Law Judge James E. LaFave upon the Minnesota Department of Employment and Economic Development's request for a legal review under Minn. R. 1400.2060, .2080 (2017) of the Additional Notice Plan and Dual Notice of Intent to Adopt Rules in the above-captioned proceeding.

Under its Additional Notice Plan, the Department plans to notify:

- 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;
- 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;
- Extended Employment Program Rulemaking SONAR 13;
- Department of Human Services Disability Services Division staff;
- Local Medicaid Lead Agency staff;
- Association of Social Services Directors;
- Olmstead Subcabinet members; and
- Anyone interested in employment outcomes for individuals with disabilities.

Based upon a review of the written submissions by the Department,

IT IS HEREBY ORDERED THAT:

1. The Additional Notice Plan is **APPROVED**.
2. The Dual Notice is **APPROVED**.

Dated: August 29, 2018



JAMES E. LAFAIVE
Administrative Law Judge

October 16, 2018

Minnesota Department of Employment and Economic Development

NOTICE OF CANCELLATION OF HEARING TO PERSONS WHO REQUESTED A HEARING

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

To persons who requested a hearing. The Department is sending this Notice to all persons who requested a hearing.

The hearing is canceled. In the September 10, 2018 State Register, on pages 315 to 331, the Department of Employment and Economic Development published a DUAL NOTICE: Notice of Intent to Adopt Rules without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received relating to the Extended Employment Program. The Notice stated that a hearing would be held on the proposed rules if 25 or more persons submitted written requests for a hearing. In response, the Department received 7 requests for a hearing. Consequently, the Department is canceling the hearing. The Department will adopt the rules without a hearing and then submit the rules and other required documents to the Chief Administrative Law Judge for review by the Office of Administrative Hearings. The Department will consider all written comments when it adopts the rules.

Agency Contact Person. The agency contact person is: Kim Babine, Director of Community Partnerships, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101, 651-379-7349, kim.babine@state.mn.us. Questions or comments concerning the cancellation of the hearing or about the rule adoption process should be directed to the agency contact person.



October 16, 2018

Director of Community Partnerships
DEED Vocational Rehabilitation Services

Revisor's ID Number: AR-4245

From: [Goldsberry, Lonie \(DEED\)](#)
To: [#DEED_Extended_Employment](#)
Bcc: ["deanritzman@gmail.com"](#); ["hilljanelle@msn.com"](#); ["omega1007@hotmail.com"](#); ["nelly12mn@gmail.com"](#); ["ariowriter@centurylink.net"](#); ["klhaertl@stkate.edu"](#); ["john.bringewatt@gmail.com"](#)
Subject: Extended Employment Rule - Notice of Canceled Hearing
Date: Wednesday, October 17, 2018 8:12:00 AM
Attachments: [10.16.18 Notice of Cancellation of Hearing.pdf](#)

Hello,

This email is being sent to interested individuals who requested a hearing on Department of Employment and Economic Development's proposed changes to the Extended Employment rule.

The comment period ended October 10th, please find attached a letter from our Director of Community Partnership regarding the cancellation.

We appreciate you taking time to comment on the rule revisions.

Kind regards,

[Lonie Goldsberry](#) | Rehabilitation Program Specialist | Vocational Rehabilitation Services
Department of Employment and Economic Development
1st National Bank Building, 332 Minnesota St., Suite E200, St. Paul MN 55101
Direct: 651-259-7343
[Web](#) | [Twitter](#) | [Facebook](#)



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From: DEED Communications <MNDEED@public.govdelivery.com>

Subject: VRS: Extended Employment Rule Revision

Vocational Rehabilitation Services header

The public comment period for the Extended Employment Rule Revision closed Wednesday, October 10, 2018. All the comments received will be submitted to the Office of Administrative Hearings as part of the official rulemaking record.

The department received 7 requests for a hearing, which is less than the minimum of 25 to require a hearing. The Dual Notice states: The Department will cancel the hearing scheduled for Wednesday, October 24, 2018, if the agency does not receive requests for a hearing from 25 or more persons. Thus, the hearing is cancelled.

The next steps in the rulemaking process are this: the department is preparing responses to the comments received during the public comment, finalizing the changes to the rule, and submitting the Order Adopting Rule to the Office of Administrative Hearings for the Administrative Law Judges review. Part of the submission to the Office of Administrative hearings will be all the comments made during the public comment period. The Administrative Law Judge has 14 days to review and approve or disapprove all or parts of the rule. If there are disapprovals, further changes may be necessary to the rule. We will notify this list serve when the submission is made and what the judges review yields.

If you have any questions, please email the DEED Extended Employment program staff Extended.Employment@state.mn.us.

Minnesota Department of Employment and Economic Development Logo [<https://mn.gov/deed/>]

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RULE SUBMISSION TO THE OFFICE OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT

**2018 EXTENDED EMPLOYMENT RULES, CHAPTER 3300
REVISOR'S ID NUMBER AR4245**

PROCEDURAL DOCUMENTS

From: Dannen, Darielle (DEED)
Sent: Tuesday, July 03, 2018 10:32 AM
To: Conboy, Marianne (MMB) <marianne.conboy@state.mn.us>
Cc: Babine, Kim (DEED) <kim.babine@state.mn.us>
Subject: Revised EE Rule Letter to MMB Requesting Review

Marianne,

Please see the attached letter requesting MMB's Review of DEED's Revised Proposed Rules of the Department of Employment and Economic Development governing the Extended Employment program; Revisor's ID Number RD4245 and accompanying materials.

Thank you,

Darielle Dannen | Government Relations Director
Minnesota Department of Employment and Economic Development
1st National Bank Building, 332 Minnesota St., Suite E200, St. Paul MN 55101
Direct: 651-259-7118 Cell: 651-470-7121
[Web](#) | [Twitter](#) | [Facebook](#)



August 3, 2018

To: Darielle Dannen
Director, Government Relations
Minnesota Department of Employment and
Economic Development

From: Marianne Conboy
Executive Budget Officer
Minnesota Management and Budget

RE: In the Matter of the Proposed Rules of the Department of Employment and Economic Development governing the Extended Employment program; Revisor's ID Number RD4245

Background

The Minnesota Department of Employment and Economic Development (DEED) is proposing changes to the state rules that govern the Extended Employment (EE) Program. The EE program provides ongoing employment support services to help Minnesotans with significant disabilities keep jobs once they have them and advance in their careers. Examples of EE direct services include job skills training at the worksite, behavior management, coordination of support services, training in independent living skills, communication skills, 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. The EE program is entirely state funded from the General Fund and the Workforce Development Fund. There were 27 Community Rehabilitation Providers that received EE funding in SFY 2018. Reimbursement to providers is based on the number of hours worked by an eligible individual receiving services. DEED reimburses providers for the hours worked by an eligible individual receiving services, at a rate specific to the particular subprogram.

The EE program has three subprograms: (1.) Supported Employment, which is also referred to as competitive, integrated employment; (2.) Community Employment, which is also referred to as workgroup or enclave based employment; and (3.) Center-Based Employment, which is also referred to as workshop based employment.

The impacts of this EE rule change to its subprograms is as follows –

(1.) The Supported Employment (SE) subprogram: will be encouraged, rate increases will be allowed only in this subprogram, the wage incentive will be changed to the SE incentive, and new and expanded services will be allowed only in this subprogram. In addition, a SE definition change means employers cannot be an individual's service provider in this subprogram.

(2.) The Community Employment (CE) subprogram: will be capped for each provider as the sum of the CE subprogram allocation and the CBE subprogram allocation in their SFY 2020 contract.

(3.) The Center-Based Employment (CBE) subprogram: will be capped for each provider as the sum of the CE subprogram allocation and CBE subprogram allocation in their SFY 2020 contract, and phased out beginning in SFY 2021, by reducing contract amounts until SFY 2025, after which there will be no funding for this subprogram. Eligible individuals can continue receiving similar services through non-state, federal funds via the Medicaid-Waiver services.

Evaluation

Pursuant to Minnesota Statutes 14.131, on behalf of the Commissioner of Minnesota Management and Budget, I have reviewed the proposed rules and Statement of Need and Reasonableness for the fiscal impact and fiscal benefits on local units of government. For most local units of government, this rule will not have fiscal impact.

There will be fiscal impacts to local units of government who participate in DEED's Extended Employment program as providers, and currently Hennepin County is the only local government that is also a provider. As a point of reference, Hennepin County's contract is \$170,235 per year - the same amount in SFY 2017, SFY 2018, and SFY 2019. The services that Hennepin County provides for the Extended Employment program are exclusively in the Supported Employment subprogram.

The Supported Employment (SE) subprogram, and thereby Hennepin County, may benefit from this proposed rule, which: (a.) clarifies how a rate increase can be made and only allows rate increases for the SE subprogram, (b.) creates a SE incentive, meaning that DEED can distribute available unused funds to providers who have overproduced, or reported more work hours than could be reimbursed under the contract allocation, only in the SE subprogram, and (c.) allows for new and expanded services only in the SE subprogram.

The SE subprogram, and thereby Hennepin County, may have additional fiscal impact from this proposed rule, which: (d.) changes the definition of what qualifies as SE to 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 updated SE definition requires that the location where an individual in the EE program works is not owned or operated by their EE service provider, in order to count as competitive, integrated employment. Due to this change, some of the individuals in Hennepin County's program may no longer work in a setting that meets the definition of SE. The county may choose to continue serving those individuals through moving some of its allocation to the Community Employment or Center-Based Employment subprograms. This rule allows for such a shift, but after May 1, 2020, shifts will only be allowed into a more integrated setting. Hennepin County's overall contract allocation amount will not decrease as a result of the definition change. If Hennepin County shifts individuals in the Community Employment or Center-Based Employment subprograms, where the reimbursement rate is lower, this could be offset in a number of ways, including by reporting more work hours.

Overall, any fiscal impact at Hennepin County's should be incremental, and other local governments will not have a fiscal impact.

Sincerely,

Marianne Conboy
Executive Budget Officer

cc: Angela Vogt, Minnesota Management and Budget

August 29, 2018

Legislative Reference Library
645 State Office Bldg.
100 Rev. Dr. MLK Jr. Blvd.
St. Paul, MN 55155

Re: In the Matter of the Proposed Rules of the Department of Employment and Economic Development governing the Extended Employment program; Revisor's ID Number RD 4245

Dear Librarian:

The Department of Employment and Economic Development intends to adopt rules that govern the Extended Employment Program. We plan to publish a Dual Notice in the Monday, September 9, 2018 State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have any questions about the proposed rule, please contact me at 651-259-7349.

Sincerely,



Kim Babine
Director, Extended Employment Program

Enclosure: Statement of Need and Reasonableness

From: Dannen, Darielle (DEED)
Sent: Wednesday, August 29, 2018 2:04 PM
To: sen.jeremy.miller@senate.mn; sen.bobby.champion@senate.mn; Pat Garofalo
<rep.pat.garofalo@house.mn>; rep.tim.mahoney@house.mn; cc@lcc.leg.mn
Cc: Andrew Eilers <Andrew.Eilers@senate.mn>; Adam Seidel (adam.seidel@house.mn)
<adam.seidel@house.mn>; cearah.hamilton@senate.mn; Michael Mollner
<Michael.Mollner@house.mn>; Babine, Kim (DEED) <kim.babine@state.mn.us>
Subject: DEED Notice of Intent to Adopt Extended Employment Rules

Dear Legislators,

The Department of Employment and Economic Development intends to adopt rules that govern the Extended Employment Program. The Extended Employment program works to help Minnesotans with significant disabilities keep jobs once they have them and advance in their careers.

As required by section Minnesota Statutes, section 14.116, the Department is providing you a copy of the Dual Notice, the Statement of Need and Reasonableness, and a copy of the proposed rules, each is attached.

The rule is being revised 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 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 would prioritize funding to provide services for individuals in competitive, integrated employment. This proposed change would cap funding for non-competitive employment and phase out funding for center-based (workshop) employment. Additionally, the proposed rule clarifies that for a job to be truly competitive and integrated, the employer cannot be an individual's service provider. Other changes in the proposed rule aim to make operating the program as simple as possible by streamlining processes and using plain language, while providing the highest quality services.

If you have any questions about the proposed rule, please me or DEED's Vocational Rehabilitation Services Director of Community Partnerships, Kim Babine at 651-259-7349 or kim.babine@state.mn.us.

Thank you,

Darielle Dannen | Government Relations Director
Minnesota Department of Employment and Economic Development
1st National Bank Building, 332 Minnesota St., Suite E200, St. Paul MN 55101
Direct: 651-259-7118 Cell: 651-470-7121
[Web](#) | [Twitter](#) | [Facebook](#)



August 29, 2018

Representative Pat Garofalo, Chair
Job Growth and Energy Affordability Finance and Policy Committee
Minnesota House of Representatives
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Representative Tim Mahoney, Ranking Minority Member
Job Growth and Energy Affordability Finance and Policy Committee
Minnesota House of Representatives
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Senator Jeremy R. Miller, Chair
Jobs and Economic Growth Finance and Policy Committee
3107 Minnesota Senate Building
95 University Ave. W.
St. Paul, MN 55155

Senator Bobby Joe Champion, Ranking Minority Member
Jobs and Economic Growth Finance and Policy Committee
2303 Minnesota Senate Building
95 University Ave. W.
St. Paul, MN 55155

Legislative Coordinating Commission
72 State Office Building
100 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

Re: In the Matter of the Proposed Rules of the Department of Employment and Economic Development governing the Extended Employment program; Revisor's ID Number RD4245

Dear Legislators,

The Department of Employment and Economic Development intends to adopt rules that govern the Extended Employment Program. The Extended Employment program works to help Minnesotans with significant disabilities keep jobs once they have them and advance in their careers.

As required by section Minnesota Statutes, section 14.116, the Department is providing you a copy of the Dual Notice, the Statement of Need and Reasonableness, and a copy of the proposed rules.

The rule is being revised 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 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 would prioritize funding to provide services for individuals in competitive, integrated employment. This proposed change would cap funding for non-competitive employment and phase out funding for center-based (workshop) employment. Additionally, the proposed rule clarifies that for a job to be truly competitive and integrated, the employer cannot be an individual's service provider. Other changes in the proposed rule aim to make operating the program as simple as possible by streamlining processes and using plain language, while providing the highest quality services.

If you have any questions about the proposed rule, please me or DEED's Vocational Rehabilitation Services Director of Community Partnerships, Kim Babine at 651-259-7349 or kim.babine@state.mn.us.

Sincerely,
Darielle Dannen
Director of Government Relations

Enclosures: Dual Notice
Statement of Need and Reasonableness
Proposed Rules

CC: Legislative Coordinating Commission

Minnesota Department of Employment and Economic Development

CERTIFICATE OF ADDITIONAL NOTICE

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; Revisor’s ID Number AR4245

I certify that Additional Notice was provided to persons or classes of persons who might be significantly affected by the rules in accordance with Minnesota Statutes, section 14.14, subdivision 1a and as approved in Order on Review of Additional Notice Plan by the Office of Administrative Hearings on August 29, 2018.



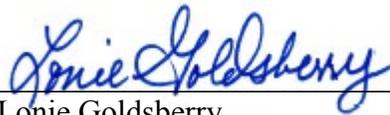
Lonie Goldsberry
Rehabilitation Program Specialist

Minnesota Department of Department of Employment and Economic Development

CERTIFICATE OF MAILING THE DUAL NOTICE TO THE RULEMAKING MAILING LIST

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; Revisor’s ID Number AR4245

I certify that on August 29, 2018, at least 33 days before the end of the comment period, at Saint Paul, Ramsey County, Minnesota, I mailed the (1) Dual Notice and (2) the proposed rules by depositing a copy in the State of Minnesota’s central mail system for United States mail with postage prepaid, to all persons and associations on the rulemaking mailing list established by Minnesota Statutes, section 14.14, subdivision 1a.



Lonie Goldsberry
Rehabilitation Program Specialist

Minnesota Department of Employment and Economic Development

CERTIFICATE OF ACCURACY OF THE MAILING LIST

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; Revisor’s ID Number RD-4245

I certify that the list of persons and associations who have requested that their names be placed on the Department of Employment and Economic Development rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a, is accurate, complete, and current as of August 30, 2018. [A copy of the mailing list is attached to this Certificate.]



Lonie Goldsberry
Rehabilitation Program Specialist

Official Agency Rulemaking mailing list

NAME	TITLE/BUSINESS	ADDRESS 1
Sarah Caruso	President and chief executive officer	Greater Twin Cities United Way
Cristy Christensen	Interim Director, Human Resources	Greater Twin Cities United Way
Lyle Clemenson	CEI	CEI
Kathy Dolphin	Dolphin Staffing	Dolphin Staffing
Lisa Fink	Legal Service Advocacy Project	2324 University Ave. W., #101
John Fitzgerald	Western Comm. Action	Western Comm. Action
Barbara Kuhn	Legal Aid Society	Legal Aid Society
Matthew Lemke	Winthrop & Weinstine P.A.	Winthrop & Weinstine P.A.
Patrick McFarland	Executive Director	Anoka County CAP, Inc.
Randy Morris	Government Relations	525 Park St., Suite 310
Dave Nasby	Construction Laborers Union #132	Construction Laborers Union #132
Jo Pels	State Field Director	AFSCME Council 5, AFL-CIO
Lori Raiber	Tri-CAP	Tri-CAP
Ed Reynoso	Teamsters Joint Council 32	Teamsters Joint Council 32
Julie Ring	Director	Association of MN Counties - Director
Charlie Roberts	Ironworkers Local #512	Ironworkers Local #512
Judi Rubin	President	Minnesota Electrical Association
Eliot Seide	AFSCME - Council 6	AFSCME - Council 6
Larry Shellito	Commissioner - Department of Vets. Affairs	Veteran's Service Building
Charles Thomas	Litigation Support Counsel-SMRLS	Southern MN Regional Legal Svcs.
Charlie Weaver	Minnesota Business Partnership	Minnesota Business Partnership
Dr. Peter Young	University of St. Thomas	University of St. Thomas

Minnesota Department of Employment and Economic Development

ORDER ADOPTING RULES

Adoption of 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; Revisor’s ID Number AR4245 OAH docket number 60-9044-35198

BACKGROUND INFORMATION

1. The Minnesota Department of Employment and Economic Development has complied with all notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law.
2. The agency received 48 written comments and submissions on the rules. Seven persons requested a public hearing. Therefore, there are not 25 or more requests for a public hearing, as such the hearing scheduled for Wednesday, October 24, 2018 was canceled. The agency received no requests for notice of submission to the Office of Administrative Hearings.
3. The rules as published in the Dual Notice have changed in response to comments received during the public comment period. The changes do not constitute substantial changes to the rules as published in the Dual Notice.
 - ***Eligibility for Individuals on MA Waiver:*** The Department proposes delaying implementation of the provision until SFY 2021 and including an exemption clause that would allow individuals currently receiving EE services who are on a MA waiver to be eligible to continue to receive long term employment supports through EE. This allows individuals to maintain services with their current provider, regardless of whether they have a 245D license. Beginning SFY 2021 (July 1, 2020) all new referrals to EE will need to adhere to the new eligibility language related to MA waivers. These changes are reflected on page 8.
 - ***NAMI’s Feedback:*** The Department proposes updating language on page 4 based on NAMI’s feedback to add the requirement of providing education on accommodations for people with disabilities in the workplace, to change “behavior management” to include symptom management as it is more appropriate language for characterizing mental illnesses, and on pages 5-6 revising the definition of “qualified professional” so that it is broader and includes all mental health professionals.

- **Employer of Record Implementation:** The Department proposes delaying the implementation of the “employer of record” provision to SFY 2021 so that a number of key provisions in the rule will all take effect at the same time. In addition to allowing providers additional time to make adjustments within their organizations, it will simplify rule implementation by not having so many dates to keep track of. These changes are reflected on page 2.
- **Center-Based Phase-Out and Non-Competitive Cap Implementation:** The implementation of the Center-Based Employment subprogram phase-out and cap on funding that is not competitive and integrated will remain the same and start SFY2021. The Department added a line on page 17 that clarifies that timeline.
- **For Greater Clarification:**
 - The Department proposes updating language on page 7 to add “time” to paid sick and paid vacation in order to provide additional clarity to the definition of work hours.
 - The Department proposes clarifying the language on page 12 of who can be considered a disability examiner by changing “another state’s department” to “other state department” to reduce confusion and provide additional clarification.
 - The Department also proposes several changes on page 11 to clarify the intent of the new rule as it relates to the employment plan to ensure providers are taking the time not only to review the employment plan, but are discussing goals, preferences, etc. and updating the plan as necessary. The plan should be carefully updated, but providers do not need to start from scratch to “develop” a new plan.
 - The Department proposes a change on page 25 to the reference from a URL to a description of the webpage as the URL may change over time and become obsolete. This is in regards to the compliance audit standards.
 - The Department proposes grammatical corrections on pages 3, 9, 21, and 22.

4. The rules are needed and reasonable.

ORDER

The above-named rules, in the form published in the State Register on September 10, 2018, with the modifications as indicated in the Revisor’s draft, file number AR4245 dated 11/20/18 are adopted under my authority in Statutes, section 268A.

Date

[Name], Commissioner
Department of Employment and Economic
Development

RULE SUBMISSION TO THE OFFICE OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT

**2018 EXTENDED EMPLOYMENT RULES, CHAPTER 3300
REVISOR'S ID NUMBER AR4245**

WRITTEN SUBMISSIONS

Department Responses to Public Comments

To: Judge James LaFave

From: Kim Babine, Director of Community Partnerships, Department of Employment and Economic Development

Docket: In the Matter of the Proposed Rules of the Department of Employment and Economic Development governing the Extended Employment program; OAH Docket No. 60-9044-35198; Revisor's ID Number AR-4245

Re: Department Responses to Public Comments

Date: January 4, 2019

The Department received comments that fell into several main themes. What follows are the Department's responses to those comments and a listing of the comments by theme.

ELIGIBILITY FOR INDIVIDUALS ON MEDICAL ASSISTANCE WAIVER

Summary of Issue

The rule draft that was published for public comment proposed modifying the eligibility section regarding individuals who are on a medical assistance waiver to be consistent with current medical assistance waiver services and practices. In particular, the proposed changes clarify that Extended Employment funds are not intended to pay for ongoing employment support services for individuals who can receive these services through other state, federal, or other sources. Thus, the draft rule stated that an individual on a Medical Assistance waiver is not eligible for Extended Employment services.

Summary of Feedback and Public Comments

This change prompted feedback from Extended Employment providers regarding unintended consequences of not being able to track individuals who receive waiver services, the impact of taking new referrals, differences in Extended Employment providers who have a 245D License through the Department of Human Services to provide waiver services and could transition individuals from Extended Employment funding to waiver funding for their employment supports versus those who cannot, concern over lack of person-centered planning and individual choice, lack of options for individuals, and disruption to the continuity of services for an individual. Extended Employment providers also indicated that this change did not allow them much time to adjust their business practices as it was written to take effect when the rule

is promulgated. In addition, Extended Employment providers noted that much is unknown at this time about how the new DHS waiver employment services will be authorized and available to individuals. The new DHS waiver employment services were effective July 1, 2018 and are being implemented as individuals update their annual plans in the first year. Extended Employment providers expressed concern over the lack of waiver employment support availability, funding, and ease of transitioning individuals who have been receiving Extended Employment funds to waiver funds.

Department Response

The Department proposes delaying implementation of the provision until SFY 2021 and including an exemption clause that would allow individuals currently receiving Extended Employment services who are on a Medical Assistance waiver to be eligible to continue to receive long term employment supports through Extended Employment. This allows individuals to maintain services with their current provider, regardless of whether they have a 245D license. Beginning SFY 2021 (July 1, 2020) all new referrals to Extended Employment will need to adhere to the new eligibility language related to MA waivers.

Statement of Need and Reasonableness

The delay in the provision is reasonable and necessary to allow sufficient time for Extended Employment providers to make any necessary updates or changes to their business practices. The exemption clause is reasonable and necessary because it allows individuals who may have a waiver to be able to continue to receive Extended Employment services from their current provider without having to change providers for employment support services if they so choose to in order to allow for individual choice.

MA Waiver - Comments Received with Concerns

Who, What, Where	MA Waiver: Comments Received with Concerns
9.12.18 Summary phone call on waiver provision	This change prompted questions and feedback from Extended Employment providers regarding unintended consequences of not being able to track individuals who receive waiver services, the impact of taking new referrals, differences in Extended Employment providers who have a 245D License through the Department of Human Services to provide waiver services and could transition individuals from Extended Employment funding to waiver funding for their employment supports versus those who cannot, concern over lack of person-centered planning and individual choice, lack of options for individuals, and disruption to
8.8.18 Email Tasks	
8.22.18 Document GWES	
9.4.18 Email Functional	

Who, What, Where	MA Waiver: Comments Received with Concerns
9.6.18 Document OP	the continuity of services for an individual.
9.11.18 Email Tasks prep for 9/12 call	Extended Employment providers also indicated that this change did not allow them much time to adjust their business practices as it was written to take effect when the rule is promulgated. In addition, Extended Employment providers noted that there is a lot of unknown at this time with how the new DHS waiver employment services will be authorized and available to individuals.
9.11.18 Email SE	
Email from Lifeworks 9.21.18	
Summary MOHR meeting 9.21.18	
10.8.18 Letter on OAH from WCI	
10.10.18 Comment via email from Monica L. Yeadon, MSW-Macro concentration student	I would like to offer my opinion regarding the proposed Extended Employment Rule changes. I am strongly opposed to the rule change that would deny extended employment services to someone with a mental illness on the CADI waiver. Supported employment services are almost never offered through the CADI Waiver, despite the fact that people with mental illnesses on social services have an unemployment rate near 85%. This change needs to be removed from the final rule. Additionally, ensuring that people with disabilities have access to competitive and integrated employment is an important goal. However, I am very concerned that the definition of competitive, integrated employment in the rule change does not account for very successful models like the AbilityOne program offered by Tasks Unlimited. The people who receive employment support through this program are employed by the provider, but they work in the community and receive competitive wages and health insurance. We should be encouraging successful models like this and not lowering their rates. I appreciate your willingness to hear and attention to these concerns.

Who, What, Where	MA Waiver: Comments Received with Concerns
<p>10.10.18 Comment via email from Karina Laqua</p>	<p>I have a few concerns about the Extended Employment Rule Change, they are listed below, EE on CADI Waiver: I am strongly opposed to the rule change that would deny extended employment services to someone with a mental illness on the CADI waiver. Supported employment services are almost never offered through the CADI Waiver, despite the fact that people with mental illnesses on social services have an unemployment rate near 85%. This change needs to be removed from the final rule. Competitive Employment: Ensuring that people with disabilities have access to competitive and integrated employment is an important goal. However, I am very concerned that the definition of competitive, integrated employment in the rule change does not account for very successful models like the AbilityOne program offered by Tasks Unlimited. The people who receive employment support through this program are employed by the provider, but they work in the community and receive competitive wages and health insurance. We should be encouraging successful models like this and not lowering their rates. Thank you for your time & consideration</p>
<p>10.10.18 Comment via email from Carrie M. Borchardt, M.D. Children's Minnesota, MC 62-299 Fort Road Medical Center</p>	<p>EE on CADI Waiver: I am strongly opposed to the rule change that would deny extended employment services to someone with a mental illness on the CADI waiver. Supported employment services are almost never offered through the CADI Waiver, despite the fact that people with mental illnesses on social services have an unemployment rate near 85%. This change needs to be removed from the final rule. · Competitive Employment: Ensuring that people with disabilities have access to competitive and integrated employment is an important goal. However, I am very concerned that the definition of competitive, integrated employment in the rule change does not account for very successful models like the AbilityOne program offered by Tasks Unlimited. The people who receive employment support through this program are employed by the provider, but they work in the community and receive competitive wages and health insurance. We should be encouraging successful models like this and not lowering their rates. Thank you for considering this!</p>

Who, What, Where	MA Waiver: Comments Received with Concerns
<p>10.10.18 Comment via email from Laura Lee</p>	<p>I am strongly opposed to the rule change that would deny extended employment services to someone with a mental illness on the CADI waiver. Supported employment services are almost never offered through the CADI Waiver, despite the fact that people with mental illnesses on social services have an unemployment rate near 85%. This change needs to be removed from the final rule.</p> <p>Competitive Employment: Ensuring that people with disabilities have access to competitive and integrated employment is an important goal. However, I am very concerned that the definition of competitive, integrated employment in the rule change does not account for very successful models like the AbilityOne program offered by Tasks Unlimited. The people who receive employment support through this program are employed by the provider, but they work in the community and receive competitive wages and health insurance. We should be encouraging successful models like this and not lowering their rates.</p>
<p>10.10.18 Comment via email from Peter Jarnstrom</p>	<p>People with Mental illnesses are almost never offered supported employment services through the CADI Waiver, why deny any support at all?</p> <p>Also, exceptions to how Competitive intergrated employment is applied should be considered for certain non profits such as AbilityOne and Tasks Unlimited.</p>
<p>10.10.18 Comment via email NAMI Minnesota. NAMI made 5 points in their letter this is Point 1</p>	<p>1). NAMI Minnesota is very concerned that MA waiver recipients will not be able to receive EE services. Unlike some other MA waivers, it is rare for people with mental illnesses using the Community Access For Disability Inclusion (CADI) waiver to receive any employment support services. This means that EE is not redundant for CADI beneficiaries with a mental illness and, except for Integrated Placements and Supports (IPS), EE is one of the few employment programs for people with mental illnesses. For this reason, NAMI is very concerned about language on line 8.11 in the proposed rule changes that prevents MA waiver recipients from receiving EE services and believes this should be removed.</p> <p>Points 2-5 are presented with other comments on the same category. Full NAMI letter at end of this document.</p>

<p>Who, What, Where</p>	<p>MA Waiver: Comments Received with Concerns</p>
<p>10.10.18 Comment via OAH website Deanna Guilliford, Goodwill-Easter Seals, MN</p>	<p>1. Appreciate DEED’s effort to seek input in the rule re-write & appreciate the changes that simplify operation 2. Concern over the addition of Federal Waivered Services funding and how it interacts with the rule and limits consumer choice, continuity of care, and is contrary to person-centered planning 3. Request that DEED delete the Waivered Services addition or exempt employment related waiver services: EDS; job placement and job retention.</p>
<p>10.9.18 Document on OAH from John Trepp – Point 5</p>	<p>Mr. Trepp provided a 12-page document on the OAH public e-comments website. Mr. Trepps’ document spanned a range of topics listed below. Mr. Trepp’s full document is at the end of this document.</p> <ul style="list-style-type: none"> • Dissatisfaction with not being able to attend the Extended Employment Rule Advisory Committee Meetings • Problems with the proposed rule • Consumer Choice • Wages in “Enclaves” vs wages in “Competitive Employment” • Long-Term Supported Employment vs Serial Placement Failure • A History Lesson, and • Problems with the SONAR <p>Areas of disagreement with Rule language. The department’s response to waiver fits with Point 5 Employer of record.</p> <ol style="list-style-type: none"> 1. Engagement 2. Capping allocations 3. Enclaves vs. Competitive employment (definition) 4. Anti-peer support bias (consumer choice) 5. Employer of record
<p>10.10.18 Comment via OAH website: Shep Harris, representing 17 EE providers</p>	<p>To the Honorable James LaFave: As individual provider organizations, which offer Extended Employment (EE) services to thousands of families on an annual basis, we wish to submit comments regarding the Department of Employment and Economic Development (DEED) Dual Notice of Intent to Adopt Rules. We are grateful to DEED staff for their years of work, communication and collaboration in regard to this rule re-write. Many issues have been discussed and proposed, which we are willing to compromise. However, a recently introduced element within the proposed Rule is causing great concern. We take issue with the proposed interaction between the State EE Program funding and the Federal Waivered Services funding and how</p>

<p>Who, What, Where</p>	<p>MA Waiver: Comments Received with Concerns</p>
	<p>that might affect individual client services. When we look at the Rule process, this issue was not a part of the originally agreed upon draft Rule document; which was forwarded for approval. Only fairly recently, has it been added on to the proposed Rule.</p> <p>As we understand this new proposal put forward by the Minnesota Department of Human Services (DHS), a client eligible for Waivered services is not eligible for EE services. This interpretation will undoubtedly create situations which limit service choices for clients, present situations limiting continuity and consistency of services for clients and present additional financial challenges to providers by limiting access to funding sources. Recognizing that the costs of providing employment services are continuing to escalate and that many providers have had to use every available funding source to try to pay for these costs, any limitation to the access of dollars to provide employment supports will undoubtedly result in less service options and less service delivery.</p> <p>To help moderate the impact of this “either waived services or EE services” proposal, the option of delaying implementation to State Fiscal Year 2021 and grandfathering in current clients is appreciative. But it still does not resolve the challenges stated above for new clients requiring services, once this specific aspect of the Rule delay is implemented.</p> <p>AccessAbility, Inc. Avivo Courage Kenny Rehabilitation Institute (Allina Health) Functional Industries Goodwill-Easter Seals Minnesota Lifeworks MRCI MSS Occupational Development Center, Inc. Opportunity Partners ProAct, Inc. Productive Alternatives, Inc. Rise Tasks Unlimited WACOSA West Central Industries, Inc. Winona ORC Industries, Inc.</p>

MA Waiver - Comments Received in Support

Who, What Where	MA Waiver: Comments Received in Support
8.23.18 Email OS	<p>1. No impact as individuals on a waiver have never and should never be EE eligible.</p> <p>2. Absolutely, all EE providers need to track and verify they are not double billing for services. Our annual EE audit completes a very in-depth check of this also. Paybacks occur if we make an error on this.</p> <p>3. Allowing providers to bill EE for waiver recipients opens up a huge can of worms. No need to bill both entities for the services we provide.</p> <p>4. The providers fighting for this provision just need to go thru the contract and compliance process (just like the rest of us) to get their statewide waiver license to provide those services. Those providers just choose not to go thru the process.</p>
9.19.18 Email OS prep for 9/12 call	<p>I think one sentiment has been lost since DEED hosted all the EE Rule committee meetings-</p> <p>EE rule doesn't need to adapt to providers (in all aspects or really any), providers should adapt and innovate to the new Rule.</p> <p>Focus on the people served not the providers and why EE was created in the first place.</p> <p>The waiver issue was discussed at length by the EE Rule committee and agreed upon.</p> <p>Bringing this issue to the entire EE provider group that didn't spend and the time and effort in every single committee meeting is creating adverse effects.</p> <p>All I heard on the conference call was providers complaining about their bottom line (money), business partners, and having to do more work. No innovation or ideas on how to improve.</p> <p>I also think DEED should take a good hard look at the audits for those providers making public comment about the EE Rule waiver provision and all the individuals currently receiving EE services that are on a waiver.</p> <p>West Central Industries certainly sounds extremely out of compliance with our current EE Rule.</p>

TAKING AWAY INDIVIDUAL CHOICE, INDIVIDUAL OPPORTUNITIES

Summary of Public Comments

There were concerns that the changes in the rule might limit individual choice. The areas noted with this concern were the changes to the definition of Competitive, Integrated Employment and the Employer of Record provision, the phase-out of funding that supports individuals working in a Center-Based Employment setting, and the cap on funding that supports individuals working in settings that are not competitive and integrated. Each of these areas is addressed below.

Department Response

One of the stated goals of the proposed rule is to prioritize funding for services that support individuals working in competitive, integrated employment settings. The proposed changes will limit Extended Employment funds that provide ongoing employment support services in settings that are not competitive and integrated (such as sheltered workshops.) Some individuals who work in settings that are not competitive and integrated 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. This change simply means a provider will not be eligible to increase the amount of their Community Employment grants funds after the cap on non-competitive employment is implemented. The timeframe for these changes allows individuals, their guardians, and/or families to gather the information they need to make an informed choice about their employment options.

Competitive, Integrated Employment Definition

The definition of “Competitive, Integrated Employment” will align with the definitions found in the Workforce Innovation and Opportunity Act and Home and Community Based Services. The Department definition will clarify that, for a job to be truly competitive and integrated, the employer of record cannot be an individual’s Extended Employment service provider. The Department refers to this clarification as the “employer of record” provision.

The “employer of record” provision makes the interpretation of an integrated employment setting consistent throughout the Extended Employment program. Without this distinction in rule, which employment settings are considered integrated is interpreted on a case-by-case basis.

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 reported to either the Community Employment subprogram or the Center-Based Employment subprogram, even if an individual is making minimum wage or higher, and/or the individual or Community Rehabilitation Provider would attest that their position is integrated.

Phase-Out of Center-Based Employment Subprogram

Phasing-out the Center-Based Employment subprogram will further the goal of prioritizing funding for services supporting individuals working in Competitive, Integrated Employment settings.

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. This 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.

Cap on Funding for Employment that is not Competitive and Integrated

Placing a funding cap on services that support individuals working in settings do not meet the definition of Competitive, Integrated Employment is another key tool to prioritize funding for competitive, integrated employment. 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.

Individual Choice and Opportunity: Comments Received with Concerns

<i>Who, What, Where</i>	<i>Individual Choice and Opportunity: Comments Received with Concerns</i>
10.9.18 Comment on OAH from Tessa Wetjen	I oppose the proposed Extended Employment Rule as currently written. I believe in broadening and strengthening options for employment and housing, not in taking some away. Some people choose to work or live with others with similar disabilities and we should not take away that opportunity.

<i>Who, What, Where</i>	<i>Individual Choice and Opportunity: Comments Received with Concerns</i>
10.9.18 Comment on OAH from Kirk Thompson	It appears the rule proposes limitations disabled people from choosing the type of employment settings in which they would like to work. It takes away some employment options for disabled people.
10.9.18 Comment on OAH from Galena Schirmer	I oppose the proposed Extended Employment Rule as currently written. People with disabilities should have the opportunity to earn a living and should get to choose the type of employment setting they prefer. This rule takes away consumer choice and seems to benefit service providers and not those with disabilities.
10.9.18 Comment on OAH from Melissa Hensley	I oppose the proposed Extended Employment Rule as currently written. People with disabilities deserve to be able to choose what type of employment setting they prefer. Taking away people's choice is a bad idea.
10.9.18 Comment on OAH from Sallianne Brown	I oppose the proposed Extended Employment Rule as currently written because people with disabilities should get to choose the type of employment setting they prefer and this rule takes away consumer choice.
10.9.18 Comment on OAH from Oliver Stremple	I disagree with the proposed Extended Employment Rule as currently written. I think access to gainful employment for folks with mental illness is important and that they deserve to choose work that fits their situation best.
10.9.18 Comment on OAH from Robin Schuette	You say the key stakeholders are individuals with disabilities, but this rule appears to be taking away choices of people disabilities who are receiving Extended Employment services. It sounds like it will hurt folks who need the most support to maintain employment. I oppose this rule as it is written.
10.9.18 Comment on OAH from Michael Ayers	I oppose the proposed Extended Employment Rule as currently written. We should treat people with disabilities - mental as well as physical - with the respect due any other member of our community. That surely includes the opportunity to choose the employment setting they prefer as they pursue earning a living.
10.9.18 Comment on OAH from Bonnie Millette	I oppose the proposed Extended Employment Rule as currently written. People with disabilities should get to choose the type of employment setting they prefer. This rule takes away consumer

<i>Who, What, Where</i>	<i>Individual Choice and Opportunity: Comments Received with Concerns</i>
	choice. The focus of this rule should be on people, not service providers.
10.9.18 Comment on OAH from Corey Trench	I oppose the proposed Extended Employment rule as currently written. People with disabilities should get to choose the type of employment setting they prefer. This rule takes away consumer choice. People with disabilities should have the opportunity to earn a living: They want to work. It brings meaning and value to their lives. The focus of this rule should be on people, not service providers.
10.9.18 Comment on OAH from Anne Schuette	The proposed rule changes may be unintentionally limiting to people with disabilities, leading to isolation in what is already an isolating society. Especially in winter. I personally like working along side people with whom I have things in common. I don't like others deeming who are desirable co-workers for my own well-being. Please examine this topic more thoroughly.
10.9.18 Comment on OAH from Jeanne Henderson	I oppose the proposed Extended Employment Rule as currently written. I believe in broadening and strengthening options for employment and housing, not in taking some away. Some people choose to work or live with others with similar disabilities and we should not take away that opportunity.
10.9.18 Comment on OAH from David Smith	I request a hearing on this matter. *How does the Government of Minnesota believe that disabled persons employed by a non-profit for disabled persons who work together in a sheltered workshop a similar form of discrimination as disabled persons required to receive medical treatment in an institution? *Why is Gallaudet University, Perkins School for the Blind, the 287 Special Needs schools in Minnesota, and similar institutions allowed to operate under the same exact same ruling that DEED relied upon to justify cutting back funding for sheltered workshops? How does the Government of Minnesota justify the taxes it requests to receive from the citizens of Minnesota if the number of disabled persons who are staff, management, board members, committee members, judges, and politicians is "less" than the national average of disabled persons in the country? If the Government of Minnesota cannot be operated on the profits it generates without further receipt of taxes why is a non-

Who, What, Where	Individual Choice and Opportunity: Comments Received with Concerns
	profit for disabled persons with fewer resources expected to act to a higher standard?
10.9.18 Comment on OAH from Erin KellyCollins	<p>I am opposed to the current form of the Extended Employment Rule and request a hearing. People with disabilities should get to choose the type of employment setting they prefer.</p> <p>As written, this rule takes away consumer choice, limits the opportunity people with disabilities have to earn a living, and seems more focused on helping service providers than actual people with disabilities. More work is needed before rule changet should go into effect.</p>
10.9.18 Comment on OAH from Janelle Hill	comment...I oppose the proposed Extended Employment Rule as it is proposed. It will reduce the quality of employment opportunities for people with disabilities. An EE rule hearing should be provided.
10.9.18 Comment on OAH from Paul Kelley	<p>I oppose the proposed Extended Employment Rule as currently written. The gist of the ruling is directed at eliminating Community and Center-Based Employment opportunities. The report states - -- "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." (3300.6045 subp 5) Many of those in non-Metro areas undoubtedly have difficulties enough under current circumstances obtaining needed services. To believe this can be solved over the next five years while, at the same time, reducing the available funding is simply ludicrous. Has there been enough true, person-to-person outreach to these citizens to determine how vital future services for them should be maintained?</p>
10.9.18 Comment on OAH from Laurie Brandt	I oppose the proposed Extended Employment Rule as currently written. I believe in broadening and strengthening options for employment, not in taking some away. People with disabilities should get to choose the type of employment setting they prefer.

<i>Who, What, Where</i>	<i>Individual Choice and Opportunity: Comments Received with Concerns</i>
10.9.18 Comment on OAH from David Schuchman	I oppose the proposed Extended Employment Rule as currently written. People with disabilities should get to choose the type of employment setting they prefer.
10.9.18 Comment on OAH from Evangeline Karakatsanis	I oppose the proposed Extended Employment Rule as currently written. There should be more opportunities for those with disabilities to have a choice and voice as to what their employment options and needs are.
10.9.18 Comment on OAH from Bruce Ario	I am opposed to the new rule because it takes away choice. It was supposedly the result of Olmstead but has been misconstrued.
10.9.18 Comment on OAH from Ashley Trepp	I am opposed to this rule as currently written. The rule as written will have the unintended negative consequences of eliminating choice of employment service providers for persons with disabilities.
10.9.18 Comment on OAH from Kristine Haertl	I oppose the Extended Employment Rule as currently written and too believe the individual John Trepp who commented previously touches on many viable problems with this Rule. Having immediate family members with mental health and developmental concerns, as well as working as a full time tenured Full Professor (in rehabilitation and psychology) in addition to being a researcher, author, and private practitioner in mental health and developmental disabilities, I can attest to the fact that this rule limits choice, discounts reality, and is ignorant to the true needs of individuals. Within my private practice, in addition to clients with mental health needs, I too have clients with IQ's around 50 that LOVE to work but need the extra supportive environment. The current rule would discount work as an option for many of my clients. In addition, the idea that having more than one person with a disability working in a supportive environment is somehow a lesser environment is completely wrong. I am at a University where data shows that up to 40% of our students admit having had some support in the past for a mental health condition. If I teach a class that has multiple students with mental health issues, it is in no way less effective and is a truism to the current data on the prevalence of mental health and developmental conditions in our society. This Rule is flawed and needs immediate attention so that it actually provides choice rather than take it away.

<i>Who, What, Where</i>	<i>Individual Choice and Opportunity: Comments Received with Concerns</i>
	<p>There needs to be a hearing on this and the rule needs an overhaul. Thank you.</p>
<p>10.10.18 Comment on OAH from Sarah Kreiser</p>	<p>I oppose the proposed Extended Employment Rule as currently written because everyone should be able to chose where they work regardless of their disability and this rule will take away individual choice.</p>
<p>10.10.18 Comment on OAH from Amanda LaGrange</p>	<p>I oppose the proposed rule as currently written. I believe these rules are best written with those directly impacted by the laws engaged, but this presently is skewed heavily to service organizations, not the individuals.</p>
<p>10.10.18 Comment on OAH from Peggy Henrikson</p>	<p>I oppose the proposed Extended Employment rule as currently written. People with disabilities should get to choose the type of employment setting they prefer.</p>
<p>10.10.18 Comment on OAH from Karen Christensen</p>	<p>I oppose the proposed Extended Employment Rule as currently written. I believe it will ultimately limit choices for those with disabilities and that the rule was not revised in a fair, open and transparent way.</p>

<i>Who, What, Where</i>	<i>Individual Choice and Opportunity: Comments Received with Concerns</i>
<p>10.9.18 Email sent to Extended Employment 10.8.18 Commentary by Bruce Ario in MINNPOST 4.8.16 Letter sent to VRS – Point 2</p>	<p>Mr. Ario submitted utilized three outlets to submit comments; via email, commentary in MINNPOST, and a letter. Mr. Ario communicated three areas of disagreement with the Rule language. The department’s response to waiver fits with Point 2 Cap on non-competitive employment environments.</p> <ol style="list-style-type: none"> 1. Definition of competitive, integrated employment 2. Limits choice of employment options & anti-peer bias 3. Cap on non-competitive employment environments
<p>10.10.18 Comment on OAH from Ron Benner</p>	<p>I oppose the proposed Extended Employment Rule as currently written. I believe in broadening and strengthening options for employment and housing, not in taking some away. Some people choose to work or live with others with similar disabilities and we should not take away that opportunity.</p>
<p>10.10.18 Comment via email NAMI Minnesota - Points 2 & 3</p>	<p>2). Definition of Community Employment and Competitive, Integrated Employment. NAMI Minnesota is concerned that the definition of Competitive, Integrated Employment is too restrictive. NAMI Minnesota also believes that the language for the requirements of both community employment and competitive, integrated employment must be clarified. Does a provider have to satisfy the A, B, and C in 3300.6000 subp. 5 to qualify as a community provider. On the same note, does a provider have to satisfy the A, B, C, and D requirements in 3300.600 subp. 7 in order to qualify as competitive integrated employment? Clarifying this language will help to avoid confusion as providers navigate this new rule.</p> <p>NAMI Minnesota is more concerned with the definition of Competitive, Integrated Employment in line 2.16 to be employment that is "not owned or operated by the extended employment" provider has several unintended consequences. Would an extended employment beneficiary be able to apply as a peer-support specialist within the same organization, what about working in an administrative role as a receptionist? In both examples, the employee would be working alongside people without disabilities in an integrated setting. Would a provider lose their higher rate if a client applies for one of these roles and gets hired? Another concern would be for counties that offer extended employment services. Would a client be unable to qualify for competitive integrated</p>

<i>Who, What, Where</i>	<i>Individual Choice and Opportunity: Comments Received with Concerns</i>
	<p>employment if they were employed by the county, which are often very large employers with thousands of positions? NAMI Minnesota suggests reviewing the qualifications under Competitive, Integrated Employment to avoid these unintended consequences.</p> <p>NAMI is also frustrated that the definition of competitive, integrated employment will not include the very successful AbilityOne Program used by Tasks Unlimited. Over 100 people with mental illnesses have been employed by this program and earn well over the minimum wage including benefits. NAMI Minnesota would also like to note that the requirement C in 3300.600 subp. 7 should also include the number of hours an individual works per month. While the wage per hour is an important metric, it is also very important to track if the individuals who have competitive, integrated employment are working enough hours to support themselves as they are in the AbilityOne program.</p> <p>The payment structure for the AbilityOne program mirrors its competitors and has cleaning contracts across the community. Although the people who work through AbilityOne are paid by their extended employment provider, this arrangement is not meaningfully different from the other cleaning contractors working in this marketplace. In our conversations with the people who work through the AbilityOne program, they want to keep their jobs, they value the freedom it affords them, appreciate the ability to work with their peers, and the money they make and the benefits. The AbilityOne program needs to be one of the choices available for people with mental illnesses seeking employment.</p> <p>3). Eligibility categories need to be interpreted broadly. Because there are so few resources to support people with a mental illness, NAMI Minnesota feels strongly that the limitations for individual eligibility for EE be interpreted broadly, particularly the definition of serious functional limitations to employment in Supb. 17. NAMI is especially concerned that definitions of mobility, self-care, work tolerance, and self-direction are defined narrowly and will not account for the significant challenges that a person with a mental illness can face when navigating a work environment.</p>

<i>Who, What, Where</i>	<i>Individual Choice and Opportunity: Comments Received with Concerns</i>
10.10.18 Comment on OAH from Mary Tkach	<p>Having spoken with both persons with disabilities and parents of children with disabilities it is my opinion that the proposed rule will reduce the options and opportunities for employment for people with disabilities. It appears that rather than increasing funding and appropriate programs to support persons with disabilities the new rule simply transfers funding from one program at the expense of another program rather than adding much needed funding overall. For both of these reasons I oppose the proposed rules. Thank you, Mary T'Kach</p>
10.9.18 Document on OAH from John Trepp – Point 4	<p>Mr. Trepp provided a 12-page document on the OAH public e-comments website. Mr. Trepp's document spanned a range of topics listed below. Mr. Trepp's full document is at the end of this document.</p> <ul style="list-style-type: none"> • Dissatisfaction with not being able to attend the Extended Employment Rule Advisory Committee Meetings • Problems with the proposed rule • Consumer Choice • Wages in “Enclaves” vs wages in “Competitive Employment” • Long-Term Supported Employment vs Serial Placement Failure • A History Lesson, and • Problems with the SONAR <p>Areas of disagreement with Rule language. The department's response to waiver fits with Point 4.</p> <ol style="list-style-type: none"> 1. Engagement 2. Capping allocations 3. Enclaves vs. Competitive employment (definition) 4. Anti-peer support bias (consumer choice) 5. Employer of record
10.9.18 Comment on OAH from Rich Tudor	<p>I oppose the proposed Extended Employment Rule as currently written. The process for collecting input on the proposed rule was a sham. People with disabilities should get to choose the type of employment setting they prefer. This rule takes away consumer choice. People with disabilities should have the opportunity to earn a living. Competition between service providers provides better options for people with disabilities, and the proposed rule is</p>

<i>Who, What, Where</i>	<i>Individual Choice and Opportunity: Comments Received with Concerns</i>
	<p>anticompetitive. This rule seems written to benefit service providers, not people with disabilities.</p>
<p>10.9.18 Comment on OAH from Kaye Peters</p>	<p>I oppose the proposed Extended Employment Rule as currently written. I believe it will ultimately limit choices for those with disabilities and that the rule was not revised in a fair, open and transparent way.</p>
<p>10.9.18 Comment on OAH from Maureen Trepp</p>	<p>I oppose this proposed ruling in its current- both in content and in process. Your form of evidence gathering is flawed and does not serve the people most affected by this ruling but rather the employers. All people should be allowed to work with those they choose.</p>
<p>10.9.18 Comment on OAH from John Bringewatt</p>	<p>I am opposed to the proposed Extended Employment Rule as is currently written, and strongly feel that a hearing should be held so that feedback from all stakeholders is heard. To date, the process has not allowed for adequate feedback, particularly from persons with disabilities themselves. Fairness requires that a hearing be held. I am particularly concerned that consumer choice be the guiding principle, and that persons with disabilities should be able to choose their preferred employment setting from a full menu of choices.</p>

<i>Who, What, Where</i>	<i>Individual Choice and Opportunity: Comments Received with Concerns</i>
10.9.18 Comment on OAH from Matthew Menge	I oppose the Extended Employment Rule as it is currently written. What is most important for the mentally ill is that they can earn a good paycheck, not who they work with. Also the idea that those who are not part of the so-called 'Competitive Employment' are somehow shielded from the real world or reality is flawed. Being part of the workforce often exposes you to clients, customers, other departments and so forth who are not disabled, regardless of whether one's immediate co-workers have the common experience of mental illness. But again, the real issue is that 'non-competitive' employment consistently offers a better paycheck, which is what the mentally ill really need for dignity and well-being,
10.9.18 Comment on OAH from Bob Wandberg	I oppose the proposed Extended Employment Rule as currently written. People with disabilities should have the opportunity to earn a living.
10.9.18 Comment on OAH from Rylee Peterson	"I oppose the proposed Extended Employment Rule as currently written. People with disabilities should have the opportunity to earn a living.
10.9.18 Comment on OAH from Craig Warzaha	I oppose the proposed Extended Employment Rule as currently written." And I think that people with disabilities should have the opportunity to earn a living.

<i>Who, What, Where</i>	<i>Individual Choice and Opportunity: Comments Received with Concerns</i>
10.10.18 Comment on OAH from Candace Meinders	I like my job and would like to continue with it the way it is. Therefore I am opposed to the new rule.
10.9.18 Comment on OAH from Lee Brandt	I oppose the proposed Extended Employment Rule as currently written. It appears it is limiting and restricting funding for Long-Term support for the people that need it.

PUBLIC ENGAGEMENT

Summary of Public Comments

A few individuals expressed concern that DEED did not seek appropriate input or feedback from those impacted by the rulemaking process.

Department Response

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.

Extended Employment Advisory Committee

The primary method of outreach was through the formation and engagement of an advisory committee. EE staff established the Extended Employment Rule Advisory Committee (EERAC) to provide a key advisory role to the rule revision. The committee identified and considered policy issues and opportunities impacting individuals who receive EE services and EE providers, and provided feedback and guidance on the drafting of the rule revision. The committee met from June 2014 to December 2015 (18 months) and 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, the EE team 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 the EE team to ensure that changes made to the Extended Employment rule would not result in unintended consequences.

Public Forums

The department conducted eight public forums: two in Mankato, two in Brainerd, and one each in St. Paul, Bemidji, Willmar, and Rochester. The public forums were held to seek input primarily from individuals receiving EE 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 good representation of providers, family members, county employees, and persons receiving Extended Employment support services at the forums.

After the department presented an overview of the program, how it differs from Day Training and Habilitation (DT&H) services funded by Medicaid waivers, and the major rule changes likely to be proposed, the department facilitated a question and answer discussion with the attendees to hear directly from people impacted by the changes.

Email List Serve

The department developed an email list serve of individuals interested in the rule revision. It contains email addresses gathered through the public forums and other outreach. The department will continue to use the list serve to communicate the proposed changes, the official process steps, and implementation steps.

The department also leveraged email list serves maintained by the communications office to disseminate information and process steps. 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.

DEED had a significant additional notice plan. EE staff consistently engaged in conversations with providers via phone, email, webinars, and in-person visits. DEED printed flyers for all individuals receiving services that were distributed by the providers, took out ads in Access Press, and kept rule information and progress current on DEED external website.

DEED accepted public comments in various formats in addition to electronic. We received written submissions through the USPS, we documented phone call summary on topics of interest, and attended MOHR and other CRP meetings.

Comments Received with Concerns

Who, What, Where	Public Engagement: Comments Received with Concerns
10.9.18 Comment on OAH from Nancy Lee	I oppose the proposed Extended Employment rule as currently written. It appears people with disabilities, who would be greatly affected by the proposed rule, were not consulted nor given a voice in the process.
10.9.18 Comment on OAH from Chris Velasco	I cannot support the proposed Extended Employment Rule as currently written. Much more input representing the needs of persons with disability labels.
10.9.18 Comment on OAH from Paul Wardell	I oppose this proposed ruling in its current form--both in content and process. Much above has been said about the content, so I will focus on the process. The people most likely to be affected by this proposed ruling are unlikely to have access to email; therefore, they are unable and unaware to comment to this request. You have assumed that is form of evidence-gathering is appropriate. You are mistaken.
10.9.18 Document on OAH from John Trepp – Point 1	<p>Mr. Trepp provided a 12-page document on the OAH public e-comments website. Mr. Trepps’ document spanned a range of topics listed below. Mr. Trepp’s full document is at the end of this document.</p> <ul style="list-style-type: none"> • Dissatisfaction with not being able to attend the Extended Employment Rule Advisory Committee Meetings • Problems with the proposed rule • Consumer Choice • Wages in “Enclaves” vs wages in “Competitive Employment” • Long-Term Supported Employment vs Serial Placement Failure • A History Lesson, and • Problems with the SONAR <p>Areas of disagreement with Rule language. The department’s response to waiver fits with Point 1.</p> <ol style="list-style-type: none"> 1. Engagement 2. Capping allocations 3. Enclaves vs. Competitive employment (definition) 4. Anti-peer support bias (consumer choice) 5. Employer of record

DEFINITIONS AND TERMINOLOGY

Summary of Feedback and Public Comments

NAMI requested some slight changes to terminology describing Ongoing Employment Support Services and the definition of Qualified Professional.

Department Response

Terminology in Ongoing Employment Support Services

The department appreciates the recommendations suggested by NAMI have made updates based on their feedback.

- Page 4, line 4.16 has been updated: disability awareness and accommodations training, for the individual, the individual's employer, supervisor, or coworkers, including related services to increase the individual's inclusion at the work site;
- Page 4, line 4.21 has been updated: behavior and symptom management

Definition of Qualified professional

The department appreciates the recommendations suggested by NAMI and have revised the definition of qualified professional based on their feedback.

- Page 5, line 5.19 has been updated: Qualified professional means a professional who is licensed certified, or registered in the state where the professional practices, and who provides a diagnosis of a disability or disabilities within the scope of the professional's license, certification, or registration for an individual in the extended employment program.
 - The list of specific professionals has been removed so as not to be exhaustive.

Definitions and Terminology: Comments Received with Concerns

<i>Who, What, Where</i>	<i>Definitions and Terminology: Comments Received with Concerns</i>
10.10.18 Comment via email NAMI Minnesota - Points 4 & 5	4). Ongoing Employment Support Services. NAMI appreciates the efforts made by DEED to identify the services that may be necessary for EE to be successful. This work could be improved through a tweak to line 4.16 and the "disability awareness training" to also require education on accommodations for people with disabilities in the workplace. We would also encourage DEED to change "behavior management" on line 4.21 to include symptom management because this is clearer and more appropriate language for characterizing mental illnesses.

Who, What, Where	Definitions and Terminology: Comments Received with Concerns
	<p>NAMI Minnesota would also like to emphasize a key barrier for people with mental illnesses is that "place and drop" programs are not responsive to the fluctuating nature of the symptoms of mental illnesses. Symptoms that impact an individual's ability to do their job may disappear and reappear and without support and accommodations can lead to lost employment. ongoing supports are vitally important for many people with mental illnesses to have success in the workplace.</p> <p>5). Definition of Qualified Professional does not reflect mental health workforce. Extended employment services assist a wide range of people with disabilities get help finding a job. NAMI Minnesota encourages a revision to 3300.6000 Subp. 16 on the qualified professional to include all mental health professionals. This is a more comprehensive term that includes everyone with the qualifications to do this role. The current language in this subpart only lists psychologists, licensed independent clinical social workers (LICSW), and licensed graduate social workers (LGSW) under supervision of a LICSW. This is only a portion of the mental health workforce that would be qualified to do this work and may generate confusion. We would also note that we are unsure what a "clinical specialist in psychiatric or mental health nursing is" from line 6.3 and that a physician's assistant cannot diagnose a mental illness.</p>

DUE PROCESS

Summary of Public Comment

An individual expressed concern that the proposed rule does not provide information to individuals being served with Extended Employment dollars to appeal any kind of action that could be seen as adverse in terms of continuing to serve the individual.

Department Response:

Extended Employment is a state-funded program that provides grants to service providers who deliver employment supports to individuals with disabilities to help them maintain work. The rule does address under the Extended Employment Support Plans section a provision to address how a person will be notified if an when their support person is absent or unavailable. DEED is not a direct provider of EE services and therefore, we make no adverse service actions towards individuals. Individuals have access to an appeal process as required by CARF, which providers are required to maintain as part of their eligibility for funding.

The Extended Employment rule is deferring to the CARF requirements that EE providers are required to have in order to be eligible for funding. CARF standards include a “Rights of Persons Served” (pg. 103 of CARF standards manual) which includes:

- Analysis of all formal complaints
- Implements a policy and written procedures by which person served may formally complain to the organization
- The rights of persons served are provided in a way that is understandable and done annually. They are available at all times to review and for clarification.
- Requirements of policies promoting the rights of persons served

The current 1998 rule references the CARF requirement and simply re-states what is required by CARF (<https://www.revisor.mn.gov/rules/3300.2025/>). The 2018 rule references the CARF requirements that EE providers are expected to be in compliance with for their CARF accreditation.

Vocational Rehabilitation Services is governed by the standards of VR Regulations under the Office of Special Education and Rehabilitative Services, Department of Education, 34 CFR Parts 361, 363, and 397, State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on the Use of Subminimum Wage, specifically section § 361.57 Review of determinations made by designated State unit personnel.

Extended Employment is a state-funded program and is not governed by the same federal requirements as the Vocational Rehabilitation program in Minnesota. The Minnesota state legislature appropriates funds for Extended Employment and the Extended Employment program is governed under state statute and rule. Extended Employment issues grants to providers who then provide the direct services to individuals which is different than the VR program that does provide direct services to individuals.

Comments Received

Who, What, Where	Due Process Comments
10.8.18 Dean Ritzman via OAH comments page	The EE rule has no part or subpart language identifying an EE recipients due process rights to receiving: • An advance notice of adverse service actions; and • An administrative appeal hearing similar to DEED/VRS Appeal Procedure Policy. https://apps.deed.state.mn.us/ddp/PolicyDetail.aspx?pol=67
6.25.18 Dean Ritzman email	An EE Rule hearing should be provided to all interested stakeholders.

COMMENT CATEGORY – UNSPECIFIC

Comments Received

Who, What, Where	Comment
10.9.18 Comment on OAH from Caitlin Curtis	I oppose the proposed Extended Employment Rule as currently written.
10.9.18 Comment on OAH from Larry Fraser	I oppose the proposed extended employment rule with people with mental illness...

COMMENT CATEGORY – IN SUPPORT

Comments Received

Who, What, Where	Comment
10.4.18 Email from Josh Dean	I believe the 6 changes proposed for the Extended Employment Program exemplify the overall of mission of DEED, which is to help our fellow Minnesotans enter our work force and to have the same opportunities as everyone else. The proposed changes are logical and offers service providers a systematic approach for implementing these changes, while still utilizing the EE program as a viable business decision. For the individual receiving EE services, the changes introduces a supported path towards competitive, integrated employment. Excellent job!
10.4.18 Email from Lifeworks	At least it's only a couple dozen pages! Also, its primary focus is on removing center-based services and shifting everything to community employment. So I really don't think there is anything that really impacts us.

Written comment submitted through MINNPOST

<https://www.minnpost.com/community-voices/2018/10/disabled-workers-proposed-deed-rule-limits-our-options/>

Disabled workers: Proposed DEED rule limits our options

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By Bruce Ario | 07:00 am



Bruce Ario

The [Minnesota Department of Employment and Economic Development](#) (DEED) just released its proposed new rule for Extended Employment, i.e., the funding stream for providing assistance to “disabled workers.” The proposed rule is not consistent with the goal of expanding options for persons with disabilities. In fact, the primary purpose of the changes from the old rule is to severely limit options for disabled workers.

DEED's Statement of Need and Reasonableness (SONAR), required for rule-changes, clearly states that "The purpose of the proposed rule is to limit funding for services supporting individuals in employment settings that are not competitive." And DEED's definition of "not competitive" focuses on whether any of one's co-workers have a disability.

In recent years, DEED has argued that people with disabilities working next to other people with disabilities (where they like and support each other) is fundamentally wrong. They even claim that people with disabilities working together are paid less than those working in an integrated setting, i.e., one where they never come into contact with others with disabilities. I think they know, or should know, that it isn't true.

I myself have a major disability and am classified by DEED as a "disabled worker." But I work for the same reason everyone else does: to earn money. I don't mind working along side other folks with disabilities — which DEED somehow thinks is a negative. My disabled co-workers are my friends. I enjoy their company — a lot more than I would enjoy working next to people who have no idea what it's like to have a disability. I get a lot of support from my disabled co-workers, and I try to support them. I also earn more, working with other disabled people, than at the "integrated placements" DEED wants everyone to have. Way more!

DEED has been gradually pushing their anti-peer-support bias for years, and the result is that, despite the increased flow of tax dollars to this program, fewer and fewer disabled workers are served each year. And almost none of the folks in DEED's preferred model achieve the financial independence (leaving Social Security Disability behind) that I and maybe a hundred of my co-workers (working together) have achieved.

We like working in a team! We earn more per hour, work more hours per week, receive better benefits – benefits actually tailored to our

needs — and our job-satisfaction is higher than those defined by DEED’s “Competitive Employment.”

DEED thinks it knows what’s good for us, but it doesn’t. It ought to be working to expand employment opportunities for people with disabilities by leaving the choice of what type of employment best suits us to us!

[The proposed rule can be found here.](#) DEED is accepting public comment on the proposed rule through Oct 10.

Bruce Ario has been in recovery since 1979. He has never found anything that works as well as peer support, and enjoys his job at Tasks Unlimited working on a team.

Department of Employment and Economic Development Dual Notice of Intent to Adopt Rules

Closed Oct 10, 2018 · Discussion · 48 Participants · 1 Topics · 48 Answers · 0 Replies · 2 Votes

48

PARTICIPANTS

1

TOPICS

48

ANSWERS

0

REPLIES

2

VOTES

SUMMARY OF TOPICS

SUBMIT A COMMENT

 48 Answers · 0 Replies

Important: All comments will be made available to the public. Please only submit information that you wish to make available publicly. The Office of Administrative Hearings does not edit or delete submissions that include personal information. We reserve the right to remove any comments we deem offensive, intimidating, belligerent, harassing, bullying, or that contain any other inappropriate or aggressive behavior without prior notification.

Sheila Ward · Citizen · (Postal Code: unknown) · Oct 08, 2018 8:27 am

 1 Votes

comment...

Dean Ritzman · Citizen · (Postal Code: unknown) · Oct 08, 2018 9:30 am

 0 Votes

The EE rule has no part or subpart language identifying an EE recipients due process rights to receiving:

- An advance notice of adverse service actions; and
- An administrative appeal hearing similar to DEED/VRS Appeal Procedure Policy. <https://apps.deed.state.mn.us/ddp/PolicyDetail.aspx?pol=67>

An EE Rule hearing should be provided to all interested stakeholders.

John Trepp · Citizen · (Postal Code: unknown) · Oct 09, 2018 9:06 am

 0 Votes

See attachment

Tessa Wetjen · Citizen · (Postal Code: unknown) · Oct 09, 2018 9:37 am

 0 Votes

Department of Employment and Economic Development Dual Notice of Intent to Adopt Rules

Closed Oct 10, 2018 · Discussion · 48 Participants · 1 Topics · 48 Answers · 0 Replies · 2 Votes

I oppose the proposed Extended Employment Rule as currently written. I believe in broadening and strengthening options for employment and housing, not in taking some away. Some people choose to work or live with others with similar disabilities and we should not take away that opportunity.

Kirk Thompson · Citizen · (Postal Code: unknown) · Oct 09, 2018 10:35 am

👍 0 Votes

It appears the rule proposes limitations disabled people from choosing the type of employment settings in which they would like to work. It takes away some employment options for disabled people.

galena schirmer · Citizen · (Postal Code: unknown) · Oct 09, 2018 10:38 am

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. People with disabilities should have the opportunity to earn a living and should get to choose the type of employment setting they prefer. This rule takes away consumer choice and seems to benefit service providers and not those with disabilities.

Melissa Hensley · Citizen · (Postal Code: unknown) · Oct 09, 2018 11:06 am

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. People with disabilities deserve to be able to choose what type of employment setting they prefer. Taking away people's choice is a bad idea.

Sallianne Brown · Citizen · (Postal Code: unknown) · Oct 09, 2018 11:13 am

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written because people with disabilities should get to choose the type of employment setting they prefer and this rule takes away consumer choice.

Rich Tudor · Citizen · (Postal Code: unknown) · Oct 09, 2018 11:30 am

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. The process for collecting input on the proposed rule was a sham. People with disabilities should get to choose the type of employment setting they prefer. This rule takes away consumer choice.

People with disabilities should have the opportunity to earn a living. Competition between service providers provides better options for people with disabilities, and the proposed rule is anticompetitive. This rule seems written to benefit service providers, not people with disabilities.

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Oliver Stremple · Citizen · (Postal Code: unknown) · Oct 09, 2018 11:34 am

👍 0 Votes

I disagree with the proposed Extended Employment Rule as currently written. I think access to gainful employment for folks with mental illness is important and that they deserve to choose work that fits their situation best.

Robin Schuette · Citizen · (Postal Code: unknown) · Oct 09, 2018 11:38 am

👍 0 Votes

You say the key stakeholders are individuals with disabilities, but this rule appears to be taking away choices of people disabilities who are receiving Extended Employment services. It sounds like it will hurt folks who need the most support to maintain employment. I oppose this rule as it is written.

Michael Ayers · Citizen · (Postal Code: unknown) · Oct 09, 2018 11:43 am

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. We should treat people with disabilities - mental as well as physical - with the respect due any other member of our community. That surely includes the opportunity to choose the employment setting they prefer as they pursue earning a living.

Lee Brandt · Citizen · (Postal Code: unknown) · Oct 09, 2018 11:53 am

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. It appears it is limiting and restricting funding for Long-Term support for the people that need it.

Corey Trench · Citizen · (Postal Code: unknown) · Oct 09, 2018 12:04 pm

👍 0 Votes

I oppose the proposed Extended Employment rule as currently written. People with disabilities should get to choose the type of employment setting they prefer. This rule takes away consumer choice. People with disabilities should have the opportunity to earn a living: They want to work. It brings meaning and value to their lives. The focus of this rule should be on people, not service providers.

Nance Lee · Citizen · (Postal Code: unknown) · Oct 09, 2018 12:27 pm

👍 0 Votes

I oppose the proposed Extended Employment rule as currently written. It appears people with disabilities, who would be greatly affected by the proposed rule, were not consulted nor given a voice in the process.

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Bonnie Millette · Citizen · (Postal Code: unknown) · Oct 09, 2018 12:31 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. People with disabilities should get to choose the type of employment setting they prefer. This rule takes away consumer choice. The focus of this rule should be on people, not service providers.

Caitlin Curtis · Citizen · (Postal Code: unknown) · Oct 09, 2018 12:59 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written.

Janelle Hill · Citizen · (Postal Code: unknown) · Oct 09, 2018 1:04 pm

👍 0 Votes

comment...I oppose the proposed Extended Employment Rule as it is proposed. It will reduce the quality of employment opportunities for people with disabilities. An EE rule hearing should be provided.

Kaye Peters · Citizen · (Postal Code: unknown) · Oct 09, 2018 1:29 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. I believe it will ultimately limit choices for those with disabilities and that the rule was not revised in a fair, open and transparent way.

Anne Schuette · Citizen · (Postal Code: unknown) · Oct 09, 2018 1:36 pm

👍 0 Votes

The proposed rule changes may be unintentionally limiting to people with disabilities, leading to isolation in what is already an isolating society. Especially in winter. I personally like working along side people with whom I have things in common. I don't like others deeming who are desirable co-workers for my own well-being. Please examine this topic more thoroughly.

Jeanne Henderson · Citizen · (Postal Code: unknown) · Oct 09, 2018 1:36 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. I believe in broadening and strengthening options for employment and housing, not in taking some away. Some people choose to work or live with others with similar disabilities and we should not take away that opportunity.

Chris Velasco · Citizen · (Postal Code: unknown) · Oct 09, 2018 1:39 pm

👍 0 Votes

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I cannot support the proposed Extended Employment Rule as currently written. Much more input representing the needs of persons with disability labels.

David Smith · Citizen · (Postal Code: unknown) · Oct 09, 2018 1:46 pm

👍 0 Votes

I request a hearing on this matter. *How does the Government of Minnesota believe that disabled persons employed by a non-profit for disabled persons who work together in a sheltered workshop a similar form of discrimination as disabled persons required to receive medical treatment in an institution? *Why is Gallaudet University, Perkins School for the Blind, the 287 Special Needs schools in Minnesota, and similar institutions allowed to operate under the same exact same ruling that DEED relied upon to justify cutting back funding for sheltered workshops? How does the Government of Minnesota justify the taxes it requests to receive from the citizens of Minnesota if the number of disabled persons who are staff, management, board members, committee members, judges, and politicians is "less" than the national average of disabled persons in the country? If the Government of Minnesota cannot be operated on the profits it generates without further receipt of taxes why is a non-profit for disabled persons with fewer resources expected to act to a higher standard?

Paul Wardell · Citizen · (Postal Code: unknown) · Oct 09, 2018 2:06 pm

👍 0 Votes

I oppose this proposed ruling in its current form--both in content and process. Much above has been said about the content, so I will focus on the process. The people most likely to be affected by this proposed ruling are unlikely to have access to email; therefore, they are unable and unaware to comment to this request. You have assumed that is form of evidence-gathering is appropriate. You are mistaken.

Maureen Trepp · Citizen · (Postal Code: unknown) · Oct 09, 2018 2:26 pm

👍 0 Votes

I oppose this proposed ruling in its current- both in content and in process. Your form of evidence gathering is flawed and does not serve the people most affected by this ruling but rather the employers. All people should be allowed to work with those they choose.

Erin Kelly-Collins · Citizen · (Postal Code: unknown) · Oct 09, 2018 2:54 pm

👍 0 Votes

I am opposed to the current form of the Extended Employment Rule and request a hearing.

People with disabilities should get to choose the type of employment setting they prefer.

As written, this rule takes away consumer choice, limits the opportunity people with disabilities have to earn a living, and seems more focused on helping service providers than actual people with disabilities.

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More work is needed before rule changet should go into effect.

Paul Kelly · Citizen · (Postal Code: unknown) · Oct 09, 2018 3:20 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. The gist of the ruling is directed at eliminating Community and Center-Based Employment opportunities.

The report states -

-- "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."

(3300.6045 subp 5)

Many of those in non-Metro areas undoubtedly have difficulties enough under current circumstances obtaining needed services. To believe this can be solved over the next five years while, at the same time, reducing the available funding is simply ludicrous. Has there been enough true, person-to-person outreach to these citizens to determine how vital future services for them should be maintained?

Laurie Brandt · Citizen · (Postal Code: unknown) · Oct 09, 2018 3:51 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. I believe in broadening and strengthening options for employment, not in taking some away. People with disabilities should get to choose the type of employment setting they prefer.

David Schuchman · Citizen · (Postal Code: unknown) · Oct 09, 2018 3:52 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. People with disabilities should get to choose the type of employment setting they prefer.

Bob Wandberg · Citizen · (Postal Code: unknown) · Oct 09, 2018 5:08 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. People with disabilities should have the opportunity to earn a living.

Evangeline Karakatsanis · Citizen · (Postal Code: unknown) · Oct 09, 2018 5:24 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. There should be more opportunities for those with disabilities to have a choice and voice as to what their

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employment options and needs are.

Bruce Ario · Citizen · (Postal Code: unknown) · Oct 09, 2018 6:01 pm

👍 0 Votes

I am opposed to the new rule because it takes away choice. It was supposedly the result of Olmstead but has been misconstrued.

Ashley Trepp · Citizen · (Postal Code: unknown) · Oct 09, 2018 6:09 pm

👍 0 Votes

I am opposed to this rule as currently written. The rule as written will have the unintended negative consequences of eliminating choice of employment service providers for persons with disabilities.

Craig Warzaha · Citizen · (Postal Code: unknown) · Oct 09, 2018 6:38 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written." And I think that people with disabilities should have the opportunity to earn a living.

Kristine Haertl · Citizen · (Postal Code: unknown) · Oct 09, 2018 7:28 pm

👍 0 Votes

I oppose the Extended Employment Rule as currently written and too believe the individual John Trepp who commented previously touches on many viable problems with this Rule. Having immediate family members with mental health and developmental concerns, as well as working as a full time tenured Full Professor (in rehabilitation and psychology) in addition to being a researcher, author, and private practitioner in mental health and developmental disabilities, I can attest to the fact that this rule limits choice, discounts reality, and is ignorant to the true needs of individuals. Within my private practice, in addition to clients with mental health needs, I too have clients with IQ's around 50 that LOVE to work but need the extra supportive environment. The current rule would discount work as an option for many of my clients. In addition, the idea that having more than one person with a disability working in a supportive environment is somehow a lesser environment is completely wrong. I am at a University where data shows that up to 40% of our students admit having had some support in the past for a mental health condition. If I teach a class that has multiple students with mental health issues, it is in no way less effective and is a truism to the current data on the prevalence of mental health and developmental conditions in our society. This Rule is flawed and needs immediate attention so that it actually provides choice rather than take it away. There needs to be a hearing on this and the rule needs an overhaul. Thank you.

Larry Fraser · Citizen · (Postal Code: unknown) · Oct 09, 2018 7:38 pm

👍 0 Votes

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I oppose the proposed extended employment rule with people with mental illness...

Rylee Peterson · Citizen · (Postal Code: unknown) · Oct 09, 2018 9:35 pm

👍 0 Votes

"I oppose the proposed Extended Employment Rule as currently written. People with disabilities should have the opportunity to earn a living.

Matthew Menge · Citizen · (Postal Code: unknown) · Oct 09, 2018 9:35 pm

👍 0 Votes

I oppose the Extended Employment Rule as it is currently written. What is most important for the mentally ill is that they can earn a good paycheck, not who they work with. Also the idea that those who are not part of the so-called 'Competitive Employment' are somehow shielded from the real world or reality is flawed. Being part of the workforce often exposes you to clients, customers, other departments and so forth who are not disabled, regardless of whether one's immediate co-workers have the common experience of mental illness. But again, the real issue is that 'non-competitive' employment consistently offers a better paycheck, which is what the mentally ill really need for dignity and well-being,

John Bringewatt · Citizen · (Postal Code: unknown) · Oct 09, 2018 10:50 pm

👍 0 Votes

I am opposed to the proposed Extended Employment Rule as is currently written, and strongly feel that a hearing should be held so that feedback from all stakeholders is heard.

To date, the process has not allowed for adequate feedback, particularly from persons with disabilities themselves. Fairness requires that a hearing be held.

I am particularly concerned that consumer choice be the guiding principle, and that persons with disabilities should be able to choose their preferred employment setting from a full menu of choices.

Deanna Gulliford · Citizen · (Postal Code: unknown) · Oct 10, 2018 10:54 am

👍 0 Votes

Please see attached letter from Goodwill-Easter Seals Minnesota.

Sarah Kreiser · Citizen · (Postal Code: unknown) · Oct 10, 2018 11:19 am

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written because everyone should be able to chose where they work regardless of their disability and this rule will take away individual choice.

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Shep Harris · Citizen · (Postal Code: unknown) · Oct 10, 2018 1:05 pm

👍 0 Votes

To the Honorable James LaFave:

As individual provider organizations, which offer Extended Employment (EE) services to thousands of families on an annual basis, we wish to submit comments regarding the Department of Employment and Economic Development (DEED) Dual Notice of Intent to Adopt Rules.

We are grateful to DEED staff for their years of work, communication and collaboration in regard to this rule re-write. Many issues have been discussed and proposed, which we are willing to compromise. However, a recently introduced element within the proposed Rule is causing great concern.

We take issue with the proposed interaction between the State EE Program funding and the Federal Waivered Services funding and how that might affect individual client services. When we look at the Rule process, this issue was not a part of the originally agreed upon draft Rule document; which was forwarded for approval. Only fairly recently, has it been added on to the proposed Rule.

As we understand this new proposal put forward by the Minnesota Department of Human Services (DHS), a client eligible for Waivered services is not eligible for EE services. This interpretation will undoubtedly create situations which limit service choices for clients, present situations limiting continuity and consistency of services for clients and present additional financial challenges to providers by limiting access to funding sources. Recognizing that the costs of providing employment services are continuing to escalate and that many providers have had to use every available funding source to try to pay for these costs, any limitation to the access of dollars to provide employment supports will undoubtedly result in less service options and less service delivery.

To help moderate the impact of this “either waived services or EE services” proposal, the option of delaying implementation to State Fiscal Year 2021 and grandfathering in current clients is appreciative. But it still does not resolve the challenges stated above for new clients requiring services, once this specific aspect of the Rule delay is implemented.

AccessAbility, Inc.
Avivo
Courage Kenny Rehabilitation Institute (Allina Health)
Functional Industries
Goodwill-Easter Seals Minnesota
Lifeworks
MRCI
MSS
Occupational Development Center, Inc.
Opportunity Partners
ProAct, Inc.
Productive Alternatives, Inc.
Rise
Tasks Unlimited
WACOSA

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West Central Industries, Inc.
Winona ORC Industries, Inc.

Amanda LaGrange · Citizen · (Postal Code: unknown) · Oct 10, 2018 1:12 pm

 0 Votes

I oppose the proposed rule as currently written. I believe these rules are best written with those directly impacted by the laws engaged, but this presently is skewed heavily to service organizations, not the individuals.

Peggy Henrikson · Citizen · (Postal Code: unknown) · Oct 10, 2018 1:37 pm

 0 Votes

I oppose the proposed Extended Employment rule as currently written. People with disabilities should get to choose the type of employment setting they prefer.

Karen Christensen · Citizen · (Postal Code: unknown) · Oct 10, 2018 1:46 pm

 0 Votes

I oppose the proposed Extended Employment Rule as currently written. I believe it will ultimately limit choices for those with disabilities and that the rule was not revised in a fair, open and transparent way.

Ron Benner · Citizen · (Postal Code: unknown) · Oct 10, 2018 2:00 pm

 0 Votes

I oppose the proposed Extended Employment Rule as currently written. I believe in broadening and strengthening options for employment and housing, not in taking some away. Some people choose to work or live with others with similar disabilities and we should not take away that opportunity.

Candace Meinders · Citizen · (Postal Code: unknown) · Oct 10, 2018 2:56 pm

 0 Votes

I like my job and would like to continue with it the way it is. Therefore I am opposed to the new rule.

Mary T'Kach · Citizen · (Postal Code: unknown) · Oct 10, 2018 3:13 pm

 0 Votes

Having spoken with both persons with disabilities and parents of children with disabilities it is my opinion that the proposed rule will reduce the options and opportunities for employment for people with disabilities. It appears that rather than increasing funding and appropriate programs to support persons with disabilities the new rule simply transfers funding from one program at the expense of another program rather than adding much needed funding overall. For both of these reasons I oppose the proposed

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rules. Thank you,
Mary T'Kach

Willmar
1300 SW 22nd Street
P.O. Box 813
Willmar, MN 56201
Phone: 320-235-5310
Fax: 320-235-5376



We enhance quality of life through individualized support,
training, and employment.

Hutchinson
218 Main Street South
Suite 116
Hutchinson, MN 55350
Phone: 320-234-7515
Fax: 320-234-7317

Sheila Ward

October 8, 2018

To the Honorable James LaFave:

As individual provider organizations, which offer Extended Employment (EE) services to thousands of families on an annual basis, we wish to submit comments regarding the Department of Employment and Economic Development (DEED) Dual Notice of Intent to Adopt Rules.

We are grateful to DEED staff for their years of work, communication and collaboration in regard to this rule rewrite. Many issues have been discussed and proposed, which we are willing to compromise. However, a recently introduced element within the proposed Rule is causing great concern.

We take issue with the proposed interaction between the State EE Program funding and the Federal Waivered Services funding and how that might affect individual client services. When we look at the Rule process, this issue was not a part of the originally agreed upon draft Rule document; which was forwarded for approval. Only fairly recently, has it been added on to the proposed Rule.

As we understand this new proposal put forward by the Minnesota Department of Human Services (DHS), a client eligible for Waivered services is not eligible for EE services. This interpretation will undoubtedly create situations which limit service choices for clients, present situations limiting continuity and consistency of services for clients and present additional financial challenges to providers by limiting access to funding sources. Recognizing that the costs of providing employment services are continuing to escalate and that many providers have had to use every available funding source to try to pay for these costs, any limitation to the access of dollars to provide employment supports will undoubtedly result in less service options and less service delivery.

To help moderate the impact of this “either waived services or EE services” proposal, the option of delaying implementation to State Fiscal Year 2021 and grandfathering in current clients is appreciative. But it still does not resolve the challenges stated above for new clients requiring services, once this specific aspect of the Rule delay is implemented.

Please help us continue to provide person-centered services, choices, continuity of services, and support services for people with disabilities. There are limited providers in the area and if the only option is a waiver funded provider, this will reduce or eliminate the choices that are available. The financial devastation for providers will potentially eradicate their ability to continue to provide services.

Thank you for your consideration regarding the proposed change to EE funding.

Sincerely,

West Central Industries Staff

I oppose the proposed Extended Employment Rule as currently written.

The proposed rule is horrible; the long-term impact will to reduce the number of people with disabilities working in the community, and to reduce the quality of employment opportunities for those able to obtain employment. It appears to have been drafted by folks with a willful misunderstanding of Olmstead, and a strong disdain for consumer choice. Furthermore, DEED's claim to have sought broad input in drafting this rule is fraudulent. DEED's process systematically excluded voices they chose not to hear and ignored input contrary to their pre-disposed agenda.

Since the outcome, i.e., the proposed rule, is more important than the flawed process, I will address the process first before proceeding to more important issues:

Around the time that DEED began the process that led to the proposed rule, I happened to run into a DEED staffer who mentioned that the process was beginning, or would soon begin, and that there would be, as had been the case with previous rewrites, an Advisory Committee formed to assist DEED in this effort.

I was long-retired by then, and without any vested interest in the rule. But as an active member of my local NAMI, as a person who had contributed significantly to the 1991 and subsequent rewrites, and as a person who greatly admired certain elements of the original RULE 627, I was interested in seeing where the process would lead, and I kept my ear to the ground. When, after much delay, the Advisory Committee was created, I called and wrote to DEED to offer my services, strictly on a volunteer basis at no cost to DEED.

I never heard back. But, again ear to the ground, I heard that the committee was starting up, and went to the first meeting. I felt I was well-received, at least by some members of the provider community. But soon after I received a letter from DEED stating that I was NOT a member of the committee. I called to say that I would then attend strictly as a non-voting, non-participatory "observer."

At that point I got a second letter stating that DEED's attorney had determined that the Advisory Committee meetings were not covered by Minnesota's "Open Meeting Law," and that therefore, I would not be allowed to attend, even as an observer. I doubt that DEED was on solid legal ground here, but at this point it was pretty clear that DEED did not want my advice. So I gave up before they sought a restraining order.

It's not like I'm a dangerous or physically threatening person. My credentials to participate in an Advisory Committee assisting DEED in the rewrite of the Extended Employment Rule are as follows:

- For 31.5 years (mid 1978 to Dec '84 as Program Director, 1985 through 2009 as Executive Director) I worked for Tasks Unlimited, an Extended Employment Provider.
 - During 24 of the 25 years that DEED was publishing their wage data and I was running the Tasks Unlimited Extended Employment program Tasks

consistently posted the highest wages paid to “Disabled Workers” in the State of Minnesota, often exceeding one standard deviation above the norm.

- I retired from Tasks, at the end of 2009, at age 62, due to the health of a family member.
- Beginning approximately in 1967 through 1990, and continuing after a slight hiatus through at least 2000, I served on the Extended Employment Advisory Committee, for years as Chair, that essentially drafted the 1991, 1995 and current rule.
 - It might be worth noting that at one point during this process, I received a special award from Governor Carlson (the only member of the Committee so recognized) for my contributions in assisting DEED with the rule-making process, and particularly for my creative ideas and my skill in brokering compromises between competing interests.
- I was an active member of Board of Directors of the trade association representing EE providers (originally MARF, the MACRO, now a new name), serving two years as the Chair of this organization during one of the rewrites.
- In 1991, while finishing my Masters of Public Administration Degree from Hamline University, I wrote a Masters Thesis entitled, “Fixing 627, an Analysis of Public Policy Issues related to the Allocation of Funding for Extended Employment in Minnesota.”
 - It might be worth noting that a senior staffer of (what is now DEED) served on the committee at Hamline that reviewed my thesis; and that
 - My thesis was recognized as the best Masters Thesis submitted to Hamline during the 1990-1991 school year.
- Since approximately 2010, I have served on the Board of Directors of NAMI of Hennepin County, and currently serve as the Chair of the Advocacy Committee.
- Also in retirement, I provide consulting services to organizations providing employment assistance to people with (non-disability related, e.g., previously incarcerated) barriers to employment.
- And although I am now 70, my kids still trust me to babysit the grandkids.

One might think that my knowledge of the history of Extended Employment in Minnesota, and my expertise in the effective administration of Extended Employment services would have been an asset to this latest Extended Employment Advisory Committee. But DEED went to extraordinary lengths to keep me away from the Advisory Committee because I was a threat; not a physical threat, it was my ideas and my knowledge of Extended Employment that DEED finds threatening. The leadership of DEED appears to feel threatened by anyone with IDEAS THEY DON'T AGREE WITH.

The published document includes a lengthy description of the formation of and the contributions of the Extended Employment Advisory Committee, and the minutes of this body's work reveal that:

- No consumers of Extended Employment services were actively engaged;

- No one representing the interests of people with mental illness were actively engaged.

I've spoken to both providers and consumers who attended one of the public listening sessions DEED held during the rule-writing process, and they seemed to agree. DEED was not interested in any opinions that differed from theirs. The claim that DEED sought outside input is fraudulent!

PROBLEMS WITH THE PROPOSED RULE

But the proposed rule itself is more important than the flaws in the rule-making process. I have organized my objections to this proposed rule in 5 main categories:

- Consumer Choice
- Wages in “Enclaves” vs wages in “Competitive Employment”
- Long-Term Supported Employment vs Serial Placement Failure
- A History Lesson, and
- Problems with the SONAR

Following this, I offer three alternatives, each superior to the proposed rule.

Consumer Choice: Any reasonable reading of Olmstead produces an understanding that Consumer Choice lies at the heart of both the initial litigation and the settlement. One would assume, therefore, that the purpose of any rule-change purported to be inspired by the need to comply with Olmstead would be designed to expand Consumer Choice.

And yet, the primary purpose of this rule-change is exactly the opposite; DEED's intent here is to SEVERELY LIMIT Consumer Choice. This is not some misinterpretation on my part; DEED's Statement of Need and Reasonableness (SONAR), required for rule-changes, clearly states that “The purpose of the proposed rule is to limit funding for services supporting individuals in employment settings that are not competitive.” And DEED's twisted definition of “not competitive” focuses on whether any of one's co-workers have a disability. In plain language, DEED's purpose here is to restrict Consumer Choice to types of employment pleasing to DEED.

- Even if one assumes that DEED is all-knowing and knows better what is best for each and every Minnesotan with a disability than the individual themselves, DEED's patronizing people with disabilities is offensive.
- Worse, DEED seems to have no clue what is best for Minnesotans with a disability, especially not for those who seek employment with the intent of earning a living. DEED treats the generation of income through one's employment as though it were an insignificant byproduct of employment.

Although hard data is difficult to come by, it appears that the State of Minnesota (DEED)'s interpretation of Olmstead is not in the mainstream of how most states are interpreting Olmstead. What is clear is that DEED's notion, that groups of people with disabilities should at all times be kept separate from one another, is an extreme outlier among civilized societies.

Societies in modern Europe and modernized Asia whole-heartedly EMBRACE ideas like inter-dependence, like peer-support, like folks with disabilities working together to create

a better life for themselves. Societies around the world typically understand how easily people with disabilities get left behind, and that groups of such persons working together in small groups is a better, healthier, way to protect their interests.

Most of the people with disabilities that I know pursue employment primarily for the same reason as the rest of humanity – to earn money. Of course employment provides an opportunity to acquire new skills, to increase self-esteem, to develop social connections with one’s co-workers, etc., but the fundamental reason that people put up with the inevitably-stressful demands of employment is to generate income, perhaps to live on; perhaps to supplement other sources of income.

During my career, I worked with a broadly diverse population of people with serious disabilities who were seeking employment. Many had unrealistic expectations re employment and many had poor work skills, Most came to me discouraged about their prospects for employment. Most had poor work histories or no work history at all. Not one person ever walked in our doors who didn’t care how much they would get paid.

Perhaps there are folks who value “integration” over a living wage. I never met one, but surely such persons could exist – and they should have the right to choose that. People who choose to earn a living should also have the right to choose.

DEED seeks to supplant the choice of individuals with disabilities with DEED’s choice because:

- DEED thinks they know better.
- DEED thinks that working along side other people with disabilities is a horrible thing that should be avoided at all cost.
- DEED has a fantasy that a person with a disability who works exclusively with non-disabled individuals will develop strong supportive relationships with his/her non-disabled co-workers, eventually causing one’s disability to disappear. (I am not aware of this ever happening, but even if there are such examples, they are surely rare.)
- Generally, people with disabilities working exclusively with non-disabled individuals tend to be isolated. Their non-disabled co-workers might be polite, they might be included in an annual social event for all employees; but they don’t get invited to the cabin for the weekend.
- One fellow I know, a man with a serious disability, has told me repeatedly, “I don’t want to be ‘Benny’ on *L.A. Law*, I don’t even like lawyers. I prefer the company of people who understand how hard it is just to make it in to work everyday. Why don’t I get to choose who to hang out with?”

Wages in “Enclaves vs wages in “Competitive Employment: In recent years, DEED has argued (based on flimsy studies with flawed research methodology) that people with disabilities working with other people with disabilities (where they like and support each other) in what DEED chooses to label an “enclaves,” are paid less than those working in an “integrated” setting, i.e., one where they never come into contact with other people with disabilities.

DEED knows that this is not true, and has hard evidence that proves it's not true! For over 30 years, DEED has collected (and audited) wage data for Extended Employment participants; and this data proves (or would prove, if DEED didn't skew the data, and maybe in spite of their efforts) that disabled Minnesotans, out in the community, working together in what DEED calls "enclaves," earn substantially MORE than similar folks working in what DEED defines as "Competitive Employment."

DEED systematically skews their own data in an attempt to camouflage the historic success of "enclave" employment in Minnesota:

- In their evaluation of "enclave" employment, DEED exclusively (and bizarrely) focuses on wages-per-hour, never wages-per-month, a far more meaningful metric. Anyone who doubts that wages-per-month are a more meaningful measure of one's employment success should apply to lease an apartment, or for a car loan.
- Focusing on wages-per-hour allows DEED to tout the "success" of people with disabilities engaged in "Competitive Employment" who earn \$12/hr, but who work only one half-day a week; and to value this above the experience of people with disabilities engaged in "enclave" employment who earn \$15/hr, and who work 40 hrs/week, generating ten times the income.
- In focusing only on minimum wage in this rule (never living wage), DEED steers away (essentially eliminating) from creating a path for a person with a disability to "earn a living." According to a recent analysis by MIT (Dr. Amy Glasmeier), the current living wage in the Twin Cities Metropolitan Area (where the majority of Minnesotans with a disability live) is approximately \$12 per hour – for people working 40hrs/wk. There are a significant number of people with disabilities working in "enclave" employment meeting this standard, but almost no one in DEED's "Competitive Employment" category.
- And in the most brazen of DEED's frauds, DEED has historically classified the wage data of those in "enclave" employment earning especially high wages as being "Competitive" even when they fail DEED's definition of "Competitive," so as to make "Competitive" look better versus "enclave."

In truth, DEED has never fully implemented the current rule with respect to wages, nor will they ever fully implement the proposed rule with respect to wages. Both the current rule and the proposed rule require that Disabled Workers receive "Customary Wages and Benefits," i.e., the same wages and benefits paid by the employer to individuals without disabilities performing the same or similar work.

This is an impressive-sounding requirement; and a well-understood joke. DEED requires a ton of documentation around participant eligibility and hours of work, but routinely "winks" at the "Customary Wages and Benefits" requirement as long as the participant work in a setting with no other persons with disabilities. And they will surely continue to "wink" under the proposed rule.

Long-Term Supported Employment vs Serial Placement Failure: The State of MN's Extended Employment program (funding) was designed to be, and should be, about

providing long-term support to “Disabled Workers” who need long-term support. DEED already has a much larger (in terms of annual dollars) funding stream, one in which matches federal dollars with state dollars, to support the “placement” of “Disabled Workers” into “competitive employment” as defined by DEED. Extended Employment was created and has continued to exist to fill the unmet need for long-term support.

It is ironic that DEED is proposing to cannibalize Extended Employment, and turn it into yet another job-placement program, during a time when job openings outnumber job-seekers by 5:1. The organization that I used to work for is already and eagerly converting from what DEED calls an “enclave” model to the preferred placement model because it is ridiculously easy, and already lucrative through funding streams outside of Extended Employment, to “place” folks with disabilities into employment.

Think about it. In today’s economy, it is much easier for a person with a disability to get a job, than to keep it. Current federal rules include incentives to providers to ensure that the “placed” individual retains his/her employment for ninety days. But most of the disabilities experienced by people enrolled in Extended Employment are long-term, if not permanent. These disabilities can be ameliorated by a period of stable employment, but they don’t always disappear in ninety days, often not in many years.

When our economy cycles back the other direction, and we know it will, people with a disability, engaged in DEED’s fantasy of “competitive employment,” will be the first folks laid off. Ninety day retention is better than no retention, but what about keeping the job for five years? For twenty years? That was the goal of Rule 627, and should be the true goal of Extended Employment.

Problems with the SONAR: One of the weakest elements of the SONAR attached to the proposed rule is the feeble assertion that the existing rule is “confusing to current DEED Extended Employment program staff,” and that their confusion “restricts transparency and accountability in program administration.”

I am aware that there has been significant turnover in this division in recent years, especially with the retirement of John Sherman, a key staffer who not only knew how to administer the existing rule, but who had been an active participant in the 1991 and subsequent re-writes (maybe even in the original RULE 627?). Personally, I disagreed with Sherman over several rule-interpretations through the years, but no one could dispute that Sherman understood the rule and how to administer it.

But Sherman is almost as old as I and his pending retirement was known to DEED for at least twelve months, probably longer. If DEED had had any intention of retaining the spirit of RULE 627, it would have been relatively simple for Sherman to have trained several existing or incoming staff in how to administer the Rule. Even after his retirement, Sherman was and still is likely available to perform this service. And even if Sherman is not available, I, or any number of other EE veterans, would be available. All DEED would need to do would be to ask.

DEED hasn't asked because DEED wants it's arbitrary discretion back. RULE 627, and even the current version to a degree, distribute funds based on published, mathematical formulas – which by definition are transparent. DEED seeks to replace this with unlimited discretion. The proposed rule is not more transparent; it is less transparent.

It is true that RULE 627, and it's subsequent revisions are complex to a degree that makes the rule difficult for outsiders, those who have never worked with it, to understand based on a casual reading. But guess what? Assisting a person with a severe disability in procuring employment, especially employment that provides a living wage, and assisting the individual to maintain said employment over the years, is a complex problem. And complex problems require complex solutions.

At best, the proposed rule is a simplistic and therefore unrealistic solution to a complex problem. At worst, the proposed rule is a blatant power-grab designed to solve DEED's problem at the expense of people with disabilities.

History Lesson: Although DEED's SONAR tries hard to suggest otherwise, there are several alternative approaches to the problems and inefficiencies of the current rule, and the history of Minnesota's Extended Employment program points to one of them.

Prior to 1980, the State of Minnesota (it wasn't DEED then) only funded Sheltered Workshops and REFUSED financial support for organizations placing people with disabilities into real jobs in the community. Only after a series of embarrassing stories about people working for pennies an hour, while the folks running Sheltered Workshops were getting rich, did the State draft the first Extended Employment Rule, often referred to as "Rule 627."

Another major complaint about the existing system was the arbitrary (and perhaps corrupt) manner in which the State determined which programs, serving which types and degrees of disabilities, would get funded. A major objective of the Rule 627* was therefore to eliminate (or at least limit) the State's discretion in this process. Rule 627 did this, creating a truly "free-market," "performance-based," system for funding the support of employment for "Disabled Workers," i.e., persons with disabilities. This system would have solved the problem of abused discretion had the State ever implemented the rule.

* I had no involvement in the drafting of this first EE Rule.

Under Rule 627, non-profit organizations meeting certain threshold criteria could serve AS MANY "Disabled Workers" as they chose to serve (assuming verification of disability). Said organizations would report audited data to the State, and at the end of the fiscal year, the State would divide the pool of funds allocated by the Legislature by the total number of hours of paid employment produced by said non-profits, to determine the rate of reimbursement. A completely transparent mathematical formula would distribute the funds allocated by the Legislature versus the corrupt discretion of DEED staff.

This rule was supposed to go into effect for State Fiscal Year 1985. But State employees, furious at losing their discretion, flat-out refused to implement the new rule, and never fully implemented this legally propagated rule! Finally, in 1991, after six years of incompetence, foot-dragging, threatened litigation, and a Legislative Auditor's Report that found a pattern of "Manipulating allocations so as to preserve the status quo," the State produced a series of revisions to Rule 627.

Regrettably, I served on the Advisory Committee advising the State on this series of rewrites, leading to the current rule, which I call "Rule 627-Lite." I now regret the compromises made; I never dreamed that they could lead to DEED eliminating consumer choice.

It is important to note that despite the foot-dragging, etc, the partial implementation of Rule 627 was incredibly effective! In four years, from State Fiscal Year 1986 to SFY 1990, the number of Minnesota Disabled Workers in Supported Employment (working out in the community) more than doubled. And job retention went up also, because job retention by Disabled Workers was financially incentivized for providers.

Rule 627-Lite maintained certain "performance-based" elements of the original rule, but effectively eliminated the "free-market" elements by "capping" the number of hours of employment each provider organization could produce. Non-profits could, in theory, serve as many "Disabled Workers" as they could find employment for, but they could only be reimbursed for providing the number of hours per year that the State said they could produce. Another way in which this revision allowed the State to recapture some of their discretion was that any new funds allocated by the Legislature, thus allowing "cap" numbers to increase, were to be "distributed" at the State's (DEED's) discretion.

"Capping" not only ended the period of growth in the Extended Employment System, it initiated a permanent downward spiral in the number of "Disabled Workers" that could be served. The cost of providing support services to "Disabled Workers" naturally grew with inflation, creating pressure on the State (DEED) to raise the reimbursement per hour of employment. This was aggravated by Rule 627-Lite grandfathering in ineffective services that should have been eliminated by Rule 627's "free-market," but had been protected (in violation of the law) by the State's failure to fully implement Rule 627.

Most years, some organizations providing ineffective services failed to produce as many hours of "Disabled Worker" employment as they had been allocated. Rule 627-Lite dictated that each organization fulfilling their contract would get the same allocation next year but, after a 5% grace, the unproductive organizations would have their future allocations reduced, thus freeing up funds for redistribution.

But here again, Rule 627-Lite gave the State (DEED) discretion in how to allocate these funds. They could have, in the spirit of a "free market," allocated these funds to those organizations who had "over-produced," i.e., provided more hours of "Disabled Worker" employment than they were allowed to bill for. But mostly, the State (DEED) chose to

respond to pressure from organizations providing ineffective services, and to instead increase the state-wide reimbursement rate.

At no time were there ever enough funds to serve every Minnesotan with a disability. But the State (DEED), under Rule 627-Lite and subsequent revisions, consistently chose to help provider organizations keep up with inflation, despite inefficient strategies. DEED did this despite the fact that some provider organizations were generating and banking substantial annual “budget surpluses,” i.e., profits. Rather than expanding services to more of the unserved, potential “Disabled Workers,” the State (DEED) knowingly chose to pad the profits of their non-profit “provider-partners.”

And since the Legislature’s allocation for Extended Employment failed to keep up with general inflation or the inflated reimbursement rate, fewer and fewer Minnesotans with a disability received Extended Employment every year. And as DEED’s own data surely shows, this trend continued. The proposed rule, which ham-handedly favors inefficient strategies over efficient ones, will accelerate the decline of Extended Employment in Minnesota.

But the “capping” of allocations and the State’s (DEED’s) choice to inflate reimbursement rates was only one blow to the original and highly effective Rule 627. “Free-market” was an important innovational element of Rule 627, but even more important was the “performance-based” element.

It is worthwhile to pause here to admire the brilliance of a rule focusing on outcomes. Typically, government rules and regulations focus on process issues that someone believes, or at least pretends to believe, will produce desirable outcomes. But frequently, the cause-and-effect relationship between the mandated processes and the identified outcomes is very weak,, sometimes non-existent. Rule 627, almost unique in state government history, rewarded providers for results/outcomes, and only for results/outcomes. And it worked. During the brief period of partial implementation of Rule 627, the wages of Disabled Workers skyrocketed.

It is trendy to talk about “performance-based funding,” but real implementation of “performance-based funding” is extremely rare. Government funds, at the Federal, State and Local levels are typically distributed based on need, cost, politics, and occasionally on the brilliant prose of a response to a “Request for Proposals” promising (but rarely delivering) wonderful outcomes. Another common strategy, the one to which DEED has transformed Extended Employment, through continual rate increases, is the system where “everybody gets what they got last year,” perhaps with the occasional inflationary increase.

Rule 627 was truly different. Rule 627 was real “performance-based funding.” Provider organizations did not, under this rule, get reimbursed on the basis of their costs. They did not get reimbursed based on the credentials of their staff. They did not get reimbursed based on how hard they tried, how well-meaning they were, how sincere they might be. They did not even get reimbursed for “placing” a person with a disability in a “job.” They

only got paid (not actually reimbursed) for real outcomes, i.e., for hours of paid employment by a “Disabled Worker.”

I applaud the proposed rules intent to discontinue recognition of sub-minimum wage employment (I would prefer at least a differential rate for “living-wage” employment and I wish they would enforce their rule re “comparable wage.”) But the “capping” of hours eliminates not only the “free market,” it essentially eliminates “performance-based funding,” because providers utilizing effective strategies almost always max-out their allocations, often with several months left in the State Fiscal Year. No longer will there be any real sense that a provider can increase revenue by working harder, by working smarter, by serving more people, or through any sort of innovation. Such efforts reap no rewards. The spirit of Rule 627 dies with this proposed rule.

Who is responsible for this outrage? Certainly not people with disabilities or folks truly representing the interests of people with disabilities. The proposed rule was written by AND FOR the convenience of the professional community and DEED. DEED staff were insulted that their discretion was replaced with simple, mathematical formulas, and have plotted since 1983 to regain control of who gets funded for what.

Nor is the provider community innocent. Providers were extremely uncomfortable with the impact of Rule 627 that forced them to produce, demanding of them, in a sense, continual improvement. They are much happier with the proposed rule that guarantees them the same funding year after year, without having to improve efficiency.

It would be an exaggeration to suggest that neither DEED or the provider community cares about people with disabilities; at a superficial level, they probably do. But DEED cares more about regaining their power, and DEED and the provider community both care more about making their jobs easy than they care about what is best for people with disabilities.

Remedies:

1. One obvious remedy would be to trash the proposed rule, leaving the existing rule in place.

The existing rule has a number of flaws (none of which are solved by the proposed rule), but it is far superior to the proposed rule. The SONAR begins by stating that the purpose of the proposed rule is to eliminate consumer choice and replace it with DEED choice (because DEED knows better). The rest of the SONAR flows from this.

Despite acknowledging that EE is a purely state-funded program, DEED conveniently suggests that the feds are requiring the proposed changes. Other states, perhaps because they understand that Olmstead is about consumer choice, are not interpreting federal mandates the way DEED does.

2. If one wanted to “tweak” the existing rule in a positive direction, there are a number of changes that could help strengthen the rule:

a. Demanding that all employment provided through EE be employment that pays minimum wage (as the proposed rule does) is a good idea and should be retained in any re-write.

b. Better yet would be to redirect the focus from “minimum wage” to a “living wage.” Determining exactly what a “living wage” is, and keeping the determination relevant over time would require some effort from DEED, but as was said above, complex problems require complex solutions.

c. Even better would be to demand that all employment provided through EE be employment that provides benefits meaningful* to the individual EE participant.

* Eligibility to enroll in/purchase some sort of health insurance that an individual EE participant cannot afford or benefit from should not count as “meaningful.”

d. Eliminating the current rule’s “anti peer-support” bias, i.e., the discrimination against people with disabilities working together, and replacing it with a bias (i.e., financial incentives for providers) for good-paying jobs would be an improvement.

e. And certainly eliminating the silliness of discriminating against “disabled workers” who receive their paychecks from their service provider (because the service provider is contracting with a large employer) would be an improvement.

3. THE BEST ALTERNATIVE would be to draft a modern version of RULE 627 that retains not only the “outcome-based funding” element of RULE 627, but also the “free-market” element. Many more people with disabilities, perhaps even double or triple the current number, could be and would be served under the original RULE 627, “free-market” system.

Since 1991, various EE rules, including the current rule, and certainly the proposed rule, severely limit the number of people with disabilities who can receive support services. Because the reported “cost” of providing support services (using outdated methods) increases faster than the pool of dollars allocated by the Legislature, the number of Minnesotans that can be served has shrunk over time, and will continue to shrink under the proposed rule. A RULE 627, “free-market” would guarantee a reversal of this trend.

“Free-markets” are, by definition, competitive, which means some providers will win and some will lose. In a free-market system, like the one envisioned by the original Rule 627, provider organizations utilizing efficient methodologies would serve more people with disabilities and capture a larger share of the available dollars. Provider organizations utilizing inefficient methodologies would serve fewer people with disabilities and capture a smaller share of the available dollars. It’s called “competition.”

This sort of competition is, unfortunately, anathema to the industry, and was a driving force behind the foot-dragging and eventual scuttling of RULE 627 back in 1991. But even under the partial implementation of RULE 627 during the years between 1985 and 1991, significant amounts of funding shifted from provider organizations utilizing inefficient methodologies to provider organizations utilizing efficient methodologies. A couple of the organizations utilizing inefficient methodologies got out of the EE business altogether. Others, choosing to survive, scrambled to become more efficient.

RULE SUBMISSION TO THE OFFICE OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT

**2018 EXTENDED EMPLOYMENT RULES, CHAPTER 3300
REVISOR'S ID NUMBER AR4245**

ADDITIONAL NOTICE DOCUMENTS

RULE CHANGES COMING FOR EXTENDED EMPLOYMENT PROGRAM

The Extended Employment (EE) program currently supports people with disabilities who work in competitive employment, crews or enclaves, and workshop jobs. The program offers job supports to help people keep their jobs and pursue careers. New rules are being proposed that could change the way the EE program works for you.

If the changes are adopted



The top priority will be **competitive, integrated employment**.



To be competitive and integrated, **your job must be with an employer that is not your service provider**.



EE funding to support people who work in workshop jobs will end June 30, 2025.



You'll have **more opportunities to make choices** about whether and where you want to work.



EE funding to support people who work in work crews or enclaves will be capped.



The rules will be **easier to read and understand**.

What will change for me?

Not much will change for you. Your services will look and feel the same. You can keep meeting regularly with your support person, turn in your paystubs, and update your goals – just like you do now. As always, EE services will support you in keeping your job, and even getting a better job.

Timeline

EE funded support services for people with jobs in workshops will be phased out, beginning July 1, 2020 and ending June 30, 2025. Most other changes will take place as soon as the new rules are in place.

Public Comment

You can review the new rules and comment on them beginning Monday, September 10, 2018 through Wednesday, October 10, 2018. The Office of Administrative Hearings has a website for you to enter your formal comments tiny.cc/AdministrativeHearings. Or email your comments to Extended.Employment@state.mn.us.

For Further Information

- » Visit the DEED-EE website at: mn.gov/deed/eerule
- » Contact: Extended.Employment@state.mn.us

MN.GOV/DEED/EERULE



EXTENDED EMPLOYMENT PROGRAM
RULE REVISION

Summary of Proposed Changes

Extended Employment Program Administrative Rulemaking

DATE: 09/04/2018

PROPOSED RULE CHANGES FOR EXTENDED EMPLOYMENT PROGRAM

The Minnesota Department of Employment and Economic Development (DEED) is proposing changes to state rules that govern the Extended Employment (EE) program. The program currently supports people with disabilities who work in competitive employment, crews or enclaves, and workshop jobs. The program offers job supports to help people keep their jobs and pursue careers.

If the changes are adopted



The top priority will be funding to support people who work in **competitive, integrated employment**.



For a job to be competitive and integrated, an individual's **employer cannot be their service provider**.



EE funding to support people who work in center-based (workshop) jobs will be gradually phased out over 5 years.



The program will reflect principles such as **person-centered practices and informed choice**.



EE funding to support people who work in community jobs (crews and enclaves) will be capped.



The rules will be **easier to read and understand**.

[MN.GOV/DEED/EERULE](https://mn.gov/deed/eerule)

m **EMPLOYMENT AND
ECONOMIC DEVELOPMENT**
VOCATIONAL REHABILITATION SERVICES
[MN.GOV/DEED/VRS](https://mn.gov/deed/vrs)

Extended Employment is a program of Vocational Rehabilitation Services,
Minnesota Department of Employment and Economic Development,
An equal opportunity employer and service provider.

Introduction

The Minnesota Department of Employment and Economic Development (DEED) is proposing changes to the state rules that govern the Extended Employment (EE) Program.

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 rule is being revised 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 center-based (workshop) employment. Additionally, the proposed rule clarifies that, for a job to be truly competitive and integrated, the employer cannot be an individual's Extended Employment 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 1998 rule and replacing it with this proposed rule. Replacement will allow for the most clarity and the most logical organization of the rule.

Community Engagement

The Department is grateful for the significant Extended Employment provider and community input into the development of the proposed rule changes. The revision process started four years ago and has included eighteen months of work by an advisory committee, eight public

forums and meetings, and ongoing engagement of the twenty-seven current Extended Employment providers.

Extended Employment Rule 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 rule revision. 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

DEED Extended Employment program staff 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 widely from Community Rehabilitation Providers and others in the disability employment services system. There was broad representation of Extended Employment providers, Community Rehabilitation providers, family members, county employees, and persons receiving Extended Employment support services at the forums.

Timeline

Most of the changes in the rule will take place as soon as the rule takes effect. There are three changes that will not begin until the SFY 2020 contracts including: setting the base for the Center-Based Employment subprogram phase-out; setting the funding cap for Center-Based and Community Employment subprograms; and implementing the “employer of record” provision that is part of the Competitive, Integrated Employment definition. The Center-Based Employment subprogram phase-out will begin starting with the SFY 2021 contracts.

Table 1 Implementation Timeline

Item	Timeframe/Notes
Rule Takes Effect	Upon Promulgation <i>(Mid-Year of SFY 2019 Contracts)</i>
Start of SFY 2020 Contracts – Employer of Record Takes Effect	July 1, 2019 SFY 2020: July 1, 2019 – June 30, 2020
Shift Deadline <i>(For shifts to a less integrated setting)</i>	May 1, 2020 <i>(2 months before end of SFY 2020 Contracts)</i>
Non-Competitive Cap is Set <i>(SFY 2020 CBE + CE Allocations)</i> Base for CBE Phase-Out Is Set <i>(SFY 2020 CBE)</i>	May 2, 2020 - June 30, 2020 <i>(In final 2 months of SFY 2020 Contracts)</i>
CBE Phase-Out Year 1	SFY 2021: July 1, 2020-June 30, 2021
CBE Phase-Out Year 2	SFY 2022: July 1, 2021-June 30, 2022
CBE Phase-Out Year 3	SFY 2023: July 1, 2022-June 30, 2023
CBE Phase-Out Year 4	SFY 2024: July 1, 2023-June 30, 2024
CBE Phase-Out Year 5	SFY 2025: July 1, 2024-June 30, 2025

3300.6000: Definitions

Definitions in Statute

Definitions in Minnesota Chapter 268A are not repeated in the rule. This is standard rule-drafting form.

Employment Settings Definitions

There are three employment settings by which the Extended Employment program is administered, including 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.

Community Employment Definition

The Department proposes modifying the definition of "Community Employment" to distinguish the employment setting from Center-Based Employment and Competitive, Integrated Employment. The two primary elements of the Community Employment definition and the Center-Based Employment definition are the employer of record and the work location provisions.

The key difference between Competitive, Integrated Employment and Community Employment is that in Competitive, Integrated Employment the provider cannot be the employer of record, and in Community Employment the provider can be the employer of record. The key difference between Community Employment and Center-Based Employment is that in Community Employment the work location cannot be owned by the provider, and in Center-Based Employment the work location can (and usually is) owned by the 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.

Competitive, Integrated Employment Definition

The Department, with advice from the Extended Employment Rule Advisory Committee, proposes modifying the definition of "Competitive, Integrated Employment" to align with the definitions found in the Workforce Innovation and Opportunity Act and Home and Community Based Services. The definition would clarify that, for a job to be truly competitive and

integrated, the employer of record cannot be an individual's Extended Employment service provider. The Department refers to this clarification as the "employer of record" provision.

Employer of Record

The "employer of record" provision makes the interpretation of an integrated employment setting consistent throughout the Extended Employment program. Without this distinction in rule, which employment settings are considered integrated is interpreted on a case-by-case basis.

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 reported to either the Community Employment subprogram or the Center-Based Employment subprogram, even if an individual is making minimum wage or higher, and/or the individual or Community Rehabilitation 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.

Table 2: Employment Settings Definitions - Key Distinctions

	Center-Based Employment	Community Employment	Competitive, Integrated Employment
Location	Individual works at a location that IS owned or operated by the individual's EE provider	Individual works at a location that IS NOT owned or operated by the individual's EE provider	Individual works at a location that IS NOT owned or operated by the individual's EE provider
Employer of Record	Individual receives wages and benefits from an employer who IS the individual's EE provider	Individual receives wages and benefits from an employer who IS or IS NOT the individual's EE provider	Individual receives wages and benefits from an employer who IS NOT the individual's EE provider

Extended Employment Services Definition

The Department proposes defining “Extended Employment services” to clarify that activities of the Extended Employment program include both the development of an Extended Employment support plan and delivery of ongoing employment support services.

Individual Receiving Extended Employment Services Definition

The Department proposes removing references to “Extended Employment worker” or “worker” and instead use “individual receiving Extended Employment services” or “individual.” The language change is consistent with the Department’s commitment to person-centered practices.

Ongoing Employment Support Services Definition: Job Placement and Job Development, Transitional Employment Services

The Department proposes removing “job development” and “job placement” from the list of Extended Employment ongoing support services as defined in rule. Career planning will remain. The disability service system has come to define job development and job placement as time intensive services, whereas career planning—to advance in employment—is a light touch service incorporated into existing support services.

The Department proposes removing “transitional employment services” because the term is not commonly used in the Extended Employment program.

Qualified Health Care Professional Definition

The Department proposes clarifying 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.

Most Severe Disability Definition

The Department proposes removing the definition of "most severe disability" and references to it throughout the rule. This terminology is problematic in that it lists specific disability types and diagnoses. If the rule lists disability types and diagnoses, the rule could unintentionally exclude someone from receiving services if their disability is not listed.

3300.6005: Individual Eligibility

The Department proposes creating a section detailing the eligibility requirements for an individual to receive Extended Employment services. The 1998 rule lacks clarity. The goal is to have stakeholders quickly find this section and know if Extended Employment might be a fit for an individual.

"Secure, Maintain, and Advance in Employment"

The Department proposes updating eligibility language in the 1998 rule for Extended Employment eligibility that requires an individual must "expect to require ongoing employment support services for an extended length of time to secure, maintain, and advance in employment." The Department proposes deleting the word "secure" from the eligibility information as Extended Employment provides services for individuals to maintain and advance in employment.

Individuals in Medical Assistance Waiver Programs

The Department proposes updating the eligibility section regarding individuals who are on a medical assistance waiver to be consistent with current medical assistance waiver services and practices. In particular, the proposed changes clarify that Extended Employment funds are not intended to pay for ongoing employment support services for individuals who can receive these services through other state, federal, or other sources. Thus, the draft rule states an individual on a Medical Assistance waiver are not eligible for Extended Employment services.

3300.6010: Extended Employment Services Delivery

The Department proposes creating a section detailing the requirements for service delivery. The 1998 rule lacks clarity. The goal is for stakeholders to quickly find this section and know service delivery requirements in the Extended Employment program.

Person-Centered Practices and Employment First

The Department, with advice from the Extended Employment Rule Advisory Committee, proposes codifying that Extended Employment services shall be delivered using person-centered practices and align the delivery of Extended Employment services with the State of Minnesota's Employment First policy.

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 consistent with services offered across state government.

Minnesota 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 people with disabilities.

Informed Choice

The Department, with advice from the Extended Employment Rule Advisory Committee, proposes clarifying 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 will be the primary venue for discussions leading to an informed choice about their employment.

For individuals earning less than minimum wage, the Informed Choice process will reference and align with the Career Counseling, Information, and Referral process identified in the WIOA, Section 511, part 397 regulations.

A Plan to Help You

The Department proposes removing redundancy in providing for an individual's informed choice. Under the 1998 rule, the Department provided information in what is commonly referred to as "A Plan to Help You." Because information that is useful in an Informed Choice conversation may vary, Extended Employment program staff propose removing the specifics identified in this section. The Department remains committed to supplying information to Extended Employment providers on labor market information, program data, worker rights, etc., at any time.

3300.6015: Extended Employment Support Plans

Extended Employment Support Plans

The elements of the Extended Employment Support Plan 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 Department proposes language to more explicitly incorporate elements that encourage person-centered practices, Employment First, and Informed Choice. Further, the proposed rule would underscore that employment support plans are to be developed each year and clarify what is required in the development of the plan.

Reporting Workers Receiving Natural Supports to the Extended Employment Program

The Department proposes removing references to the provision: “reporting workers receiving natural supports to the Extended Employment program” in the 1998 rule. The proposed rule relies on person-centered planning and informed choice conversations to determine when and how an individual would like their employer to be involved with their Extended Employment provider. Building natural supports in the workplace is encouraged. The Department encourages an Extended Employment provider to help facilitate that process, but this provision does not achieve that goal. The Department is unaware of any current or past use of this provision. The Department believes the provision, if used, would be burdensome for an Extended Employment provider to develop a contract with an employer and adhere to the prescribed amount of visits with the employer in order to report individuals in the program.

3300.6020: Case Record Documentation

The Department proposes a new section that puts case record documentation requirements in one place. The elements of case record documentation are largely unchanged from the 1998 rule, though the proposed rule pulls the documentation requirements into a cohesive and concise section. The goal is for stakeholders to quickly find this information and know what is required for case record documentation.

Extended Employment Provider Determine and Document Serious Functional Limitations to Employment

The Department proposes retaining the ability of an Extended Employment provider to assess an individual’s serious functional limitations to employment for the purposes of determining eligibility for Extended Employment services.

If an individual is referred from an entity other than Vocational Rehabilitation Services 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. The Department and the Extended Employment Rule Advisory Committee considered requiring a third party to determine an individual’s serious functional limitations to

employment. The Department asserts 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.

3300.6025: Provider Reporting Requirements

The Department proposes a new section that puts case record documentation requirements in one place. The elements of Extended Employment provider reporting requirements are largely unchanged from the 1998 rule, though the proposed rule pulls the reporting requirements into a cohesive and concise section. The goal is for stakeholders to quickly find this information and know what data the Extended Employment provider is required to report to the Department.

The Department proposes removing 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 via other methods.

3300.6030: Requirements for Extended Employment Funding

The proposed rule creates a section to define the requirements for funding. In the 1998 rule the Community Rehabilitation Provider eligibility and certification procedures are in various parts of the rule and is difficult to follow.

Requirements for Funding

The Department proposes clearer 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 current certification process requires a separate application and paperwork to complete the process; it is cumbersome and unnecessary. Under the proposed rule, the Department will maintain proper rigor in information gathering through a simplified and streamlined process.

Funding will still require Extended Employment providers to hold and maintain CARF accreditation. The Department proposes removing the requirement to certify specific site locations for Extended Employment providers of Supported Employment. Because Supported Employment services do not necessarily occur at an Extended Employment provider location, the program can be more flexible. The rule will be silent on certifying Extended Employment provider locations.

Funding in Special Circumstances

The Department proposes identifying the conditions under which a Community Rehabilitation Provider is eligible for funding in special circumstances. The proposed rule will streamline 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 would remove those distinct certifications and instead outline when a Community Rehabilitation Provider will be 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 provider will meet the requirements for accreditation by CARF within one year.

3300.6035: Funding

This section provides clarity in funding mechanisms and brings the rule into alignment with identified best practices for program administration. The level of detail added to the funding provisions in the proposed rule will increase transparency and accountability to the administration of the program.

Continuation Funding

The Department proposes aligning funding provisions in the rule with current business practices. The proposed language clarifies the process to determine initial contract allocations. This continuation funding provision is what governs the general appropriation and the year-to-year contracts of the current twenty-seven Extended Employment providers.

Contracted Allocation Subprogram Distribution

The Department, with advice from the Extended Employment Rule Advisory Committee, proposes the following requirements for distribution of an Extended Employment provider's subprogram allocations to prioritize funding for Competitive, Integrated Employment. An Extended Employment provider may adjust the distribution of their total funding allocation among the subprograms in developing the new fiscal year contract from a subprogram with a less integrated setting to a subprogram with a more integrated setting.

To ensure that Extended Employment providers have enough time to adjust to the new definition of Competitive, Integrated Employment, the new definition of Community Employment, and the "employer of record" provision, the Department proposes before May 1, 2020, Extended Employment providers may shift portions of any subprogram allocation to another subprogram allocation. In state fiscal year 2021 and thereafter, the Extended Employment provider cannot shift any of their Supported Employment subprogram allocation to their Community Employment subprogram allocation or their Center-Based Subprogram

allocation; and a provider cannot shift from their Community Employment subprogram allocation to their Center-Based Subprogram allocation.

Cap on Funding for Employment that is not Competitive and Integrated

The Department, with advice from the Extended Employment Rule Advisory Committee, proposes a funding cap for employment that does not meet the definition of Competitive, Integrated Employment. The Department, with advice from the Extended Employment Rule Advisory Committee, proposes phasing out the Center-Based Employment (CBE) subprogram, as described in the next section, and capping the sum of each Extended Employment provider's Center-Based Employment subprogram and Community Employment (CE) subprogram allocations.

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 the state fiscal year 2020 Community Employment subprogram contract allocation.

Phase-Out of Center-Based Employment Subprogram

The Department, with advice from the Extended Employment Rule Advisory Committee, proposes eliminating the Center-Based Employment subprogram. 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. This 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.

The basis for each Extended Employment provider's annual funding reduction will be the provider's state fiscal year 2020 Center-Based Employment subprogram contract allocation.

An Extended Employment provider may shift the funds reduced from the Center-Based Employment subprogram to either their Community Employment subprogram contract allocation or their Supported Employment subprogram contract allocation, or both. The Extended Employment provider may also forfeit the funds. Of the funds reduced from the

Center-Based Employment subprogram contract allocation each year, no more than 50 percent of the funds can be shifted to the Community Employment subprogram.

An example of the reduction is shown in the table below. It is based on an Extended Employment provider’s Center-Based Employment subprogram state fiscal year 2020 contract allocation of \$100,000.

Table 3: Example Center-Based Employment Allocation

	CBE Phase-Out	Reduction Percentage	CBE Reduction Amount	Of CBE Reduction, no more than 50% can shift to CE	CBE Allocation for Following Fiscal Year
Base for CBE Phase-Out Is Set: SFY 2020 Contracts					\$100,000
Year 1: SFY 2021	5% reduction from 2020 allocation	5%	\$5,000	\$2,500	\$95,000
Year 2: SFY 2022	15% reduction from 2020 allocation	15%	\$15,000	\$7,500	\$80,000
Year 3: SFY 2023	20% reduction from 2020 allocation	20%	\$20,000	\$10,000	\$60,000
Year 4: SFY 2024	25% reduction from 2020 allocation	25%	\$25,000	\$12,500	\$35,000
Year 5: SFY 2025	35% reduction from 2020 allocation	35%	\$35,000	\$17,500	\$0

Extended Employment providers should note that underproduction in the Center-Based Employment subprogram during the phase-out period could accelerate reduction of Center-Based funds.

Statewide Allocation

The Department proposes removing language specifying a statewide allocation between the Supported Employment Fund and Non-Competitive Fund. These statewide allocations are not currently used, as allocations from each fund are specific to the Extended Employment provider.

2.5% Transfer Language

The Department, with advice from the Extended Employment Rule Advisory Committee, proposes removing the provision that allows 2.5 percent of an Extended Employment provider’s contracted allocation for one subprogram to be earned by audited production that

exceeds the Extended Employment provider's contracted allocation in another subprogram. Extended Employment program staff and the Extended Employment Rule Advisory Committee propose eliminating this provision to support the goal of prioritizing funds for competitive, integrated employment.

3300.6040: Contract Adjustments

Voluntary Shifts

The Department, with advice from the Extended Employment Rule Advisory Committee, proposes the same subprogram allocation rule language for voluntary shifts as in the initial contract allocations. 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.

Underproduction Penalty

The Department, with advice from the Extended Employment Rule Advisory Committee, proposes simplifying the process by which an Extended Employment provider's contract allocation is amended downward when they have not met their contract allocation in the previous fiscal year.

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 an Extended Employment 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 the underproduction penalty provision from the 1998 rule.

Waiver from Underproduction Penalty

The Department, with advice from the Extended Employment Rule Advisory Committee, proposes simplifying the process by which an Extended Employment provider may be eligible for a waiver from the underproduction penalty.

The proposed rule states that if an Extended Employment 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.

3300.6045: Distribution of Available Funds

This part simplifies and streamlines 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 DEED Extended Employment program staff and Community Rehabilitation Providers. Further, current 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.

Available Funds

The Department proposes identifying the circumstances by which funds may be available from time to time. These available funds are primarily due to underproduction by Extended Employment providers in the previous fiscal year. Funds could be available due to a general increase in the state appropriation or if an Extended Employment provider's contract is terminated.

This part does not govern the general appropriation and year-to-year contracts. The general appropriation and year-to-year contracts are referred to as "continuation funding" and which is covered in section 3300.6035 called "Funding."

Distribution of Available Funds; Considerations

The Department proposes specifying the process of determining how funds will be distributed. The proposed rule 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, best practice for service delivery, 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.

As proposed, there will be four methods by which to distribute available funds: 1) the redistribution to Extended Employment providers that have overproduced in the Supported Employment subprogram provision; 2) the Supported Employment Incentive provision; 3) The New or Expanded Services provision; or 4) the Supported Employment subprogram Rate Adjustment provision.

The Department will best be able to respond to these needs and will do so with the greatest transparency and efficiency if the process is simplified as proposed.

Distribution Method: Redistribution to Extended Employment Providers that have Overproduced in in the Supported Employment Subprogram

The Department, with advice from the Extended Employment Rule Advisory Committee, proposes specifying 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 Extended Employment providers that overproduce in the Supported Employment subprogram, as overproduction demonstrates a need for increased service capacity. The 1998 rule had no clear mechanism for increasing allocations for Extended Employment 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 would situate this provision in the funding distribution part to make clear it is one of several mechanisms for distributing available funds.

Distribution Method: Supported Employment Incentive

The Department, with advice from the Extended Employment Rule Advisory Committee, proposes modifying 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 would allow 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. This change further incentivizes Competitive, Integrated Employment. The proposed rule would situate this provision in the funding distribution part to make clear it is one of several mechanisms for distributing available funds.

Distribution Method: New or Expanded Services

The Department proposes clarifying 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. In addition, New or Expanded Services are designed to be a tool for innovation in service delivery. Thus, the proposed rule allows waiving program requirements to conduct pilot projects. The proposed rule would situate this provision in the funding distribution part to make clear it is one of several mechanisms for distributing available funds.

Any new Community Rehabilitation Provider that might come into the system through the New or Expanded services provision will be subject to the same program rigor as any other Extended Employment provider currently in the system. The proposed rule provides for a different

performance structure but still requires the provider to set and meet production goals in a certain timeframe. If those production goals are not met in the specified time frame, a provider will need to develop and implement a corrective action plan. If the Community Rehabilitation Provider does not adhere to the corrective action plan, DEED will pull the funding. Under the Funding in Special Circumstances provision, a new provider could receive funding without having finished their CARF accreditation as long as they are able to prove to the Department that they will meet the requirements for and receive CARF accreditation within one year.

Annual Survey

The Department proposes removing the annual survey provision found in the New and Expanded services provision in the 1998 rule. The 1998 provision is limiting in its scope and application. The Department highly values input from individuals, Extended Employment providers, and other stakeholders and will engage in a wide variety of methods to gather feedback on the program, the services, and needs. The proposed rule expands upon the evaluation criteria required for the Department to use when distributing funds. The proposed rule requires the Department to seek input from a wider range of stakeholders, evaluate and prioritize the availability of funds, and still maintain the criterion of considering geographic needs as outlined in 3300.6045 Distribution of Available Funds.

Supported Employment Subprogram Rate Adjustment

The Department proposes to maintain the ability of the Department to distribute available funds through a Supported Employment Subprogram Rate Adjustment. Extended Employment program staff recognize that rate increases for the Supported Employment subprogram are critical for Extended Employment providers as providing services in a Competitive, Integrated Employment setting is the most costly setting for Extended Employment providers. The proposed rule would situate this provision in the funding distribution part to make clear it is one of several mechanisms for distributing available funds.

The Extended Employment appropriation increase for rate increases in the next few years that MOHR lobbied for in the 2017 legislative session will not change. Those dollars will be used for rate increases as the legislation calls for, though they will be limited to rate increases for the Supported Employment subprogram per part 3300.6050.

3300.6050: Rates

The Department, with advice from the Extended Employment Rule Advisory Committee, proposes allowing rate increases only for the Supported Employment subprogram. This change will further direct resources to Competitive, Integrated Employment. The Department further proposes removing explicitly stated rate amounts in rule as the rates change year to year. In place of specific rates, The Department proposes adding language establishing that rates are determined by adjusting the rates from the previous fiscal year in proportion to available funding.

3300.6055: Withdrawal of Funds

There is no significant change to the withdrawal of funds section from the 1998 rule.

3300.6060: Provider Compliance Audits

The Department proposes creating a section that details all the requirements and processes for the 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.

3300.6065: Pay and Benefits

The Department proposes creating a section for pay and benefits information regarding the minimum personnel benefits an Extended Employment provider must offer an individual if the Extended Employment provider is the employer of record. This section also has information regarding requirements for an individual who is self-employed. The elements of this part are largely unchanged from the 1998 rule.

3300.6070: Appeal Procedure

There is no significant change to the appeal procedure section from the 1998 rule.

DIRECTORY OF ORGANIZATIONS MEMBER



PawPADs
Pawsitive Perspectives
Assistance Dogs

PawPADs was founded in 2005 in Orgeon, of which it relocated to Minnesota in 2008.

PawPADs focuses on training service dogs for individuals with disabilities. Clients include wounded warriors, children and adults with diabetes, children with autism, and people with disabilities.

PawPADs offers several training programs for their service dogs – Prison Road Puppies, Paw Corps, Project Y.E.S., and the SIT Programs – all of which happen due to the generosity of veterans, inmates, and volunteers.

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PEOPLE & PLACES

'Pony up' for animal's replacement

Replacing employees is tough in today's time of low unemployment. But the folks at Hold Your Horses, an equine therapy nonprofit in Greenfield, have a unique hiring situation on their hands. They must replace Lily, a legendary pony.

Lily is a 20-year-old therapy pony at Hold Your Horses. She has carried countless clients, providing calmness and joy since 2006. Retirement age has arrived as Lily is ready to "go out to pasture." The little brown pony is no longer able to carry even the smallest clients. Lily is a Fjord Haflinger mix and one of the finest therapy ponies to work here. Hold Your Horses will keep Lily but she can no longer assist clients.

An online fundraising campaign has been launched to raise funds to purchase, transport and care for the next pony to fill Lily's horseshoes. Details can be found at crowdrise.com/o/en/campaign/lilys-legacy.

Hold Your Horses is a Minnesota nonprofit that improves the lives of people with disabilities through individualized equine assisted therapy. Hold Your Horses engages a team of professionals that includes licensed clinicians in occupational therapy and psychology. An experienced team of horse handlers are also critical to the professional service delivery.

Occupational therapists provide hippotherapy at Hold Your Horses. Used as a treatment strategy, the horse provides multi-dimensional movement



A Hold Your Horses client and Lily the pony shared some time together. The pony is retiring.

and a dynamic base of support to help challenge and develop skills. In this treatment environment, children with balance, coordination and body awareness impairments can develop skills for greater independence in their daily life activities.

Hold Your Horses hosts equine-facilitated psychotherapy programming. Individual and group services help trauma survivors learn coping and communication skills through equine activities that lead to improved daily living skills. ■

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Lijewski is DHS's first accessibility coordinator

An advocate for people with disabilities and a user of assistive technology for more than 38 years has been named to the new position of accessibility coordinator at the Minnesota Department of Human Services (DHS). Lynnette "Lolly" Lijewski, who has served in a variety of positions in DHS's Disability Services Division since 2005, began her new position in mid-August.

Lijewski brings to the new position a background in digital accessible content and a background in development of agencywide policies. She also has served as chair of the Accessibility Standards and Design Team, a departmentwide group that monitors and promotes digital accessibility throughout the agency, and as chair of the MNIT Technology Accessibility Advisory Committee.

Lijewski said she looks forward to being the department's go-to person on accessibility issues and concerns. "DHS is at an exciting point in its accessibility



Lynette "Lolly" Lijewski

evolution," she said. "Until now, accessibility has been done informally. With the creation of this position, DHS can move to formalizing accessibility and building an accessibility ecosystem to further embed accessibility into the agency's culture, policies and processes."

Lijewski earned a bachelor of social work degree from the College of St. Catherine (now St. Catherine University) in St. Paul and a master's degree in public affairs from the Humphrey Institute of Public Affairs at the University of Minnesota in Minneapolis.

Zbaracki to take helm at PRI

Julie K. Zbaracki is the new chief executive officer at Partnership Resources, Inc. (PRI). PRI provides day treatment and habilitation and supported employment services to adults with developmental disabilities. PRI's mission is "to create partnerships between people with disabilities and the community."



Julie Zbaracki

PEOPLE AND PLACES To page 10

PROPOSED CHANGES TO EXTENDED EMPLOYMENT RULE

The Minnesota Department of Employment and Economic Development (DEED) is proposing changes to state rules that govern the Extended Employment (EE) program. The program helps Minnesotans with significant disabilities keep their jobs and advance in their careers.

Proposed Changes

-  Prioritize funding for competitive, integrated employment
-  Align the program with new practices in the broader disability services system
-  Reflect principles such as person-centered practices and informed choice

Public Comment

Notice of an opportunity to make formal comments on the proposed EE rules will be published Fall 2018. For more information and to sign up for email notifications, please visit the DEED – EE website at:
» mn.gov/deed/eeerule

For further information, contact:
» Extended.Employment@state.mn.us



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From: "DEED: Vocational Rehabilitation Services" <MNDEED@Public.govdelivery.com>

Subject: VRS: Extended Employment Rule Revision



DEED is proposing changes to state rules that govern the Extended Employment Program. The program helps Minnesotans with significant disabilities keep their jobs and advance in their careers. The rule is being revised to prioritize the Extended Employment Program funding for services to support individuals working in competitive, integrated employment.

The proposed rule was published in the State Register on Monday, September 10. You can review the rules and comment on the changes now through Wednesday, October 10. The Office of Administrative Hearings has a [website](#) for you to enter your comments.

For more information and to sign up for email notifications, please visit the [DEED Extended Employment website](#).



Questions?
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From: "DEED: Vocational Rehabilitation Services" <MNDEED@Public.govdelivery.com>

Subject: VRS: Extended Employment Rule Revision

Vocational Rehabilitation Services header

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For more information and to sign up for email notifications, please visit the DEED Extended Employment website [mn.gov/deed/eerule].

Minnesota Department of Employment and Economic Development Logo 2016 Questions?

Contact Us [<http://mn.gov/deed/about/contact-us/index.jsp>]

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- Email (HTML)
- Email (Plain Text)

From: "DEED: Vocational Rehabilitation Services" <MNDEED@Public.govdelivery.com>

Subject: VRS: Extended Employment Rule Revision



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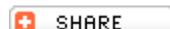
The proposed Extended Employment rule will be published in the State Register on Monday, September 10. You can review the rules and comment on them Monday, September 10 through Wednesday, October 10. The Office of Administrative Hearings has a [website](#) for you to enter your comments.

For more information and to sign up for email notifications, please visit the [DEED Extended Employment website](#).



Questions?
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This email was sent to Email Address using GovDelivery Communications Cloud on behalf of: Minnesota Department of Employment and Economic Development · 332 Minnesota Street Suite E-200 · Saint Paul, MN 55101 · (800) 657-3858



From: "DEED: Vocational Rehabilitation Services" <MNDEED@Public.govdelivery.com>

Subject: VRS: Extended Employment Rule Revision

Vocational Rehabilitation Services header

DEED is proposing changes to the state rules that govern the Extended Employment Program. The program helps Minnesotans with significant disabilities keep their jobs and advance in their careers. The rule is being revised to prioritize the Extended Employment Program funding for services to support individuals working in competitive, integrated employment.

The proposed Extended Employment rule will be published in the State Register on Monday, September 10. You can review the rules and comment on them Monday, September 10 through Wednesday, October 10. The Office of Administrative Hearings has a website [<https://minnesota.oh.ah.gov/discussions/departments-of-employment-and-economic-development-dual-notice-of-intent-to-adopt-rules>] for you to enter your comments.

For more information and to sign up for email notifications, please visit the DEED Extended Employment website [mn.gov/deed/eerule].

Minnesota Department of Employment and Economic Development Logo 2016 Questions?

Contact Us [<http://mn.gov/deed/about/contact-us/index.jsp>]

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"DEED is an equal opportunity employer and service provider."

This email was sent to Email Address using GovDelivery Communications Cloud on behalf of: Minnesota Department of Employment and Economic Development 332 Minnesota Street Suite E-200 Saint Paul, MN 55101 (800) 657-3858 GovDelivery logo [<https://subscriberhelp.granicus.com/>]

October 16, 2018

Minnesota Department of Employment and Economic Development

NOTICE OF CANCELLATION OF HEARING TO PERSONS WHO REQUESTED A HEARING

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

To persons who requested a hearing. The Department is sending this Notice to all persons who requested a hearing.

The hearing is canceled. In the September 10, 2018 State Register, on pages 315 to 331, the Department of Employment and Economic Development published a DUAL NOTICE: Notice of Intent to Adopt Rules without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received relating to the Extended Employment Program. The Notice stated that a hearing would be held on the proposed rules if 25 or more persons submitted written requests for a hearing. In response, the Department received 7 requests for a hearing. Consequently, the Department is canceling the hearing. The Department will adopt the rules without a hearing and then submit the rules and other required documents to the Chief Administrative Law Judge for review by the Office of Administrative Hearings. The Department will consider all written comments when it adopts the rules.

Agency Contact Person. The agency contact person is: Kim Babine, Director of Community Partnerships, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101, 651-379-7349, kim.babine@state.mn.us. Questions or comments concerning the cancellation of the hearing or about the rule adoption process should be directed to the agency contact person.



October 16, 2018

Director of Community Partnerships
DEED Vocational Rehabilitation Services

Revisor's ID Number: AR-4245

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Robin Schuette
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Department of Employment and Economic Development Dual Notice of Intent to Adopt Rules

Closed Oct 10, 2018 · Discussion · 48 Participants · 1 Topics · 48 Answers · 0 Replies · 2 Votes

48

PARTICIPANTS

1

TOPICS

48

ANSWERS

0

REPLIES

2

VOTES

SUMMARY OF TOPICS

SUBMIT A COMMENT

 48 Answers · 0 Replies

Important: All comments will be made available to the public. Please only submit information that you wish to make available publicly. The Office of Administrative Hearings does not edit or delete submissions that include personal information. We reserve the right to remove any comments we deem offensive, intimidating, belligerent, harassing, bullying, or that contain any other inappropriate or aggressive behavior without prior notification.

Sheila Ward · Citizen · (Postal Code: unknown) · Oct 08, 2018 8:27 am

 1 Votes

comment...

Dean Ritzman · Citizen · (Postal Code: unknown) · Oct 08, 2018 9:30 am

 0 Votes

The EE rule has no part or subpart language identifying an EE recipients due process rights to receiving:

- An advance notice of adverse service actions; and
- An administrative appeal hearing similar to DEED/VRS Appeal Procedure Policy. <https://apps.deed.state.mn.us/ddp/PolicyDetail.aspx?pol=67>

An EE Rule hearing should be provided to all interested stakeholders.

John Trepp · Citizen · (Postal Code: unknown) · Oct 09, 2018 9:06 am

 0 Votes

See attachment

Tessa Wetjen · Citizen · (Postal Code: unknown) · Oct 09, 2018 9:37 am

 0 Votes

Department of Employment and Economic Development Dual Notice of Intent to Adopt Rules

Closed Oct 10, 2018 · Discussion · 48 Participants · 1 Topics · 48 Answers · 0 Replies · 2 Votes

I oppose the proposed Extended Employment Rule as currently written. I believe in broadening and strengthening options for employment and housing, not in taking some away. Some people choose to work or live with others with similar disabilities and we should not take away that opportunity.

Kirk Thompson · Citizen · (Postal Code: unknown) · Oct 09, 2018 10:35 am

👍 0 Votes

It appears the rule proposes limitations disabled people from choosing the type of employment settings in which they would like to work. It takes away some employment options for disabled people.

galena schirmer · Citizen · (Postal Code: unknown) · Oct 09, 2018 10:38 am

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. People with disabilities should have the opportunity to earn a living and should get to choose the type of employment setting they prefer. This rule takes away consumer choice and seems to benefit service providers and not those with disabilities.

Melissa Hensley · Citizen · (Postal Code: unknown) · Oct 09, 2018 11:06 am

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. People with disabilities deserve to be able to choose what type of employment setting they prefer. Taking away people's choice is a bad idea.

Sallianne Brown · Citizen · (Postal Code: unknown) · Oct 09, 2018 11:13 am

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written because people with disabilities should get to choose the type of employment setting they prefer and this rule takes away consumer choice.

Rich Tudor · Citizen · (Postal Code: unknown) · Oct 09, 2018 11:30 am

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. The process for collecting input on the proposed rule was a sham. People with disabilities should get to choose the type of employment setting they prefer. This rule takes away consumer choice.

People with disabilities should have the opportunity to earn a living. Competition between service providers provides better options for people with disabilities, and the proposed rule is anticompetitive. This rule seems written to benefit service providers, not people with disabilities.

Department of Employment and Economic Development Dual Notice of Intent to Adopt Rules

Closed Oct 10, 2018 · Discussion · 48 Participants · 1 Topics · 48 Answers · 0 Replies · 2 Votes

Oliver Stremple · Citizen · (Postal Code: unknown) · Oct 09, 2018 11:34 am

👍 0 Votes

I disagree with the proposed Extended Employment Rule as currently written. I think access to gainful employment for folks with mental illness is important and that they deserve to choose work that fits their situation best.

Robin Schuette · Citizen · (Postal Code: unknown) · Oct 09, 2018 11:38 am

👍 0 Votes

You say the key stakeholders are individuals with disabilities, but this rule appears to be taking away choices of people disabilities who are receiving Extended Employment services. It sounds like it will hurt folks who need the most support to maintain employment. I oppose this rule as it is written.

Michael Ayers · Citizen · (Postal Code: unknown) · Oct 09, 2018 11:43 am

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. We should treat people with disabilities - mental as well as physical - with the respect due any other member of our community. That surely includes the opportunity to choose the employment setting they prefer as they pursue earning a living.

Lee Brandt · Citizen · (Postal Code: unknown) · Oct 09, 2018 11:53 am

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. It appears it is limiting and restricting funding for Long-Term support for the people that need it.

Corey Trench · Citizen · (Postal Code: unknown) · Oct 09, 2018 12:04 pm

👍 0 Votes

I oppose the proposed Extended Employment rule as currently written. People with disabilities should get to choose the type of employment setting they prefer. This rule takes away consumer choice. People with disabilities should have the opportunity to earn a living: They want to work. It brings meaning and value to their lives. The focus of this rule should be on people, not service providers.

Nance Lee · Citizen · (Postal Code: unknown) · Oct 09, 2018 12:27 pm

👍 0 Votes

I oppose the proposed Extended Employment rule as currently written. It appears people with disabilities, who would be greatly affected by the proposed rule, were not consulted nor given a voice in the process.

Department of Employment and Economic Development Dual Notice of Intent to Adopt Rules

Closed Oct 10, 2018 · Discussion · 48 Participants · 1 Topics · 48 Answers · 0 Replies · 2 Votes

Bonnie Millette · Citizen · (Postal Code: unknown) · Oct 09, 2018 12:31 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. People with disabilities should get to choose the type of employment setting they prefer. This rule takes away consumer choice. The focus of this rule should be on people, not service providers.

Caitlin Curtis · Citizen · (Postal Code: unknown) · Oct 09, 2018 12:59 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written.

Janelle Hill · Citizen · (Postal Code: unknown) · Oct 09, 2018 1:04 pm

👍 0 Votes

comment...I oppose the proposed Extended Employment Rule as it is proposed. It will reduce the quality of employment opportunities for people with disabilities. An EE rule hearing should be provided.

Kaye Peters · Citizen · (Postal Code: unknown) · Oct 09, 2018 1:29 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. I believe it will ultimately limit choices for those with disabilities and that the rule was not revised in a fair, open and transparent way.

Anne Schuette · Citizen · (Postal Code: unknown) · Oct 09, 2018 1:36 pm

👍 0 Votes

The proposed rule changes may be unintentionally limiting to people with disabilities, leading to isolation in what is already an isolating society. Especially in winter. I personally like working along side people with whom I have things in common. I don't like others deeming who are desirable co-workers for my own well-being. Please examine this topic more thoroughly.

Jeanne Henderson · Citizen · (Postal Code: unknown) · Oct 09, 2018 1:36 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. I believe in broadening and strengthening options for employment and housing, not in taking some away. Some people choose to work or live with others with similar disabilities and we should not take away that opportunity.

Chris Velasco · Citizen · (Postal Code: unknown) · Oct 09, 2018 1:39 pm

👍 0 Votes

Department of Employment and Economic Development Dual Notice of Intent to Adopt Rules

Closed Oct 10, 2018 · Discussion · 48 Participants · 1 Topics · 48 Answers · 0 Replies · 2 Votes

I cannot support the proposed Extended Employment Rule as currently written. Much more input representing the needs of persons with disability labels.

David Smith · Citizen · (Postal Code: unknown) · Oct 09, 2018 1:46 pm

👍 0 Votes

I request a hearing on this matter. *How does the Government of Minnesota believe that disabled persons employed by a non-profit for disabled persons who work together in a sheltered workshop a similar form of discrimination as disabled persons required to receive medical treatment in an institution? *Why is Gallaudet University, Perkins School for the Blind, the 287 Special Needs schools in Minnesota, and similar institutions allowed to operate under the same exact same ruling that DEED relied upon to justify cutting back funding for sheltered workshops? How does the Government of Minnesota justify the taxes it requests to receive from the citizens of Minnesota if the number of disabled persons who are staff, management, board members, committee members, judges, and politicians is "less" than the national average of disabled persons in the country? If the Government of Minnesota cannot be operated on the profits it generates without further receipt of taxes why is a non-profit for disabled persons with fewer resources expected to act to a higher standard?

Paul Wardell · Citizen · (Postal Code: unknown) · Oct 09, 2018 2:06 pm

👍 0 Votes

I oppose this proposed ruling in its current form--both in content and process. Much above has been said about the content, so I will focus on the process. The people most likely to be affected by this proposed ruling are unlikely to have access to email; therefore, they are unable and unaware to comment to this request. You have assumed that is form of evidence-gathering is appropriate. You are mistaken.

Maureen Trepp · Citizen · (Postal Code: unknown) · Oct 09, 2018 2:26 pm

👍 0 Votes

I oppose this proposed ruling in its current- both in content and in process. Your form of evidence gathering is flawed and does not serve the people most affected by this ruling but rather the employers. All people should be allowed to work with those they choose.

Erin Kelly-Collins · Citizen · (Postal Code: unknown) · Oct 09, 2018 2:54 pm

👍 0 Votes

I am opposed to the current form of the Extended Employment Rule and request a hearing.

People with disabilities should get to choose the type of employment setting they prefer.

As written, this rule takes away consumer choice, limits the opportunity people with disabilities have to earn a living, and seems more focused on helping service providers than actual people with disabilities.

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More work is needed before rule changet should go into effect.

Paul Kelly · Citizen · (Postal Code: unknown) · Oct 09, 2018 3:20 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. The gist of the ruling is directed at eliminating Community and Center-Based Employment opportunities.

The report states -

-- "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."

(3300.6045 subp 5)

Many of those in non-Metro areas undoubtedly have difficulties enough under current circumstances obtaining needed services. To believe this can be solved over the next five years while, at the same time, reducing the available funding is simply ludicrous. Has there been enough true, person-to-person outreach to these citizens to determine how vital future services for them should be maintained?

Laurie Brandt · Citizen · (Postal Code: unknown) · Oct 09, 2018 3:51 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. I believe in broadening and strengthening options for employment, not in taking some away. People with disabilities should get to choose the type of employment setting they prefer.

David Schuchman · Citizen · (Postal Code: unknown) · Oct 09, 2018 3:52 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. People with disabilities should get to choose the type of employment setting they prefer.

Bob Wandberg · Citizen · (Postal Code: unknown) · Oct 09, 2018 5:08 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. People with disabilities should have the opportunity to earn a living.

Evangeline Karakatsanis · Citizen · (Postal Code: unknown) · Oct 09, 2018 5:24 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written. There should be more opportunities for those with disabilities to have a choice and voice as to what their

Department of Employment and Economic Development Dual Notice of Intent to Adopt Rules

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employment options and needs are.

Bruce Ario · Citizen · (Postal Code: unknown) · Oct 09, 2018 6:01 pm

👍 0 Votes

I am opposed to the new rule because it takes away choice. It was supposedly the result of Olmstead but has been misconstrued.

Ashley Trepp · Citizen · (Postal Code: unknown) · Oct 09, 2018 6:09 pm

👍 0 Votes

I am opposed to this rule as currently written. The rule as written will have the unintended negative consequences of eliminating choice of employment service providers for persons with disabilities.

Craig Warzaha · Citizen · (Postal Code: unknown) · Oct 09, 2018 6:38 pm

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written." And I think that people with disabilities should have the opportunity to earn a living.

Kristine Haertl · Citizen · (Postal Code: unknown) · Oct 09, 2018 7:28 pm

👍 0 Votes

I oppose the Extended Employment Rule as currently written and too believe the individual John Trepp who commented previously touches on many viable problems with this Rule. Having immediate family members with mental health and developmental concerns, as well as working as a full time tenured Full Professor (in rehabilitation and psychology) in addition to being a researcher, author, and private practitioner in mental health and developmental disabilities, I can attest to the fact that this rule limits choice, discounts reality, and is ignorant to the true needs of individuals. Within my private practice, in addition to clients with mental health needs, I too have clients with IQ's around 50 that LOVE to work but need the extra supportive environment. The current rule would discount work as an option for many of my clients. In addition, the idea that having more than one person with a disability working in a supportive environment is somehow a lesser environment is completely wrong. I am at a University where data shows that up to 40% of our students admit having had some support in the past for a mental health condition. If I teach a class that has multiple students with mental health issues, it is in no way less effective and is a truism to the current data on the prevalence of mental health and developmental conditions in our society. This Rule is flawed and needs immediate attention so that it actually provides choice rather than take it away. There needs to be a hearing on this and the rule needs an overhaul. Thank you.

Larry Fraser · Citizen · (Postal Code: unknown) · Oct 09, 2018 7:38 pm

👍 0 Votes

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Closed Oct 10, 2018 · Discussion · 48 Participants · 1 Topics · 48 Answers · 0 Replies · 2 Votes

I oppose the proposed extended employment rule with people with mental illness...

Rylee Peterson · Citizen · (Postal Code: unknown) · Oct 09, 2018 9:35 pm

👍 0 Votes

"I oppose the proposed Extended Employment Rule as currently written. People with disabilities should have the opportunity to earn a living.

Matthew Menge · Citizen · (Postal Code: unknown) · Oct 09, 2018 9:35 pm

👍 0 Votes

I oppose the Extended Employment Rule as it is currently written. What is most important for the mentally ill is that they can earn a good paycheck, not who they work with. Also the idea that those who are not part of the so-called 'Competitive Employment' are somehow shielded from the real world or reality is flawed. Being part of the workforce often exposes you to clients, customers, other departments and so forth who are not disabled, regardless of whether one's immediate co-workers have the common experience of mental illness. But again, the real issue is that 'non-competitive' employment consistently offers a better paycheck, which is what the mentally ill really need for dignity and well-being,

John Bringewatt · Citizen · (Postal Code: unknown) · Oct 09, 2018 10:50 pm

👍 0 Votes

I am opposed to the proposed Extended Employment Rule as is currently written, and strongly feel that a hearing should be held so that feedback from all stakeholders is heard.

To date, the process has not allowed for adequate feedback, particularly from persons with disabilities themselves. Fairness requires that a hearing be held.

I am particularly concerned that consumer choice be the guiding principle, and that persons with disabilities should be able to choose their preferred employment setting from a full menu of choices.

Deanna Gulliford · Citizen · (Postal Code: unknown) · Oct 10, 2018 10:54 am

👍 0 Votes

Please see attached letter from Goodwill-Easter Seals Minnesota.

Sarah Kreiser · Citizen · (Postal Code: unknown) · Oct 10, 2018 11:19 am

👍 0 Votes

I oppose the proposed Extended Employment Rule as currently written because everyone should be able to chose where they work regardless of their disability and this rule will take away individual choice.

Department of Employment and Economic Development Dual Notice of Intent to Adopt Rules

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Shep Harris · Citizen · (Postal Code: unknown) · Oct 10, 2018 1:05 pm

👍 0 Votes

To the Honorable James LaFave:

As individual provider organizations, which offer Extended Employment (EE) services to thousands of families on an annual basis, we wish to submit comments regarding the Department of Employment and Economic Development (DEED) Dual Notice of Intent to Adopt Rules.

We are grateful to DEED staff for their years of work, communication and collaboration in regard to this rule re-write. Many issues have been discussed and proposed, which we are willing to compromise. However, a recently introduced element within the proposed Rule is causing great concern.

We take issue with the proposed interaction between the State EE Program funding and the Federal Waivered Services funding and how that might affect individual client services. When we look at the Rule process, this issue was not a part of the originally agreed upon draft Rule document; which was forwarded for approval. Only fairly recently, has it been added on to the proposed Rule.

As we understand this new proposal put forward by the Minnesota Department of Human Services (DHS), a client eligible for Waivered services is not eligible for EE services. This interpretation will undoubtedly create situations which limit service choices for clients, present situations limiting continuity and consistency of services for clients and present additional financial challenges to providers by limiting access to funding sources. Recognizing that the costs of providing employment services are continuing to escalate and that many providers have had to use every available funding source to try to pay for these costs, any limitation to the access of dollars to provide employment supports will undoubtedly result in less service options and less service delivery.

To help moderate the impact of this “either waived services or EE services” proposal, the option of delaying implementation to State Fiscal Year 2021 and grandfathering in current clients is appreciative. But it still does not resolve the challenges stated above for new clients requiring services, once this specific aspect of the Rule delay is implemented.

AccessAbility, Inc.
Avivo
Courage Kenny Rehabilitation Institute (Allina Health)
Functional Industries
Goodwill-Easter Seals Minnesota
Lifeworks
MRCI
MSS
Occupational Development Center, Inc.
Opportunity Partners
ProAct, Inc.
Productive Alternatives, Inc.
Rise
Tasks Unlimited
WACOSA

Department of Employment and Economic Development Dual Notice of Intent to Adopt Rules

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West Central Industries, Inc.
Winona ORC Industries, Inc.

Amanda LaGrange · Citizen · (Postal Code: unknown) · Oct 10, 2018 1:12 pm

 0 Votes

I oppose the proposed rule as currently written. I believe these rules are best written with those directly impacted by the laws engaged, but this presently is skewed heavily to service organizations, not the individuals.

Peggy Henrikson · Citizen · (Postal Code: unknown) · Oct 10, 2018 1:37 pm

 0 Votes

I oppose the proposed Extended Employment rule as currently written. People with disabilities should get to choose the type of employment setting they prefer.

Karen Christensen · Citizen · (Postal Code: unknown) · Oct 10, 2018 1:46 pm

 0 Votes

I oppose the proposed Extended Employment Rule as currently written. I believe it will ultimately limit choices for those with disabilities and that the rule was not revised in a fair, open and transparent way.

Ron Benner · Citizen · (Postal Code: unknown) · Oct 10, 2018 2:00 pm

 0 Votes

I oppose the proposed Extended Employment Rule as currently written. I believe in broadening and strengthening options for employment and housing, not in taking some away. Some people choose to work or live with others with similar disabilities and we should not take away that opportunity.

Candace Meinders · Citizen · (Postal Code: unknown) · Oct 10, 2018 2:56 pm

 0 Votes

I like my job and would like to continue with it the way it is. Therefore I am opposed to the new rule.

Mary T'Kach · Citizen · (Postal Code: unknown) · Oct 10, 2018 3:13 pm

 0 Votes

Having spoken with both persons with disabilities and parents of children with disabilities it is my opinion that the proposed rule will reduce the options and opportunities for employment for people with disabilities. It appears that rather than increasing funding and appropriate programs to support persons with disabilities the new rule simply transfers funding from one program at the expense of another program rather than adding much needed funding overall. For both of these reasons I oppose the proposed

Department of Employment and Economic Development Dual Notice of Intent to Adopt Rules

Closed Oct 10, 2018 · Discussion · 48 Participants · 1 Topics · 48 Answers · 0 Replies · 2 Votes

rules. Thank you,
Mary T'Kach

Willmar
1300 SW 22nd Street
P.O. Box 813
Willmar, MN 56201
Phone: 320-235-5310
Fax: 320-235-5376



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RECEIVED

By: OAH on 10/8/18 @ 8:27 AM
Sheila Ward

October 8, 2018

To the Honorable James LaFave:

As individual provider organizations, which offer Extended Employment (EE) services to thousands of families on an annual basis, we wish to submit comments regarding the Department of Employment and Economic Development (DEED) Dual Notice of Intent to Adopt Rules.

We are grateful to DEED staff for their years of work, communication and collaboration in regard to this rule rewrite. Many issues have been discussed and proposed, which we are willing to compromise. However, a recently introduced element within the proposed Rule is causing great concern.

We take issue with the proposed interaction between the State EE Program funding and the Federal Waivered Services funding and how that might affect individual client services. When we look at the Rule process, this issue was not a part of the originally agreed upon draft Rule document; which was forwarded for approval. Only fairly recently, has it been added on to the proposed Rule.

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To help moderate the impact of this "either waived services or EE services" proposal, the option of delaying implementation to State Fiscal Year 2021 and grandfathering in current clients is appreciative. But it still does not resolve the challenges stated above for new clients requiring services, once this specific aspect of the Rule delay is implemented.

Please help us continue to provide person-centered services, choices, continuity of services, and support services for people with disabilities. There are limited providers in the area and if the only option is a waiver funded provider, this will reduce or eliminate the choices that are available. The financial devastation for providers will potentially eradicate their ability to continue to provide services.

Thank you for your consideration regarding the proposed change to EE funding.

Sincerely,

West Central Industries Staff

I oppose the proposed Extended Employment Rule as currently written.

The proposed rule is horrible; the long-term impact will to reduce the number of people with disabilities working in the community, and to reduce the quality of employment opportunities for those able to obtain employment. It appears to have been drafted by folks with a willful misunderstanding of Olmstead, and a strong disdain for consumer choice. Furthermore, DEED's claim to have sought broad input in drafting this rule is fraudulent. DEED's process systematically excluded voices they chose not to hear and ignored input contrary to their pre-disposed agenda.

Since the outcome, i.e., the proposed rule, is more important than the flawed process, I will address the process first before proceeding to more important issues:

Around the time that DEED began the process that led to the proposed rule, I happened to run into a DEED staffer who mentioned that the process was beginning, or would soon begin, and that there would be, as had been the case with previous rewrites, an Advisory Committee formed to assist DEED in this effort.

I was long-retired by then, and without any vested interest in the rule. But as an active member of my local NAMI, as a person who had contributed significantly to the 1991 and subsequent rewrites, and as a person who greatly admired certain elements of the original RULE 627, I was interested in seeing where the process would lead, and I kept my ear to the ground. When, after much delay, the Advisory Committee was created, I called and wrote to DEED to offer my services, strictly on a volunteer basis at no cost to DEED.

I never heard back. But, again ear to the ground, I heard that the committee was starting up, and went to the first meeting. I felt I was well-received, at least by some members of the provider community. But soon after I received a letter from DEED stating that I was NOT a member of the committee. I called to say that I would then attend strictly as a non-voting, non-participatory "observer."

At that point I got a second letter stating that DEED's attorney had determined that the Advisory Committee meetings were not covered by Minnesota's "Open Meeting Law," and that therefore, I would not be allowed to attend, even as an observer. I doubt that DEED was on solid legal ground here, but at this point it was pretty clear that DEED did not want my advice. So I gave up before they sought a restraining order.

It's not like I'm a dangerous or physically threatening person. My credentials to participate in an Advisory Committee assisting DEED in the rewrite of the Extended Employment Rule are as follows:

- For 31.5 years (mid 1978 to Dec '84 as Program Director, 1985 through 2009 as Executive Director) I worked for Tasks Unlimited, an Extended Employment Provider.
 - During 24 of the 25 years that DEED was publishing their wage data and I was running the Tasks Unlimited Extended Employment program Tasks

consistently posted the highest wages paid to “Disabled Workers” in the State of Minnesota, often exceeding one standard deviation above the norm.

- I retired from Tasks, at the end of 2009, at age 62, due to the health of a family member.
- Beginning approximately in 1967 through 1990, and continuing after a slight hiatus through at least 2000, I served on the Extended Employment Advisory Committee, for years as Chair, that essentially drafted the 1991, 1995 and current rule.
 - It might be worth noting that at one point during this process, I received a special award from Governor Carlson (the only member of the Committee so recognized) for my contributions in assisting DEED with the rule-making process, and particularly for my creative ideas and my skill in brokering compromises between competing interests.
- I was an active member of Board of Directors of the trade association representing EE providers (originally MARF, the MACRO, now a new name), serving two years as the Chair of this organization during one of the rewrites.
- In 1991, while finishing my Masters of Public Administration Degree from Hamline University, I wrote a Masters Thesis entitled, “Fixing 627, an Analysis of Public Policy Issues related to the Allocation of Funding for Extended Employment in Minnesota.”
 - It might be worth noting that a senior staffer of (what is now DEED) served on the committee at Hamline that reviewed my thesis; and that
 - My thesis was recognized as the best Masters Thesis submitted to Hamline during the 1990-1991 school year.
- Since approximately 2010, I have served on the Board of Directors of NAMI of Hennepin County, and currently serve as the Chair of the Advocacy Committee.
- Also in retirement, I provide consulting services to organizations providing employment assistance to people with (non-disability related, e.g., previously incarcerated) barriers to employment.
- And although I am now 70, my kids still trust me to babysit the grandkids.

One might think that my knowledge of the history of Extended Employment in Minnesota, and my expertise in the effective administration of Extended Employment services would have been an asset to this latest Extended Employment Advisory Committee. But DEED went to extraordinary lengths to keep me away from the Advisory Committee because I was a threat; not a physical threat, it was my ideas and my knowledge of Extended Employment that DEED finds threatening. The leadership of DEED appears to feel threatened by anyone with IDEAS THEY DON'T AGREE WITH.

The published document includes a lengthy description of the formation of and the contributions of the Extended Employment Advisory Committee, and the minutes of this body's work reveal that:

- No consumers of Extended Employment services were actively engaged;

- No one representing the interests of people with mental illness were actively engaged.

I've spoken to both providers and consumers who attended one of the public listening sessions DEED held during the rule-writing process, and they seemed to agree. DEED was not interested in any opinions that differed from theirs. The claim that DEED sought outside input is fraudulent!

PROBLEMS WITH THE PROPOSED RULE

But the proposed rule itself is more important than the flaws in the rule-making process. I have organized my objections to this proposed rule in 5 main categories:

- Consumer Choice
- Wages in “Enclaves” vs wages in “Competitive Employment”
- Long-Term Supported Employment vs Serial Placement Failure
- A History Lesson, and
- Problems with the SONAR

Following this, I offer three alternatives, each superior to the proposed rule.

Consumer Choice: Any reasonable reading of Olmstead produces an understanding that Consumer Choice lies at the heart of both the initial litigation and the settlement. One would assume, therefore, that the purpose of any rule-change purported to be inspired by the need to comply with Olmstead would be designed to expand Consumer Choice.

And yet, the primary purpose of this rule-change is exactly the opposite; DEED's intent here is to SEVERELY LIMIT Consumer Choice. This is not some misinterpretation on my part; DEED's Statement of Need and Reasonableness (SONAR), required for rule-changes, clearly states that “The purpose of the proposed rule is to limit funding for services supporting individuals in employment settings that are not competitive.” And DEED's twisted definition of “not competitive” focuses on whether any of one's co-workers have a disability. In plain language, DEED's purpose here is to restrict Consumer Choice to types of employment pleasing to DEED.

- Even if one assumes that DEED is all-knowing and knows better what is best for each and every Minnesotan with a disability than the individual themselves, DEED's patronizing people with disabilities is offensive.
- Worse, DEED seems to have no clue what is best for Minnesotans with a disability, especially not for those who seek employment with the intent of earning a living. DEED treats the generation of income through one's employment as though it were an insignificant byproduct of employment.

Although hard data is difficult to come by, it appears that the State of Minnesota (DEED)'s interpretation of Olmstead is not in the mainstream of how most states are interpreting Olmstead. What is clear is that DEED's notion, that groups of people with disabilities should at all times be kept separate from one another, is an extreme outlier among civilized societies.

Societies in modern Europe and modernized Asia whole-heartedly EMBRACE ideas like inter-dependence, like peer-support, like folks with disabilities working together to create

a better life for themselves. Societies around the world typically understand how easily people with disabilities get left behind, and that groups of such persons working together in small groups is a better, healthier, way to protect their interests.

Most of the people with disabilities that I know pursue employment primarily for the same reason as the rest of humanity – to earn money. Of course employment provides an opportunity to acquire new skills, to increase self-esteem, to develop social connections with one’s co-workers, etc., but the fundamental reason that people put up with the inevitably-stressful demands of employment is to generate income, perhaps to live on; perhaps to supplement other sources of income.

During my career, I worked with a broadly diverse population of people with serious disabilities who were seeking employment. Many had unrealistic expectations re employment and many had poor work skills, Most came to me discouraged about their prospects for employment. Most had poor work histories or no work history at all. Not one person ever walked in our doors who didn’t care how much they would get paid.

Perhaps there are folks who value “integration” over a living wage. I never met one, but surely such persons could exist – and they should have the right to choose that. People who choose to earn a living should also have the right to choose.

DEED seeks to supplant the choice of individuals with disabilities with DEED’s choice because:

- DEED thinks they know better.
- DEED thinks that working along side other people with disabilities is a horrible thing that should be avoided at all cost.
- DEED has a fantasy that a person with a disability who works exclusively with non-disabled individuals will develop strong supportive relationships with his/her non-disabled co-workers, eventually causing one’s disability to disappear. (I am not aware of this ever happening, but even if there are such examples, they are surely rare.)
- Generally, people with disabilities working exclusively with non-disabled individuals tend to be isolated. Their non-disabled co-workers might be polite, they might be included in an annual social event for all employees; but they don’t get invited to the cabin for the weekend.
- One fellow I know, a man with a serious disability, has told me repeatedly, “I don’t want to be ‘Benny’ on *L.A. Law*, I don’t even like lawyers. I prefer the company of people who understand how hard it is just to make it in to work everyday. Why don’t I get to choose who to hang out with?”

Wages in “Enclaves vs wages in “Competitive Employment: In recent years, DEED has argued (based on flimsy studies with flawed research methodology) that people with disabilities working with other people with disabilities (where they like and support each other) in what DEED chooses to label an “enclaves,” are paid less than those working in an “integrated” setting, i.e., one where they never come into contact with other people with disabilities.

DEED knows that this is not true, and has hard evidence that proves it's not true! For over 30 years, DEED has collected (and audited) wage data for Extended Employment participants; and this data proves (or would prove, if DEED didn't skew the data, and maybe in spite of their efforts) that disabled Minnesotans, out in the community, working together in what DEED calls "enclaves," earn substantially MORE than similar folks working in what DEED defines as "Competitive Employment."

DEED systematically skews their own data in an attempt to camouflage the historic success of "enclave" employment in Minnesota:

- In their evaluation of "enclave" employment, DEED exclusively (and bizarrely) focuses on wages-per-hour, never wages-per-month, a far more meaningful metric. Anyone who doubts that wages-per-month are a more meaningful measure of one's employment success should apply to lease an apartment, or for a car loan.
- Focusing on wages-per-hour allows DEED to tout the "success" of people with disabilities engaged in "Competitive Employment" who earn \$12/hr, but who work only one half-day a week; and to value this above the experience of people with disabilities engaged in "enclave" employment who earn \$15/hr, and who work 40 hrs/week, generating ten times the income.
- In focusing only on minimum wage in this rule (never living wage), DEED steers away (essentially eliminating) from creating a path for a person with a disability to "earn a living." According to a recent analysis by MIT (Dr. Amy Glasmeier), the current living wage in the Twin Cities Metropolitan Area (where the majority of Minnesotans with a disability live) is approximately \$12 per hour – for people working 40hrs/wk. There are a significant number of people with disabilities working in "enclave" employment meeting this standard, but almost no one in DEED's "Competitive Employment" category.
- And in the most brazen of DEED's frauds, DEED has historically classified the wage data of those in "enclave" employment earning especially high wages as being "Competitive" even when they fail DEED's definition of "Competitive," so as to make "Competitive" look better versus "enclave."

In truth, DEED has never fully implemented the current rule with respect to wages, nor will they ever fully implement the proposed rule with respect to wages. Both the current rule and the proposed rule require that Disabled Workers receive "Customary Wages and Benefits," i.e., the same wages and benefits paid by the employer to individuals without disabilities performing the same or similar work.

This is an impressive-sounding requirement; and a well-understood joke. DEED requires a ton of documentation around participant eligibility and hours of work, but routinely "winks" at the "Customary Wages and Benefits" requirement as long as the participant work in a setting with no other persons with disabilities. And they will surely continue to "wink" under the proposed rule.

Long-Term Supported Employment vs Serial Placement Failure: The State of MN's Extended Employment program (funding) was designed to be, and should be, about

providing long-term support to “Disabled Workers” who need long-term support. DEED already has a much larger (in terms of annual dollars) funding stream, one in which matches federal dollars with state dollars, to support the “placement” of “Disabled Workers” into “competitive employment” as defined by DEED. Extended Employment was created and has continued to exist to fill the unmet need for long-term support.

It is ironic that DEED is proposing to cannibalize Extended Employment, and turn it into yet another job-placement program, during a time when job openings outnumber job-seekers by 5:1. The organization that I used to work for is already and eagerly converting from what DEED calls an “enclave” model to the preferred placement model because it is ridiculously easy, and already lucrative through funding streams outside of Extended Employment, to “place” folks with disabilities into employment.

Think about it. In today’s economy, it is much easier for a person with a disability to get a job, than to keep it. Current federal rules include incentives to providers to ensure that the “placed” individual retains his/her employment for ninety days. But most of the disabilities experienced by people enrolled in Extended Employment are long-term, if not permanent. These disabilities can be ameliorated by a period of stable employment, but they don’t always disappear in ninety days, often not in many years.

When our economy cycles back the other direction, and we know it will, people with a disability, engaged in DEED’s fantasy of “competitive employment,” will be the first folks laid off. Ninety day retention is better than no retention, but what about keeping the job for five years? For twenty years? That was the goal of Rule 627, and should be the true goal of Extended Employment.

Problems with the SONAR: One of the weakest elements of the SONAR attached to the proposed rule is the feeble assertion that the existing rule is “confusing to current DEED Extended Employment program staff,” and that their confusion “restricts transparency and accountability in program administration.”

I am aware that there has been significant turnover in this division in recent years, especially with the retirement of John Sherman, a key staffer who not only knew how to administer the existing rule, but who had been an active participant in the 1991 and subsequent re-writes (maybe even in the original RULE 627?). Personally, I disagreed with Sherman over several rule-interpretations through the years, but no one could dispute that Sherman understood the rule and how to administer it.

But Sherman is almost as old as I and his pending retirement was known to DEED for at least twelve months, probably longer. If DEED had had any intention of retaining the spirit of RULE 627, it would have been relatively simple for Sherman to have trained several existing or incoming staff in how to administer the Rule. Even after his retirement, Sherman was and still is likely available to perform this service. And even if Sherman is not available, I, or any number of other EE veterans, would be available. All DEED would need to do would be to ask.

DEED hasn't asked because DEED wants it's arbitrary discretion back. RULE 627, and even the current version to a degree, distribute funds based on published, mathematical formulas – which by definition are transparent. DEED seeks to replace this with unlimited discretion. The proposed rule is not more transparent; it is less transparent.

It is true that RULE 627, and it's subsequent revisions are complex to a degree that makes the rule difficult for outsiders, those who have never worked with it, to understand based on a casual reading. But guess what? Assisting a person with a severe disability in procuring employment, especially employment that provides a living wage, and assisting the individual to maintain said employment over the years, is a complex problem. And complex problems require complex solutions.

At best, the proposed rule is a simplistic and therefore unrealistic solution to a complex problem. At worst, the proposed rule is a blatant power-grab designed to solve DEED's problem at the expense of people with disabilities.

History Lesson: Although DEED's SONAR tries hard to suggest otherwise, there are several alternative approaches to the problems and inefficiencies of the current rule, and the history of Minnesota's Extended Employment program points to one of them.

Prior to 1980, the State of Minnesota (it wasn't DEED then) only funded Sheltered Workshops and REFUSED financial support for organizations placing people with disabilities into real jobs in the community. Only after a series of embarrassing stories about people working for pennies an hour, while the folks running Sheltered Workshops were getting rich, did the State draft the first Extended Employment Rule, often referred to as "Rule 627."

Another major complaint about the existing system was the arbitrary (and perhaps corrupt) manner in which the State determined which programs, serving which types and degrees of disabilities, would get funded. A major objective of the Rule 627* was therefore to eliminate (or at least limit) the State's discretion in this process. Rule 627 did this, creating a truly "free-market," "performance-based," system for funding the support of employment for "Disabled Workers," i.e., persons with disabilities. This system would have solved the problem of abused discretion had the State ever implemented the rule.

* I had no involvement in the drafting of this first EE Rule.

Under Rule 627, non-profit organizations meeting certain threshold criteria could serve AS MANY "Disabled Workers" as they chose to serve (assuming verification of disability). Said organizations would report audited data to the State, and at the end of the fiscal year, the State would divide the pool of funds allocated by the Legislature by the total number of hours of paid employment produced by said non-profits, to determine the rate of reimbursement. A completely transparent mathematical formula would distribute the funds allocated by the Legislature versus the corrupt discretion of DEED staff.

This rule was supposed to go into effect for State Fiscal Year 1985. But State employees, furious at losing their discretion, flat-out refused to implement the new rule, and never fully implemented this legally propagated rule! Finally, in 1991, after six years of incompetence, foot-dragging, threatened litigation, and a Legislative Auditor's Report that found a pattern of "Manipulating allocations so as to preserve the status quo," the State produced a series of revisions to Rule 627.

Regrettably, I served on the Advisory Committee advising the State on this series of rewrites, leading to the current rule, which I call "Rule 627-Lite." I now regret the compromises made; I never dreamed that they could lead to DEED eliminating consumer choice.

It is important to note that despite the foot-dragging, etc, the partial implementation of Rule 627 was incredibly effective! In four years, from State Fiscal Year 1986 to SFY 1990, the number of Minnesota Disabled Workers in Supported Employment (working out in the community) more than doubled. And job retention went up also, because job retention by Disabled Workers was financially incentivized for providers.

Rule 627-Lite maintained certain "performance-based" elements of the original rule, but effectively eliminated the "free-market" elements by "capping" the number of hours of employment each provider organization could produce. Non-profits could, in theory, serve as many "Disabled Workers" as they could find employment for, but they could only be reimbursed for providing the number of hours per year that the State said they could produce. Another way in which this revision allowed the State to recapture some of their discretion was that any new funds allocated by the Legislature, thus allowing "cap" numbers to increase, were to be "distributed" at the State's (DEED's) discretion.

"Capping" not only ended the period of growth in the Extended Employment System, it initiated a permanent downward spiral in the number of "Disabled Workers" that could be served. The cost of providing support services to "Disabled Workers" naturally grew with inflation, creating pressure on the State (DEED) to raise the reimbursement per hour of employment. This was aggravated by Rule 627-Lite grandfathering in ineffective services that should have been eliminated by Rule 627's "free-market," but had been protected (in violation of the law) by the State's failure to fully implement Rule 627.

Most years, some organizations providing ineffective services failed to produce as many hours of "Disabled Worker" employment as they had been allocated. Rule 627-Lite dictated that each organization fulfilling their contract would get the same allocation next year but, after a 5% grace, the unproductive organizations would have their future allocations reduced, thus freeing up funds for redistribution.

But here again, Rule 627-Lite gave the State (DEED) discretion in how to allocate these funds. They could have, in the spirit of a "free market," allocated these funds to those organizations who had "over-produced," i.e., provided more hours of "Disabled Worker" employment than they were allowed to bill for. But mostly, the State (DEED) chose to

respond to pressure from organizations providing ineffective services, and to instead increase the state-wide reimbursement rate.

At no time were there ever enough funds to serve every Minnesotan with a disability. But the State (DEED), under Rule 627-Lite and subsequent revisions, consistently chose to help provider organizations keep up with inflation, despite inefficient strategies. DEED did this despite the fact that some provider organizations were generating and banking substantial annual “budget surpluses,” i.e., profits. Rather than expanding services to more of the unserved, potential “Disabled Workers,” the State (DEED) knowingly chose to pad the profits of their non-profit “provider-partners.”

And since the Legislature’s allocation for Extended Employment failed to keep up with general inflation or the inflated reimbursement rate, fewer and fewer Minnesotans with a disability received Extended Employment every year. And as DEED’s own data surely shows, this trend continued. The proposed rule, which ham-handedly favors inefficient strategies over efficient ones, will accelerate the decline of Extended Employment in Minnesota.

But the “capping” of allocations and the State’s (DEED’s) choice to inflate reimbursement rates was only one blow to the original and highly effective Rule 627. “Free-market” was an important innovational element of Rule 627, but even more important was the “performance-based” element.

It is worthwhile to pause here to admire the brilliance of a rule focusing on outcomes. Typically, government rules and regulations focus on process issues that someone believes, or at least pretends to believe, will produce desirable outcomes. But frequently, the cause-and-effect relationship between the mandated processes and the identified outcomes is very weak,, sometimes non-existent. Rule 627, almost unique in state government history, rewarded providers for results/outcomes, and only for results/outcomes. And it worked. During the brief period of partial implementation of Rule 627, the wages of Disabled Workers skyrocketed.

It is trendy to talk about “performance-based funding,” but real implementation of “performance-based funding” is extremely rare. Government funds, at the Federal, State and Local levels are typically distributed based on need, cost, politics, and occasionally on the brilliant prose of a response to a “Request for Proposals” promising (but rarely delivering) wonderful outcomes. Another common strategy, the one to which DEED has transformed Extended Employment, through continual rate increases, is the system where “everybody gets what they got last year,” perhaps with the occasional inflationary increase.

Rule 627 was truly different. Rule 627 was real “performance-based funding.” Provider organizations did not, under this rule, get reimbursed on the basis of their costs. They did not get reimbursed based on the credentials of their staff. They did not get reimbursed based on how hard they tried, how well-meaning they were, how sincere they might be. They did not even get reimbursed for “placing” a person with a disability in a “job.” They

only got paid (not actually reimbursed) for real outcomes, i.e., for hours of paid employment by a “Disabled Worker.”

I applaud the proposed rules intent to discontinue recognition of sub-minimum wage employment (I would prefer at least a differential rate for “living-wage” employment and I wish they would enforce their rule re “comparable wage.”) But the “capping” of hours eliminates not only the “free market,” it essentially eliminates “performance-based funding,” because providers utilizing effective strategies almost always max-out their allocations, often with several months left in the State Fiscal Year. No longer will there be any real sense that a provider can increase revenue by working harder, by working smarter, by serving more people, or through any sort of innovation. Such efforts reap no rewards. The spirit of Rule 627 dies with this proposed rule.

Who is responsible for this outrage? Certainly not people with disabilities or folks truly representing the interests of people with disabilities. The proposed rule was written by AND FOR the convenience of the professional community and DEED. DEED staff were insulted that their discretion was replaced with simple, mathematical formulas, and have plotted since 1983 to regain control of who gets funded for what.

Nor is the provider community innocent. Providers were extremely uncomfortable with the impact of Rule 627 that forced them to produce, demanding of them, in a sense, continual improvement. They are much happier with the proposed rule that guarantees them the same funding year after year, without having to improve efficiency.

It would be an exaggeration to suggest that neither DEED or the provider community cares about people with disabilities; at a superficial level, they probably do. But DEED cares more about regaining their power, and DEED and the provider community both care more about making their jobs easy than they care about what is best for people with disabilities.

Remedies:

1. One obvious remedy would be to trash the proposed rule, leaving the existing rule in place.

The existing rule has a number of flaws (none of which are solved by the proposed rule), but it is far superior to the proposed rule. The SONAR begins by stating that the purpose of the proposed rule is to eliminate consumer choice and replace it with DEED choice (because DEED knows better). The rest of the SONAR flows from this.

Despite acknowledging that EE is a purely state-funded program, DEED conveniently suggests that the feds are requiring the proposed changes. Other states, perhaps because they understand that Olmstead is about consumer choice, are not interpreting federal mandates the way DEED does.

2. If one wanted to “tweak” the existing rule in a positive direction, there are a number of changes that could help strengthen the rule:

a. Demanding that all employment provided through EE be employment that pays minimum wage (as the proposed rule does) is a good idea and should be retained in any re-write.

b. Better yet would be to redirect the focus from “minimum wage” to a “living wage.” Determining exactly what a “living wage” is, and keeping the determination relevant over time would require some effort from DEED, but as was said above, complex problems require complex solutions.

c. Even better would be to demand that all employment provided through EE be employment that provides benefits meaningful* to the individual EE participant.

* Eligibility to enroll in/purchase some sort of health insurance that an individual EE participant cannot afford or benefit from should not count as “meaningful.”

d. Eliminating the current rule’s “anti peer-support” bias, i.e., the discrimination against people with disabilities working together, and replacing it with a bias (i.e., financial incentives for providers) for good-paying jobs would be an improvement.

e. And certainly eliminating the silliness of discriminating against “disabled workers” who receive their paychecks from their service provider (because the service provider is contracting with a large employer) would be an improvement.

3. THE BEST ALTERNATIVE would be to draft a modern version of RULE 627 that retains not only the “outcome-based funding” element of RULE 627, but also the “free-market” element. Many more people with disabilities, perhaps even double or triple the current number, could be and would be served under the original RULE 627, “free-market” system.

Since 1991, various EE rules, including the current rule, and certainly the proposed rule, severely limit the number of people with disabilities who can receive support services. Because the reported “cost” of providing support services (using outdated methods) increases faster than the pool of dollars allocated by the Legislature, the number of Minnesotans that can be served has shrunk over time, and will continue to shrink under the proposed rule. A RULE 627, “free-market” would guarantee a reversal of this trend.

“Free-markets” are, by definition, competitive, which means some providers will win and some will lose. In a free-market system, like the one envisioned by the original Rule 627, provider organizations utilizing efficient methodologies would serve more people with disabilities and capture a larger share of the available dollars. Provider organizations utilizing inefficient methodologies would serve fewer people with disabilities and capture a smaller share of the available dollars. It’s called “competition.”

This sort of competition is, unfortunately, anathema to the industry, and was a driving force behind the foot-dragging and eventual scuttling of RULE 627 back in 1991. But even under the partial implementation of RULE 627 during the years between 1985 and 1991, significant amounts of funding shifted from provider organizations utilizing inefficient methodologies to provider organizations utilizing efficient methodologies. A couple of the organizations utilizing inefficient methodologies got out of the EE business altogether. Others, choosing to survive, scrambled to become more efficient.

This was a stressful time for both provider organizations and the State department administering the program.

But the real winners were people with disabilities! Almost overnight, people with disabilities who had been confined within sheltered workshops earning pennies per hour (the provider organizations had insisted that either that was all they were capable of, or that they didn't mind) were suddenly finding jobs out in the community that paid minimum wage. Better yet, hundreds of people with disabilities (especially people with under-served disabilities such as mental illness) who were unable to obtain services from provider organizations with long waiting lists, were suddenly able to obtain services from provider organizations seeking to maintain or increase their funding.

Industry leadership, i.e., established provider organizations and the state agency (not called DEED then) was eager, almost in a panic, to stop this. And did with the Rule 627-Lite. A casual reading of the proposed rule, with its frequent and glowing references to "Competitive Employment" might lead the reader to conclude that DEED is pro-competition. But the opposite is true.

THE PROPOSED RULE IS DESIGNED TO EXPAND CONTROL OF EE FUNDS BY A MONOPOLY OF ESTABLISHED PROVIDERS – AT THE EXPENSE OF PEOPLE WITH DISABILITIES.

RECEIVED

By: OAH on 10/10/18 @ 10:54 AM

Deanna Guillford



October 9, 2018

To the Honorable James LaFave,

As a provider organization of Extended Employment (EE) services, Goodwill-Easter Seals Minnesota would like to submit the following comments regarding the Department of Employment and Economic Development (DEED) Dual Notice of Intent to Adopt Rules.

We appreciate the efforts by DEED staff to seek input in this rule re-write. Specifically, we support Minnesota's commitment to person-centered practices, informed choice and Minnesota Employment First Policy with a focus on competitive, integrated employment. As a provider, we strive for these exact same priorities in our work with individuals every day.

The proposed changes simplify operation; increasing efficiencies and streamlining processes. We also appreciate that the new rule updates and further defines outdated language from the last rule revision in 1988.

However, we do have a few concerns regarding the proposed rule change and specifically, the addition of Federal Waivered Services funding and how that interacts with the State EE Program. Our concern is that this new change limits consumer choice, continuity of care and is contrary to person-centered planning. Our understanding is that a consumer with waived services for non-employment related services like housing (for example), would no longer be eligible for EE services. This seems contrary to the goal of employing more individuals with disabilities. This DHS requested addition also seems contrary to the Medicaid rule of payer of last resort and the DHS Guiding Letter for access to Waiver funds. Ideally, this significant change would have been included in the EE Rule change committee for both input and discussion.

Our primary concern is how this new rule would impact individuals with disabilities who are seeking employment. With this in mind, our recommendation would be to delete the Waivered Services addition out of the new EE rule or exempt employment related waiver services: EDS; job placement and job retention.

Thank you for this opportunity to provide input to this important decision.

Sincerely,

A handwritten signature in blue ink that reads "Michael Wirth-Davis".

Michael Wirth-Davis, D.P.A.
President and CEO

August 29, 2018

VIA EMAIL ONLY

Kim Babine
Department of Employment and Economic Development
First National Bank
332 Minnesota St, Ste E200
Saint Paul, MN 55101
kim.babine@state.mn.us

**Re: *In the Matter of the Proposed Permanent Rules Relating to
Extended Employment Services*
OAH 60-9044-35198; Revisor R-4245**

Dear Ms. Babine:

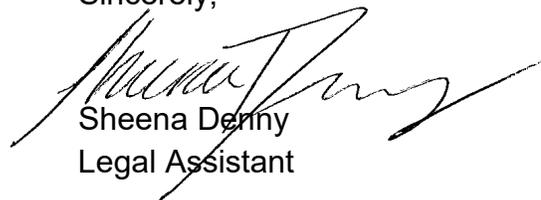
Enclosed herewith and served upon you please find the **ORDER ON REVIEW OF ADDITIONAL NOTICE PLAN AND DUAL NOTICE** in the above-entitled matter.

Prior to publishing the notice in the State Register, please notify the Office of Administrative Hearings (OAH) at katie.lin@state.mn.us in order to activate the agency's eComments page on OAH's website. **Please note that if you do not notify us of the publication, the eComments site will not be available to receive public comments.**

For the convenience of the Office of Administrative Hearings, the Administrative Law Judge requests the Minnesota Department of Employment and Economic Development to change the contact information on page three of the Dual Notice, at lines 7-9 of the paragraph titled Notice of Hearing, to read "Judge LaFave's Legal Assistant Denise Collins can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7900 and FAX 651-539-0310 or denise.collins@state.mn.us."

If you have any questions regarding this matter, please contact Denise Collins at (651) 361-7875, denise.collins@state.mn.us or facsimile at (651) 539-0310.

Sincerely,


Sheena Denny
Legal Assistant

Enclosure

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW SECTION
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

In the Matter of the Proposed Permanent Rules Relating to Extended Employment Services	OAH Docket No. 60-9044-35198 R-4245
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Sheena Denny certifies that on August 29, 2018, she served a true and correct copy of the attached **ORDER ON REVIEW OF ADDITIONAL NOTICE PLAN AND DUAL NOTICE**; by courier service, by placing it in the United States mail with postage prepaid, or by electronic mail, as indicated below, addressed to the following individuals:

<u>VIA EMAIL ONLY</u> Kim Babine Department of Employment and Economic Development First National Bank 332 Minnesota St, Ste E200 Saint Paul, MN 55101 kim.babine@state.mn.us	
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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the 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

**ORDER ON REVIEW OF ADDITIONAL
NOTICE PLAN AND DUAL NOTICE**

This matter came before Administrative Law Judge James E. LaFave upon the Minnesota Department of Employment and Economic Development's request for a legal review under Minn. R. 1400.2060, .2080 (2017) of the Additional Notice Plan and Dual Notice of Intent to Adopt Rules in the above-captioned proceeding.

Under its Additional Notice Plan, the Department plans to notify:

- 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;
- 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;
- Extended Employment Program Rulemaking SONAR 13;
- Department of Human Services Disability Services Division staff;
- Local Medicaid Lead Agency staff;
- Association of Social Services Directors;
- Olmstead Subcabinet members; and
- Anyone interested in employment outcomes for individuals with disabilities.

Based upon a review of the written submissions by the Department,

IT IS HEREBY ORDERED THAT:

1. The Additional Notice Plan is **APPROVED**.
2. The Dual Notice is **APPROVED**.

Dated: August 29, 2018



JAMES E. LAFAIVE
Administrative Law Judge

August 22, 2018

The Honorable Tammy L. Pust
Chief Administrative Law Judge
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: In the Matter of the Proposed Rules of the Department of Employment and Economic Development governing the Extended Employment program; Request to Schedule a Rules Hearing and Request for Review and Approval of Additional Notice Plan; OAH Docket No. 60-9044-35198; Revisor's ID Number RD-4245

Dear Chief Just Pust:

The Department of Employment and Economic Development (DEED) requests that you please schedule a rules hearing under Minnesota Statutes, sections 14.131 to 14.20, and assign an Administrative Law Judge. The hearing is for the Department's proposed rules governing the Extended Employment program. We request that the judge conduct the hearing on Wednesday, October 24, 2018 beginning at 2:00 p.m. in the Minnesota Conference Room at the DEED offices at the First National Bank Building, Suite E200, 332 Minnesota Street, St. Paul, Minnesota, 55101.

Enclosed are the documents for the Administrative Law Judge's review, as required by Minnesota Rules, part 1400.2080, subpart 5:

- The Dual Notice proposed to be issued. If the Department receives fewer than 25 requests for a hearing in response to the Dual Notice, the hearing will be canceled. We will notify you if this occurs.
- A copy of the proposed rules, with a certificate of approval as to form by the Revisor of Statutes attached.
- A draft of the Statement of Need and Reasonableness.

The Department also requests that you approve our Additional Notice Plan. The documents required for your review by Minnesota Rules, part 1400.2060, include the three documents listed above for requesting a rules hearing. We are also providing you below with our explanation of why we believe our Additional Notice Plan reflects reasonable efforts to notify persons or classes of persons who might be significantly affected by the rules in accordance with Minnesota Statutes, section 14.14, subdivision 1a.

The Additional Notice Plan is described on pages 12-16 of the Statement of Need and Reasonableness. We believe our Additional Notice Plan complies with the statute because we

have identified an extensive group of affected persons and potentially affected stakeholders. The Department has identified a broad range of mediums of delivery to help reach all affected persons and stakeholders.

Please call me at 651-259-7349 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "K Babine". The signature is written in a cursive, slightly slanted style.

Kim Babine
Director of Community Partnerships
DEED Vocational Rehabilitation Services

August 22, 2018

Minnesota Department of Employment and Economic Development

Vocational Rehabilitation Services, Extended Employment Program

DUAL NOTICE: Notice of Intent to Adopt Rules without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; OAH Docket No. 60-9044-35198; Revisor's ID Number RD-4245.

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.

Introduction. The Department of Employment and Economic Development (DEED) intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on Wednesday, October 10, 2018, the Department will hold a public hearing in the Minnesota Room at DEED Headquarters, First National Bank Building, Suite E200, 332 Minnesota Street, St. Paul, MN 55101, starting at 2:00 p.m. on Wednesday, October 24, 2018. To find out whether the Department will adopt the rules without a hearing or if it will hold the hearing, you should contact the agency contact person after Wednesday, October 10, 2018 and before Wednesday, October 24, 2018.

Agency Contact Person. Submit any comments or questions on the rules or written requests for a public hearing to the agency contact person. The agency contact person is: Kim Babine, Director of Community Partnerships, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101, 651-379-7349, kim.babine@state.mn.us.

You may also review the proposed rule and submit written comments via the Office of Administrative Hearings Rulemaking e-comments website at <https://minnesotaoah.granicusideas.com/discussions>.

You may also review more information regarding the proposed rule and sign up for email updates at mn.gov/deed/eerule.

Subject of Rules and Statutory Authority. The proposed rule govern the Extended Employment program. The proposed rule codifies updated rules governing the Extended Employment program, *Minnesota Rules*, chapters 3300.6000 – 3300.6070 and repeals existing rules governing the Extended Employment program, *Minnesota Rules*, chapters 3300.2005 – 3300.3100. The statutory authority to adopt the rules is *Minnesota Statutes*, section 268A.15.

The proposed changes to the Extended Employment rule prioritize funding for competitive, integrated employment, align the program with new practices in the broader disability service system, and reflect principles such as person-centered practices and informed choice.

A copy of the proposed rule is published on the Department of Employment and Economic Development's website: mn.gov/deed/eerule.

Comments. You have until 4:30 p.m. on Wednesday, October 10, 2018, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that the Department hold a hearing on the rules. You must make your request for a public hearing in writing, which the agency contact person must receive by 4:30 p.m. on Wednesday, October 10, 2018. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the Department will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

Modifications. The Department might modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the agency or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the Department follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Department encourages you to participate in the rulemaking process.

Cancellation of Hearing. The Department will cancel the hearing scheduled for Wednesday, October 24, 2018, if the agency does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the agency will notify you before the scheduled hearing whether the hearing will be held. You may also call the agency contact person at 651-259-7349 after Wednesday, October 10, 2018 to find out whether the hearing will be held. On the scheduled day, you may check for whether the hearing will be held by calling 651-259-7349 or going on-line at mn.gov/deed/eerule.

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, the Department will hold a hearing following the procedures in Minnesota Statutes, sections 14.131 to 14.20. This public hearing will be held in the Minnesota Room at DEED Headquarters, First National Bank Building, Suite E200, 332 Minnesota Street, St. Paul, MN 55101, starting at 2:00 p.m. on Wednesday, October 24, 2018. The hearing will continue until all interested persons have been heard. Administrative Law Judge James LaFave is assigned to conduct the hearing. Judge LaFave can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7875, and fax 651-539-0310.

Hearing Procedure. If the Department holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the Administrative Law Judge may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the agency and any interested person may respond in writing to any new information submitted. No one may submit new evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge via the Office of Administrative Hearings Rulemaking e-comments website at <https://minnesotaoah.granicusideas.com/discussions> no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Department of Employment and Economic Development or on the agency's website at mn.gov/deed/eerule. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge. The agency requests that any person submitting written views or data to the Administrative Law Judge before the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

Statement of Need and Reasonableness. The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person. You may review or obtain copies for the cost of

reproduction by contacting the agency contact person. A copy of the SONAR is published on the Department of Employment and Economic Development's website: mn.gov/deed/eerule

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, or by telephone: 651-539-1180 or 1-800-657-3889.

Adoption Procedure if No Hearing. If no hearing is required, the agency may adopt the rules after the end of the comment period. The Department will submit the rules and supporting documents to the Office of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the office. If you want either to receive notice of this, to receive a copy of the adopted rules, or to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Adoption Procedure after a Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the agency adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the agency contact person stated above.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

Date

Shawntera Hardy
Commissioner
Department of Employment and Economic Development



EXTENDED EMPLOYMENT PROGRAM
RULE REVISION

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

DRAFT DATE: 08/22/2018

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
mn.gov/deed/erule

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 [date] 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 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 The Extended Employment program placed an advertisement regarding the Extended Employment rule revision and how to participate in the process.
 - 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 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.

Date

Shawntera Hardy
Commissioner
Department of Employment and Economic Development

1.1 **Department of Employment and Economic Development**

1.2 **Proposed Permanent Rules Relating to Extended Employment Services**

1.3 **3300.6000 DEFINITIONS.**

1.4 Subpart 1. **Scope.** When used in parts 3300.6000 to 3300.6070, the terms defined in
1.5 this part have the meanings given them.

1.6 Subp. 2. **CARF.** "CARF" means CARF International, the independent, nonprofit
1.7 organization that sets standards and provides accreditation for service and quality of
1.8 community rehabilitation providers.

1.9 Subp. 3. **Center-based employment.** "Center-based employment" means employment
1.10 for which an individual:

1.11 A. works at a location that is owned or operated by the individual's extended
1.12 employment provider;

1.13 B. receives wages and benefits from an employer who is, directly or indirectly,
1.14 the individual's extended employment provider;

1.15 C. performs work that does not meet all of the conditions of either the supported
1.16 employment subprogram or the community employment subprogram.

1.17 Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department
1.18 of Employment and Economic Development or the commissioner's designee.

1.19 Subp. 5. **Community employment.** "Community employment" means employment
1.20 for which an individual:

1.21 A. works at a location that is not owned or operated by the individual's extended
1.22 employment provider;

1.23 B. receives wages and benefits from an employer who is or is not, directly or
1.24 indirectly, the individual's extended employment provider;

2.1 C. performs work that does not meet all the conditions of the supported
2.2 employment subprogram.

2.3 Subp. 6. **Community employment subprogram.** "Community employment
2.4 subprogram" means the commissioner's service category for individuals in community
2.5 employment under subpart 5.

2.6 Subp. 7. **Competitive, integrated employment.** "Competitive, integrated employment"
2.7 means work performed on a full- or part-time basis, with or without supports, for which an
2.8 individual:

2.9 A. works at a location that:

2.10 (1) for state fiscal year 2019, is or is not owned or operated by the individual's
2.11 service provider, and where the individual with a disability interacts, for purpose of
2.12 performing job duties, with people without disabilities in similar positions within the work
2.13 unit and the entire work site, not including supervisors or individuals providing services to
2.14 the employee; and

2.15 (2) for state fiscal year 2020 and thereafter, is not owned or operated by the
2.16 individual's extended employment provider, and where the individual with a disability
2.17 interacts, for purpose of performing job duties, with people without disabilities in similar
2.18 positions within the work unit and the entire work site, not including supervisors or
2.19 individuals providing services to the employee;

2.20 B. receives wages and benefits from an employer who:

2.21 (1) for state fiscal year 2019, is or is not, directly or indirectly, the individual's
2.22 extended employment provider; and

2.23 (2) for state fiscal year 2020 and thereafter, is not, directly or indirectly, the
2.24 individual's extended employment provider;

3.1 C. is paid at or above the federal, state, or local minimum wage, whichever is
3.2 highest, as defined in this chapter; and

3.3 D. is compensated at or above the customary wage and benefits as defined in
3.4 subpart 9.

3.5 Subp. 8. **Customary wage and benefits or customary rate.** "Customary wage and
3.6 benefits" or "customary rate" means the wage paid and the level of benefits provided by the
3.7 employer to an individual without disabilities performing the same or similar work with
3.8 comparable training, skills, and experiences with that employer.

3.9 Subp. 9. **Department.** "Department" means the Department of Employment and
3.10 Economic Development.

3.11 Subp. 10. **Employer.** "Employer" has the meaning given in United States Code, title
3.12 29, section 203(d).

3.13 Subp. 11. **Extended employment provider or provider.** "Extended employment
3.14 provider" or "provider" means a community rehabilitation provider that receives funding
3.15 through the extended employment program.

3.16 Subp. 12. **Extended employment services.** "Extended employment services" means
3.17 the development of an extended employment support plan and the delivery of ongoing
3.18 employment support services.

3.19 Subp. 13. **Individual receiving extended employment services or**
3.20 **individual.** "Individual receiving extended employment services" or "individual" means
3.21 an individual who meets the eligibility requirements in this chapter and who receives
3.22 extended employment services under the extended employment program. Any reference in
3.23 parts 3300.6000 to 3300.6070 to an individual receiving extended employment services
3.24 includes the individual's legal representative.

4.1 Subp. 14. **Minimum wage.** "Minimum wage" means an hourly wage rate not less
4.2 than the higher of the rate specified in section 6(a)(1) of the United States Fair Labor
4.3 Standards Act of 1938, United States Code, title 29, section 206(a)(1), or the rate specified
4.4 in the Minnesota Fair Labor Standards Act, Minnesota Statutes, section 177.24, or local
4.5 minimum wage law, and that is not less than the customary wage and benefits.

4.6 Subp. 15. **Ongoing employment support services.**

4.7 A. "Ongoing employment support services" means any of the services in item B
4.8 that are:

4.9 (1) identified in the individual's extended employment support plan;

4.10 (2) related to the individual's serious functional limitations to employment;

4.11 and

4.12 (3) necessary and required to maintain or advance the individual's current
4.13 employment.

4.14 B. Ongoing employment support services include:

4.15 (1) rehabilitation technology, job redesign, or environmental adaptations;

4.16 (2) disability awareness training for the individual, the individual's employer,
4.17 supervisor, or coworkers, including related services to increase the individual's inclusion
4.18 at the work site;

4.19 (3) job skill training at the work site;

4.20 (4) regular observation or supervision of the individual;

4.21 (5) behavior management;

4.22 (6) coordination of support services;

4.23 (7) job-related safety training;

5.1 (8) job-related self-advocacy skills training to advance employment;

5.2 (9) training in independent living skills including money management,
5.3 grooming and personal care, social skills, orientation and mobility, and using public
5.4 transportation or drivers' training;

5.5 (10) communication skills training including sign language training, Braille,
5.6 speech reading, and the use of communication devices or other adaptive methods for the
5.7 individual, or the individual's employer, supervisor, or coworkers;

5.8 (11) follow-up services including contact with the individual's employer,
5.9 supervisor, or coworkers; the individual's parents, family members, advocates, or legal
5.10 representatives; and other suitable professional and informed advisors, in order to reinforce
5.11 and stabilize the job placement;

5.12 (12) training in job-seeking skills;

5.13 (13) career planning to advance in employment; and

5.14 (14) any other service that is identified in the individual's extended
5.15 employment support plan related to the individual's serious functional limitations to
5.16 employment that is needed to maintain or advance the employment of an individual in the
5.17 extended employment program.

5.18 Subp. 16. **Qualified professional.**

5.19 A. "Qualified professional" means the professionals listed in item B who are
5.20 licensed, certified, or registered in the state where the professional practices, and who provide
5.21 a diagnosis of a disability or disabilities within the scope of the professional's license,
5.22 certification, or registration for an individual in the extended employment program.

5.23 B. The following are qualified professionals:

5.24 (1) a physician or psychologist;

- 6.1 (2) a physician's assistant practicing under the supervision of a physician;
- 6.2 (3) an advanced practice registered nurse;
- 6.3 (4) clinical specialists in psychiatric or mental health nursing;
- 6.4 (5) an audiologist;
- 6.5 (6) a chiropractor;
- 6.6 (7) a licensed chemical dependency counselor;
- 6.7 (8) a social worker from a county mental health or county developmental
- 6.8 disabilities program;
- 6.9 (9) a licensed independent clinical social worker (LICSW); and
- 6.10 (10) a licensed graduate social worker (LGSW) or a licensed independent
- 6.11 social worker (LISW) practicing under the supervision of a LICSW.

6.12 **Subp. 17. Serious functional limitations to employment.** "Serious functional

6.13 limitations to employment" means an individual experiences significant barriers to

6.14 employment in three or more of the functional areas listed in items A to G that affect an

6.15 individual's ability to maintain or advance in employment, and the individual requires

6.16 ongoing employment support services to mitigate the effect of the limitations and achieve

6.17 the individual's employment goals.

6.18 A. "Communication" means the ability to effectively give and receive information

6.19 through words or concepts, using methods such as reading, writing, speaking, listening,

6.20 sign language, or other adaptive methods.

6.21 B. "Interpersonal skills" means the ability to establish and maintain personal,

6.22 family, and community relationships as it affects, or is likely to affect, job performance and

6.23 security.

7.1 C. "Mobility" means the physical and psychological ability to move about from
7.2 place to place inside and outside the home, including travel to and from usual destinations
7.3 in the community for activities of daily living, training, or work.

7.4 D. "Self-care" means the skills needed to manage self or living environment,
7.5 including eating, toileting, grooming, dressing, money management, and management of
7.6 special health or safety needs, including medication management, as they affect an
7.7 individual's ability to participate in training or work-related activities.

7.8 E. "Self-direction" means the ability to plan, initiate, organize, or carry out
7.9 goal-directed activities or solve problems related to working.

7.10 F. "Work skills" means:

7.11 (1) the ability to do specific tasks required to carry out job functions; and

7.12 (2) the capacity to benefit from training in how to perform tasks required to
7.13 carry out job functions.

7.14 G. "Work tolerance" means the capacity or endurance to effectively and efficiently
7.15 perform jobs requiring various levels of physical demands, psychological demands, or both.

7.16 Subp. 18. **Supported employment subprogram.** "Supported employment subprogram"
7.17 means the commissioner's service category for individuals who are in competitive, integrated
7.18 employment.

7.19 Subp. 19. **Work hours.** "Work hours" means the hours for which an individual
7.20 performs paid work, including hours of paid holidays, paid sick, paid vacation, and other
7.21 paid leaves of absence. The payment of a bonus or commission is not included in the
7.22 computation of work hours.

8.1 **3300.6005 INDIVIDUAL ELIGIBILITY.**

8.2 **Subpart 1. Individual eligibility.**

8.3 **A. An individual is eligible for extended employment services if the individual:**

8.4 **(1) is a Minnesota resident;**

8.5 **(2) has documentation of a diagnosed disability or disabilities by a qualified**
8.6 **professional according to part 3300.6000, subpart 16;**

8.7 **(3) has a serious functional limitation to employment in three or more**
8.8 **functional areas according to part 3300.6000, subpart 17; and**

8.9 **(4) requires ongoing employment support services to maintain and advance**
8.10 **in employment.**

8.11 **B. An individual on a medical assistance waiver, regardless of the waiver service**
8.12 **the individual is receiving, is not eligible to receive extended employment services through**
8.13 **the extended employment program.**

8.14 **3300.6010 EXTENDED EMPLOYMENT SERVICES DELIVERY.**

8.15 **Subpart 1. Person-centered practices. A provider must deliver extended employment**
8.16 **services in the extended employment program using person-centered practices.**

8.17 **"Person-centered practices" means practices that help an individual set goals and develop**
8.18 **action steps that enhance the individual's quality of life, where control over decisions rests**
8.19 **with the individual. The provider must not influence an individual's decision making but**
8.20 **instead serve as a facilitator of decision making.**

8.21 **Subp. 2. Employment first. A provider must consider employment first in delivering**
8.22 **extended employment services in the extended employment program. "Employment first"**
8.23 **means the expectation that a working age Minnesotan with a disability can work, wants to**
8.24 **work, and can achieve competitive employment, and each person must be offered the**

9.1 opportunity to work and earn a competitive wage before being offered other supports and
9.2 services.

9.3 Subp. 3. **Informed choice.**

9.4 A. The provider must facilitate an individual's ability to make an informed choice
9.5 about the individual's employment. "Informed choice" means the individual is able to make
9.6 decisions regarding the individual's employment. Informed choice requires:

9.7 (1) that the individual understands all employment options, methods to
9.8 overcome barriers to employment, and the potential risks and benefits of those decisions;

9.9 (2) employment options that are not limited to only disability-specific
9.10 programs;

9.11 (3) community resources and supports are included in options; and

9.12 (4) the individual is provided community-based experiences on which to base
9.13 employment choices on an ongoing basis using person-centered practices.

9.14 B. For an individual required to participate in a career counseling, information,
9.15 and referral services consultation by the Workforce Innovation and Opportunity Act (WIOA),
9.16 section 511, part 397, a provider is not required to provide duplicative informed choice
9.17 information for purposes of the extended employment program. A provider must consider
9.18 the career counseling, information, and referral services consultation summary report when
9.19 developing an individual's extended employment support plan and retain a copy in the case
9.20 record.

9.21 **3300.6015 EXTENDED EMPLOYMENT SUPPORT PLANS.**

9.22 Subpart 1. **Extended employment support plan.** The provider must develop an
9.23 extended employment support plan for each individual in the extended employment program.

10.1 Subp. 2. Requirements of the extended employment support plan. The plan must
10.2 include the following:

10.3 A. the individual's employment goals and objectives, including:

10.4 (1) employment goals and goals for career advancement;

10.5 (2) the individual's preferences for employment setting, integration, range or
10.6 level of pay, work hours, work schedules, and benefits, including reference to the individual's
10.7 decision from the career counseling, information, and referral meeting regarding whether
10.8 an individual expressed interest in pursuing competitive, integrated employment; and

10.9 (3) the timeline for reaching the individual's employment goals;

10.10 B. the individual's vocational strengths, education, and work skills;

10.11 C. the individual's interests and preferences for jobs and work environments;

10.12 D. the individual's serious functional limitations to employment and how they
10.13 impact an individual's ability to maintain employment;

10.14 E. the individual's preferences for when, where, and how the required two per
10.15 month in-person meetings will occur;

10.16 F. identification of the specific ongoing employment support services that will be
10.17 provided;

10.18 G. the person or persons who will be providing the ongoing employment support
10.19 services, and a plan that describes how the individual will be notified and the impact on
10.20 scheduled services in the event the identified person or persons are absent or unavailable
10.21 to provide scheduled services;

10.22 H. the individual's decision to disclose or not disclose disability-related information
10.23 to the individual's employer and how supports will be provided in either scenario;

11.1 I. the names of the participants in the planning and preparation of the individual's
11.2 extended employment support plan; and

11.3 J. the signature of the individual.

11.4 **Subp. 3. Annual review and development of the extended employment support**
11.5 **plan.** A provider must facilitate a review of an individual's extended employment support
11.6 plan and development of a new extended employment support plan at least once per year.
11.7 The new extended employment support plan shall be maintained in the case file. The review
11.8 and development shall include the individual, the provider, and anyone else the individual
11.9 would like involved. The review and development must include a discussion of each element
11.10 of the extended employment support plan and must itemize each of the following:

11.11 A. the individual's satisfaction with his or her employment and the ongoing
11.12 employment support services that are being provided;

11.13 B. the effectiveness of the individual's extended employment support plan in
11.14 achieving the individual's vocational goals;

11.15 C. the individual's interest in changing or advancing in employment; and

11.16 D. the individual's continuing need for ongoing employment support services to
11.17 maintain or advance in employment going forward.

11.18 **3300.6020 CASE RECORD DOCUMENTATION.**

11.19 **Subpart 1. Case records.** An extended employment provider must maintain a current
11.20 confidential case record for each individual served in the extended employment program.
11.21 The provider shall retain each case record for a minimum of three years after the completion
11.22 of the compliance audit process.

11.23 **Subp. 2. Case record elements.** Case records must include the following information:

12.1 A. personal identification data, including the individual's legal name, Social
12.2 Security number, legal status, date of birth, residential status and address, and, if applicable,
12.3 the name and contact information of the individual's legal representative;

12.4 B. documentation of eligibility for extended employment, including:

12.5 (1) independent source documentation of the individual's diagnosed disability
12.6 by a qualified professional; and

12.7 (2) documentation identifying the individual's specific significant functional
12.8 limitations to employment by one of the following:

12.9 (a) a disability examiner, employed by the department's Disability
12.10 Determination Services, or another state's department who evaluates claims for disability
12.11 benefits using Social Security Administration guidelines to determine the significant
12.12 functional limitations to employment of individuals;

12.13 (b) a vocational rehabilitation professional, employed by a state
12.14 department or county unit, who is authorized by the government unit to determine the
12.15 significant functional limitations to employment of individuals; or

12.16 (c) an extended employment provider, as provided in the intake
12.17 paperwork;

12.18 C. pay statements from the individual's payroll agent demonstrating:

12.19 (1) start and end dates of the pay period;

12.20 (2) hours worked during the pay period;

12.21 (3) hours of paid leave used in the pay period;

12.22 (4) amount of gross wages paid in the pay period;

12.23 (5) payroll agent of record; and

13.1 (6) the individual's and the employer's contribution to the individual's federal
13.2 Social Security program;

13.3 D. the date the individual was referred to the extended employment provider for
13.4 extended employment services, the referral source, and the name and contact information
13.5 of the person who made the referral;

13.6 E. employment data, including contact information for supervisors, job duties,
13.7 work schedules, rate of pay, benefits, start dates, and termination dates;

13.8 F. the current extended employment support plan updated annually; and

13.9 G. the ongoing employment support services provided to the individual including,
13.10 at a minimum, the date and services provided to the individual by the provider during the
13.11 two in-person meetings per month.

13.12 Subp. 3. WIOA, section 511. If an individual's employment requires an annual WIOA,
13.13 section 511, career counseling session, then the case record must include documentation of
13.14 that session.

13.15 **3300.6025 PROVIDER REPORTING REQUIREMENTS.**

13.16 Subpart 1. Individual data. A provider must submit data requested by the
13.17 commissioner, including identification and contact information, eligibility information,
13.18 demographic information, intake and exit information, and work record data in a manner
13.19 prescribed by the commissioner on each individual reported to the extended employment
13.20 program.

13.21 Subp. 2. Work record data. A provider must submit work record data evidenced by
13.22 pay statements from an individual's employer in order to receive payment. Work record
13.23 data must include:

13.24 A. start and end dates of the pay period or the month;

- 14.1 B. hours worked during the pay period or the month;
- 14.2 C. amount of gross wages paid during the pay period or the month;
- 14.3 D. type of subprogram where hours are reported;
- 14.4 E. payroll agent of record; and
- 14.5 F. job type, as an O*Net code.

14.6 Subp. 3. **Monitoring.** The commissioner is authorized to conduct monitoring visits

14.7 as a part of the contracting process to ensure the accuracy of reported data. The provider

14.8 must make individual records and performance data available to the commissioner for

14.9 monitoring. A provider may appeal the loss of hours and earnings resulting from the

14.10 commissioner's assessment of allowable hours under part 3300.6065.

14.11 **3300.6030 REQUIREMENTS FOR EXTENDED EMPLOYMENT FUNDING.**

14.12 Subpart 1. **Requirements for funding.** To receive funding under the extended

14.13 employment program, a community rehabilitation provider must:

- 14.14 A. be a public or nonprofit entity registered with the Minnesota secretary of state;
- 14.15 B. comply with Minnesota Statutes, sections 268A.06 to 268A.085, regarding
- 14.16 requirements of the board;
- 14.17 C. hold accreditation in the CARF standards in this item.

14.18 (1) To provide services through the supported employment subprogram, the

14.19 community employment subprogram, or the center-based employment subprogram, a

14.20 community rehabilitation provider must hold accreditation in the CARF administrative and

15.1 program standards for community employment services, including job development and
15.2 employment supports.

15.3 (2) To provide services through the center-based employment subprogram, a
15.4 community rehabilitation provider must hold accreditation in the CARF administrative and
15.5 program standards for organizational employment services; and

15.6 D. maintain CARF conformance between CARF surveys.

15.7 Subp. 2. Funding in special circumstances.

15.8 A. If a community rehabilitation provider submits evidence of any of the
15.9 circumstances listed in item B, the commissioner must grant funding under the extended
15.10 employment program even if the requirements for funding in subpart 1 are not met. Funding
15.11 under this subpart is only valid for up to one year and cannot be used in any two consecutive
15.12 fiscal years.

15.13 B. The following are special circumstances warranting grant funding:

15.14 (1) CARF cannot schedule a timely survey;

15.15 (2) CARF has completed a survey but has not delivered the results of the
15.16 survey to the provider; or

15.17 (3) An extraordinary and catastrophic circumstance has occurred. For the
15.18 purposes of this part, an "extraordinary and catastrophic circumstance" means a fire or other
15.19 natural disaster that is beyond the control of a provider that has adversely affected or
15.20 completely halted operations such that the extended employment provider has been unable
15.21 to maintain the requirements for funding.

15.22 C. If a community rehabilitation provider is not a current extended employment
15.23 provider and has been awarded a contract for new or expanded extended employment
15.24 services and is in compliance with all requirements for funding except the requirement for

16.1 accreditation by CARF, then the commissioner must grant funding under the extended
16.2 employment program even if the CARF requirement for funding in subpart 1 is not met. If
16.3 the provider is not accredited by CARF, the provider must demonstrate the likelihood that
16.4 the provider will meet the requirements for accreditation by CARF and will receive
16.5 accreditation within one year.

16.6 **3300.6035 FUNDING.**

16.7 **Subpart 1. Continuation funding.**

16.8 A. Each fiscal year, a provider who held a contract with the commissioner for
16.9 extended employment funding in the previous fiscal year, and maintains compliance with
16.10 the requirements for funding, is eligible for continuation of their funding within the limits
16.11 of available appropriations for this purpose.

16.12 B. If a community rehabilitation provider held a contract for new or expanded
16.13 services in the previous fiscal year, has met the identified outcomes of the new or expanded
16.14 services within the time frame specified in the contract, and maintains compliance with the
16.15 requirements for funding, then the provider is eligible for continuation of their funding
16.16 within the limits of available appropriations for this purpose.

16.17 **Subp. 2. Starting point for initial extended employment contract allocations.** The
16.18 starting point for a provider's initial extended employment contract allocation for each
16.19 subprogram in a particular fiscal year must be determined by the provider's prior fiscal year
16.20 extended employment contract allocation for each subprogram, as amended.

16.21 **Subp. 3. Contracted allocation subprogram distribution.**

16.22 A. The commissioner must specify a provider's funding allocation amount by
16.23 subprogram in the provider's contract.

17.1 B. The starting point for a provider's allocation amount by subprogram in a new
17.2 fiscal year contract is a provider's allocation amount by subprogram in the previous fiscal
17.3 year contract.

17.4 C. A provider may adjust the distribution of the provider's total funding allocation
17.5 among the subprograms in developing the new fiscal year contract as follows:

17.6 (1) a provider may shift a portion of the provider's center-based employment
17.7 subprogram allocation to the provider's community employment subprogram allocation or
17.8 the provider's supported employment subprogram allocation, or both;

17.9 (2) a provider may shift a portion of the provider's community employment
17.10 subprogram allocation to the provider's supported employment subprogram allocation;

17.11 (3) before May 1, 2020, a provider may make one request to shift a portion
17.12 of any of the provider's subprogram allocations to any other subprogram allocation; and

17.13 (4) in state fiscal year 2021 and thereafter, a provider must not shift a portion
17.14 of the provider's supported employment subprogram allocation to the provider's community
17.15 employment subprogram allocation or the provider's center-based subprogram allocation.

17.16 A provider must not shift a portion of the provider's community employment subprogram
17.17 allocation to the provider's center-based employment subprogram allocation.

17.18 Subp. 4. **Cap on funding for certain employment.** Beginning in fiscal year 2020,
17.19 the commissioner must set a cap on employment that does not meet the definition of
17.20 competitive, integrated employment for each provider. The cap for each provider is set as
17.21 the sum of a provider's fiscal year 2020 contract allocations for the center-based employment
17.22 subprogram and the community employment subprogram.

17.23 Subp. 5. **Center-based employment subprogram phaseout.**

17.24 A. Beginning in fiscal year 2021, the commissioner must reduce each provider's
17.25 center-based employment subprogram contract allocation as described in this subpart. The

18.1 basis for each provider's reduction each year is the provider's fiscal year 2020 center-based
18.2 employment subprogram contract allocation.

18.3 B. A provider may shift the funds reduced from the center-based employment
18.4 subprogram to either its community employment subprogram contract allocation or its
18.5 supported employment subprogram contract allocation. The provider may also forfeit the
18.6 funds. Of the funds reduced from the center-based employment subprogram allocation each
18.7 year, no more than 50 percent of the funds can be shifted to the community employment
18.8 subprogram.

18.9 (1) In fiscal year 2021, a provider's center-based employment subprogram
18.10 contract allocation must be reduced by at least five percent of the provider's center-based
18.11 employment subprogram fiscal year 2020 contract allocation.

18.12 (2) In fiscal year 2022, a provider's center-based employment subprogram
18.13 contract allocation must be reduced by at least 15 percent of the provider's center-based
18.14 employment subprogram fiscal year 2020 contract allocation.

18.15 (3) In fiscal year 2023, a provider's center-based employment subprogram
18.16 contract allocation must be reduced by at least 20 percent of the provider's center-based
18.17 employment subprogram fiscal year 2020 contract allocation.

18.18 (4) In fiscal year 2024, a provider's center-based employment subprogram
18.19 contract allocation must be reduced by at least 25 percent of the provider's center-based
18.20 employment subprogram fiscal year 2020 contract allocation.

18.21 (5) In fiscal year 2025, a provider's center-based employment subprogram
18.22 contract allocation must be reduced by at least 35 percent of the provider's center-based
18.23 employment subprogram fiscal year 2020 contract allocation.

18.24 (6) The commissioner must not provide funding to a provider for the
18.25 center-based employment subprogram in fiscal year 2026 and later.

19.1 **3300.6040 CONTRACT ADJUSTMENTS.**

19.2 Subpart 1. **Voluntary shifts.** After the extended employment contract has been
19.3 executed, a provider may request voluntary shifts in the distribution of the total allocation
19.4 amount among the subprograms. Voluntary shifts may be made according to the parameters
19.5 in part 3300.6035, subpart 3, item C. A shift in the distribution of the allocation requires a
19.6 renegotiated provider contract.

19.7 Subp. 2. **Underproduction penalty.**

19.8 A. After the compliance audit reconciliation process under part 3300.6060 for a
19.9 previous fiscal year is complete, the commissioner must determine if a provider is subject
19.10 to an underproduction penalty for a particular subprogram.

19.11 B. A provider is subject to an underproduction penalty for a particular subprogram
19.12 when the provider's audited production for a particular subprogram in a fiscal year is less
19.13 than 95 percent of the provider's allocation for that subprogram in the fiscal year.

19.14 C. An underproduction penalty means the commissioner must adjust a provider's
19.15 subprogram allocation for that subprogram in the subsequent fiscal year's contract downward,
19.16 except as provided by subpart 3.

19.17 D. The downward adjustment for that subprogram's allocation must be the audited
19.18 subprogram production in the audited fiscal year plus five percent of the audited fiscal year's
19.19 subprogram contract allocation.

19.20 Subp. 3. **Waiver from underproduction penalty.** If a provider is subject to an
19.21 underproduction penalty in a particular subprogram as described in subpart 2, the provider
19.22 is eligible for either a one-year waiver or a catastrophic waiver from the underproduction
19.23 penalty.

19.24 A. If a provider earns 90 percent to 95 percent of a subprogram allocation, the
19.25 provider is eligible for a one-year waiver from the underproduction penalty for a particular

20.1 subprogram. The commissioner must provide the waiver without a request process. A
20.2 provider is ineligible to receive the one-year waiver for a particular subprogram in any two
20.3 consecutive fiscal years. A provider is eligible for the one-year waiver in each particular
20.4 subprogram.

20.5 B. If a provider earns less than 90 percent of a subprogram allocation and
20.6 demonstrates it is experiencing an extraordinary and catastrophic circumstance under this
20.7 item, the commissioner may issue a catastrophic waiver from the underproduction penalty.

20.8 (1) For purposes of this subpart, an "extraordinary and catastrophic
20.9 circumstance" means a fire or other natural disaster that is beyond the control of the provider
20.10 that has adversely affected or completely halted operations such that extended employment
20.11 individuals have been unable to work or extended employment provider staff have been
20.12 unable to provide extended employment services.

20.13 (2) A provider seeking a catastrophic waiver to the contract starting point
20.14 must request this variance in a manner prescribed by the commissioner and shall:

20.15 (a) state the reasons for the request;

20.16 (b) submit independent documentation of the extraordinary and
20.17 catastrophic circumstances;

20.18 (c) demonstrate how the extraordinary and catastrophic circumstances
20.19 resulted in the loss of work hours of extended employment individuals; and

20.20 (d) submit a measurable work plan for corrective action to meet
20.21 contracted hours during the next contract period.

20.22 (3) A provider is eligible for the catastrophic waiver in each particular
20.23 subprogram. A provider is ineligible for the catastrophic waiver for a particular subprogram
20.24 in any two consecutive fiscal years.

21.1 **3300.6045 DISTRIBUTION OF AVAILABLE FUNDS.**

21.2 Subpart 1. Available funds. The commissioner must distribute funds that become
21.3 available due to any of the following:

21.4 A. a general increase in the state appropriation;

21.5 B. the underproduction penalty process as described in part 3300.6040; or

21.6 C. unspent funds due to termination of a contract.

21.7 Subp. 2. Distribution of available funds; considerations.

21.8 A. The commissioner must consider the factors in this subpart when determining
21.9 which method of distribution of additional available funds under subpart 3 will be used.

21.10 (1) Priority for allocation of funds must go toward the service needs of
21.11 individuals who would benefit from ongoing employment support services.

21.12 (2) The commissioner must consider input from stakeholders such as current
21.13 extended employment providers, other community rehabilitation providers, representatives
21.14 of county social service agencies, vocational rehabilitation staff, and representatives from
21.15 advocacy organizations.

21.16 (3) The commissioner must consider the amount of onetime funds or ongoing
21.17 funds available for distribution.

21.18 (4) The commissioner must consider the relationship of additional extended
21.19 employment services to current services.

21.20 (5) The commissioner must consider the performance of current extended
21.21 employment services.

21.22 (6) The commissioner must consider the geographic distribution of current
21.23 extended employment services and the distribution method's ability to respond to needs for
21.24 geographic distribution of extended employment services.

22.1 B. When funds are available for distribution, the commissioner must distribute
22.2 funds on a onetime basis, a time-limited basis, or by adding to a provider's subsequent year
22.3 initial extended employment contract starting point.

22.4 Subp. 3. **Distribution method; supported employment overproduction.** If the
22.5 commissioner distributes available funds through the supported employment overproduction
22.6 provision, the commissioner must distribute funds to extended employment providers that
22.7 have overproduced in the supported employment subprogram based on a proportionate share
22.8 of the total supported employment subprogram overproduction by all extended employment
22.9 providers. Overproduction means an extended employment provider's audited supported
22.10 employment subprogram hours exceed the provider's supported employment contract
22.11 allocation in a given fiscal year.

22.12 Subp. 4. **Distribution method; supported employment incentive.** If the commissioner
22.13 distributes available funds through the supported employment incentive provision, the
22.14 commissioner must distribute funds to extended employment providers based on each
22.15 provider's audited supported employment hours divided by the total audited supported
22.16 employment hours of all extended employment providers in the audited fiscal year.

22.17 Subp. 5. **Distribution method; new or expanded services.** If the commissioner
22.18 distributes available funds through the new or expanded services provision, the commissioner
22.19 must develop and publish a request for proposals for new or expanded services. New or
22.20 expanded services must only be to provide ongoing employment support services to
22.21 individuals in competitive, integrated employment. Community rehabilitation providers
22.22 may apply for distribution of available funds by responding to a request for proposals for
22.23 new or expanded services issued by the commissioner.

22.24 A. In developing the request for proposals for new or expanded extended
22.25 employment services, the commissioner shall consider how to foster innovation and promote
22.26 state-of-the-art best practices in providing ongoing employment support services to

23.1 individuals in competitive, integrated employment. The commissioner may waive program
23.2 requirements as outlined in this chapter to conduct pilot projects, foster innovation, and
23.3 promote state-of-the-art best practices in competitive, integrated employment.

23.4 B. The underproduction penalty in part 3300.6040 does not apply to a new or
23.5 expanded services contract allocation. A contract for new or expanded services must include
23.6 production goals within identified time frames. If a provider's audited production for the
23.7 new or expanded services in an audited fiscal year is less than the production goals identified
23.8 in the contract for new or expanded services, the provider must develop and implement a
23.9 corrective action plan to meet the goals in the contract. The commissioner must approve
23.10 and monitor the corrective action plan. If the provider does not administer extended
23.11 employment services according to the corrective action plan approved by the commissioner,
23.12 the commissioner must withdraw allocated state funds for new and expanded services under
23.13 part 3300.6055.

23.14 Subp. 6. **Distribution method; supported employment subprogram rate**
23.15 **adjustment.** If the commissioner distributes available funds through a supported employment
23.16 subprogram rate adjustment, the commissioner must use the available funds to adjust the
23.17 statewide uniform reimbursement rates for the supported employment subprogram as
23.18 provided under part 3300.6050.

23.19 **3300.6050 RATES.**

23.20 A. The unit of distribution of extended employment program funding is the
23.21 payment for one work hour performed by an eligible individual and reported to the
23.22 commissioner in the extended employment program.

23.23 B. For each subprogram, the statewide uniform reimbursement rates apply for
23.24 each reported work hour up to the maximum contracted allocation for that subprogram.

24.1 C. The commissioner must set statewide uniform reimbursement rates each fiscal
24.2 year. The commissioner must determine rates by adjusting rates of the previous fiscal year
24.3 in proportion to available funding. Rate increases are available for the supported employment
24.4 subprogram only.

24.5 D. The commissioner must publish statewide uniform reimbursement rates for
24.6 each subprogram as part of the information provided during the contracting process.

24.7 **3300.6055 WITHDRAWAL OF FUNDS.**

24.8 Subpart 1. Criteria for withdrawal of allocated state funds. The commissioner must
24.9 withdraw allocated state funds from a provider when:

24.10 A. extended employment services are not being administered according to:

24.11 (1) this chapter and Minnesota Statutes, chapter 268A;

24.12 (2) the terms, conditions, or duties of the extended employment program
24.13 grant contract; or

24.14 (3) a corrective action plan approved by the commissioner; or

24.15 B. the provider has not complied with the commissioner's written requests to
24.16 implement changes to extended employment services.

24.17 An extended employment provider must submit information requested by the commissioner
24.18 to carry out the duties in this chapter.

24.19 Subp. 2. Notice of withdrawal. Except where there is an imminent danger to the
24.20 health or safety of individuals, the commissioner must give written notice at least 45 days
24.21 before allocated state funds may be withdrawn from a provider. The notice must state the
24.22 reasons for the withdrawal of funds.

25.1 **3300.6060 PROVIDER COMPLIANCE AUDIT.**

25.2 **Subpart 1. Compliance audit examinations conducted.**

25.3 A. After June 30 of each year, each provider must undergo a compliance audit
25.4 for the previous fiscal year. The audit must be conducted according to the requirements of
25.5 this subpart and the commissioner's Compliance Audit Standards, which are incorporated
25.6 by reference, not subject to frequent change, and available at [https://mn.gov/deed/](https://mn.gov/deed/job-seekers/disabilities/extend-employment/service-providers/)
25.7 job-seekers/disabilities/extend-employment/service-providers/. The commissioner must
25.8 review the compliance audit standards on an annual basis and seek the input of providers
25.9 and independent auditors in the review of the standards. The commissioner must make
25.10 updated standards available on the department's Web site no later than May 31 of each year.

25.11 B. The audit must be performed by independent auditors at the provider's expense.

25.12 C. The provider must submit a completed compliance audit report to the
25.13 commissioner by October 31 of each year.

25.14 **Subp. 2. Reconciliation payments.** Based on the results of the compliance audit, the
25.15 commissioner must reconcile the value of reported work hours previously paid but found
25.16 ineligible or work hours previously not paid but found eligible according to the provider's
25.17 independent auditor's compliance audit report.

25.18 **3300.6065 PAY AND BENEFITS.**

25.19 A. An individual in the extended employment program who is self-employed must
25.20 realize net income that is the equivalent or in excess of the hourly rate of pay required under
25.21 the Minnesota Fair Labor Standards Act, Minnesota Statutes, chapter 177, and the federal
25.22 Fair Labor Standards Act, when the number of hours worked is compared with the income
25.23 realized. Self-employed individuals must pay timely self-employment taxes on income from
25.24 employment and, if necessary during the provider's compliance examination, provide
25.25 documentation of reported self-employment tax obligation.

26.1 B. An extended employment provider that is the employer of record for an
26.2 individual must provide the following minimum personnel benefits:

26.3 (1) either:

26.4 (a) vacation, sick leave, and holidays, provided on a proportional basis
26.5 as provided to the nonexempt, full-time staff of the provider agency, provided that, at a
26.6 minimum, individuals are entitled to five days of paid vacation, five days of paid sick leave,
26.7 and five paid holidays per calendar year; or

26.8 (b) flexible paid leave, provided in lieu of vacation and sick leaves, that
26.9 is provided on a proportional basis as provided to the nonexempt, full-time staff of the
26.10 provider agency, provided that, at a minimum, individuals must be entitled to ten days of
26.11 paid leave and five paid holidays per calendar year; and

26.12 (2) other mandated state and federal leave benefits.

26.13 **3300.6070 APPEAL PROCEDURE.**

26.14 Subpart 1. Notice of intent to appeal. A community rehabilitation provider appealing
26.15 commissioner decisions must provide a written notice of intent to appeal to the commissioner.
26.16 The written notice of intent to appeal must be received by the commissioner within 30 days
26.17 from the date that the community rehabilitation provider received notice from the
26.18 commissioner of the action that the community rehabilitation provider wishes to appeal. If
26.19 the notice of intent to appeal is not received from the provider within the 30-day period, the
26.20 decision of the commissioner is final. The notice of intent to appeal must state the grounds
26.21 for the appeal, including facts and issues that will be addressed at a contested case hearing.

26.22 Subp. 2. Informal review. Within 30 days after the commissioner receives a notice
26.23 of intent to appeal, the commissioner shall contact the community rehabilitation provider
26.24 and informally review the reasons for the appeal. The informal review by the commissioner
26.25 may be oral or written. Before the end of the 30-day period for informal review, the

27.1 commissioner must make a written decision regarding the community rehabilitation provider's
27.2 appeal. The decision by the commissioner must state the commissioner's position on the
27.3 issue under appeal, the basis of that position, and the community rehabilitation provider's
27.4 right to request a contested case hearing.

27.5 Subp. 3. **Contested case.** After the informal review under subpart 2, the community
27.6 rehabilitation provider may make a written request for a contested case hearing before an
27.7 administrative law judge as provided in Minnesota Statutes, sections 14.57 to 14.62. The
27.8 written request for a contested case hearing must be received by the commissioner no more
27.9 than 30 days after the date when the community rehabilitation provider received written
27.10 notice of the decision of the commissioner following the informal review. Within 15 days
27.11 from the date the commissioner receives a community rehabilitation provider's request for
27.12 a contested case hearing, the commissioner must request the Office of Administrative
27.13 Hearings to assign an administrative law judge to hear the appeal and schedule a hearing.
27.14 The contested case hearing must be initiated and conducted according to Minnesota Statutes,
27.15 sections 14.57 to 14.62.

27.16 Subp. 4. **Decision.** The decision of the administrative law judge must be recommended
27.17 for the commissioner's adoption. The commissioner's decision on the issue under appeal is
27.18 the final decision.

27.19 **REPEALER.** Minnesota Rules, parts 3300.2005; 3300.2010; 3300.2015; 3300.2020;
27.20 3300.2025; 3300.2030; 3300.2035; 3300.2040; 3300.2045; 3300.2052; and 3300.2055, are
27.21 repealed.

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Relating to Extended Employment Services

AGENCY: Department of Employment and Economic Development

REVISOR ID: R-4245

MINNESOTA RULES: Chapter 3300

INCORPORATIONS BY REFERENCE:

Part 3300.6060, subpart 1: Compliance Audit Standards is not subject to frequent change and is available through the Department of Employment and Economic Development website at <https://mn.gov/deed/job-seekers/disabilities/extend-employment/service-providers/>.

The attached rules are approved for
publication in the State Register

A handwritten signature in cursive script that reads "Sheree Speer". The signature is written in black ink and is positioned above a horizontal line.

Sheree Speer
Assistant Deputy Revisor

RECEIVED

By: OAH on 4/26/2018 at 3:10 pm



OAH Docket Number: 60-9044-35198

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Proposed Rules of DEED's extended employment program
REVISOR'S ID NUMBER RD4245

NOTICE OF APPEARANCE

[Insert matter title]

PLEASE TAKE NOTICE that:

1. The party/agency named below (Party/Agency) will appear at the prehearing conference and all subsequent proceedings in the above-entitled matter.
2. By providing its email address below, the Party/Agency acknowledges that it has read and agrees to the terms of the Office of Administrative Hearings' e-Filing policy and chooses to opt into receiving electronic notice from the Office of Administrative Hearings in this matter. **Note: Provision of an email address DOES NOT constitute consent to electronic service from any opposing party or agency in this proceeding.**¹
3. The Party/Agency agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel.

Party's/Agency's Name: Kim Babine - Department of Employment & Economic Development
 Email: kim.babine@state.mn.us Telephone: 651-259-7349
 Mailing Address: 1st National Bank, 332 Minnesota St., Suite E200, St Paul, MN 55101

Party's/Agency's Attorney: _____
 Firm Name: _____
 Email: _____ Telephone: _____
 Mailing Address: _____

Respondent's/Opposing Party's Name: _____
 Email: _____ Telephone: _____
 Mailing Address: _____

Dated: _____

 Signature of Party/Agency or Attorney

¹ In order to opt in to electronic notice, this form must be emailed to OAH.efiling.support@state.mn.us. If the party does not wish to opt in to electronic notice, this form may be filed with the Office of Administrative Hearings via facsimile, U.S. Mail, or personal service. See 2015 Minn. Laws Ch. 63, Minn. R. 1400.5550, subps. 2-5 (2015).
 Note: This form must be served upon the opposing party/agency. Counsel may not withdraw from representation without written notice.