

VRS Extended Employment Rule Revision Advisory Committee

SESSION NOTES for September 30, 2015

Convened by Minnesota DEED Vocational Rehabilitation Services

Meeting Details

Date: Wednesday, September 30, 2015

Time: 10:30 am – 3:00pm

Location: ProAct, Eagan, MN 55121

Chair: John Sherman, VRS Extended Employment Program Director

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

Advisory members (or alternates) in attendance: Jeff Bangsberg, Christine Bauman, Laura Bealey, Tim Dickie, Steve Ditschler, Jeremy Gurney, Nancy Huizenga, Amanda Jensen-Stahl, Holly Johnson, Karen Johnston, Anita Kavitz, Wendy Keller, Don Lavin, Clayton Liend, Anna MacIntyre (for Dean Ritzman), Rod Pederson (by phone), Lynn Sando, John Sherman, and David Sherwood-Gabrielson

Unable to attend: Tim Hammond, Kim Peck, Dean Ritzman, and Roland Root

Key Perspectives for EE Rule Revision Work

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

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

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Advisory Session Objectives:

1. Share important updates since the June 2015 EE Rule Revision Advisory Committee meeting including legislative outcomes and next steps.
2. Begin Phase II of the Minnesota EE Rule Revision process, which is focused on the writing, review and seeking of comments on proposed draft Rule changes, with a committee review of a set of initial draft sections.
3. Gather key stakeholder perspectives and input on proposed draft EE Rule changes to assist Minnesota DEED Vocational Rehabilitation Services in the Minnesota EE Rule Revision writing process.
4. Continued discussion of ADA, Olmstead and the Workforce Innovation and Opportunity Act (WIOA) and their combined implications for Minnesota's Extended Employment Rule revision.

Welcome and Opening Remarks

The meeting was called to order. EE Program Director John Sherman welcomed attendees to the first meeting of the Phase II work of the Extended Employment Rule Revision work and began the session with committee members introductions. He noted new EE program staff member Amanda Jensen-Stahl as well as new EE Rule Advisory Committee members joining the committee for Phase II: Christine Bauman (VRS - Rehabilitation Area Manager, Mankato), Roland Root (VRS - Regional Manager, Northern Region) and Lynn Sando (National Alliance on Mental Illness of Minnesota (NAMI-MN)).

Update on Legislative Outcomes since the June 2, 2015 Meeting

John Sherman provided an overview of the outcomes from the legislative special session to resolve the Governor's veto of the Jobs Bill. John reminded the advisory that rule is effectively law and rule is subservient to statute. Both the House and the Senate must agree on language for it to be effective and many of the proposed changes discussed with the EE Rule Advisory Committee were not included in the version that was passed approximately five minutes before the official end of session.

John walked the advisory committee through amendments made to Minnesota Statute 2014, section 268A. as documented in a handout entitled "Legislative Changes to Extended Employment - special session 2015 Laws Chapter 1" that was sent to committee members in preparation for the meeting. The changes are predominantly focused on updates to language such as replacing 'rehabilitation facility' with 'community rehabilitation provider' throughout as well as incorporating the WIOA definition of "noncompetitive employment" in Sec.16.

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Jeff Bangberg asked that the meeting record note his objection to any 'watering down' of the requirement for Community Rehabilitation Provider Governing Boards to include a person with a disability. Karen Johnston responded that the statute language changes did not result in any loss of representation of persons with disability on governing boards and John concurred.

Anita Kavitz added that the changes to 268A.085 Community Rehabilitation Provider Governing Boards allow Allina Health System, Inc.'s to establish a separate board for the Courage Kenny program to serve as the governing board of their extended employment program rather than the governing board of the corporation. The program's board is subject to the same requirements and a person with a disability. The intention of the language changes is to support more direct governing for extended employment programs that are contained as part of a larger nonprofit or public entity.

Jeff said the rule should guard against any potential loopholes that would lead to the creation of 'ghost boards' by providers that lack a true voice and weight within their leadership and governance structure. Karen stated that she understood and would share his concern if the governing was allowed by committees. However she believes that boards are much stronger and held to higher accountability such that the integrity of the voice of board representation by a person(s) with a disability remains intact with the statute language. John agreed that the revised statute is committed to the representation principles the EE Advisory has discussed to date.

Don Lavin asked a question regarding the definition of 'customary rate' included within the Sec.16 definition of 'noncompetitive employment'. Don asked if that could include subminimum wage and John said yes. The phrase 'customary rate' was developed to allow for local wage differences. Don noted that wherever possible the spirit and letter of the rule should be aligned with competitive, integrated employment and said the language should be reviewed after the final WIOA regulations are released for any potential changes required for compliance. John noted that this statute language is not what either VRS or MOHR proposed in their recommended language but rather what was developed by the legislature in the special session.

Karen Johnston asked whether the proposed changes regarding Ability One made statute. John Sherman answered that proposed changes were not adopted and there remains significant issues with Ability One.

In conclusion, John stated that work continues to reintroduce portions of the proposed changes back into the statute process and into the draft EE rule.

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Working Session: Review of Draft EE Rule Changes

Anita Kavitz provided a brief overview of the master index of recommended changes to Statute 268A and EE Rule 3300.2010 that were developed and discussed the EE Rule Advisory Committee during Phase I working sessions. Advisory Committee members were sent the Master Rule Index document along with the EE Draft Rule v-1 092215 and the EE Rule Markup v-1 092215 to review in preparation for the meeting.

Over the course of the working session, Anita walked through the draft EE Rule changes proposed for the following sections:

- 3300.2010 Certification

- 3300.2015 Eligibility

- 3300.2020 Program Planning, Service Delivery, and Case Records

- 3300.2052 Withdrawal of Allocated Funds

- 3300.2055 Appeal Procedure

Related to 3300.2010 Certification draft review:

Don Lavin complimented the EE Program staff on the draft rule content and then asked if the draft should include references to the Minnesota Employment First Policy for more intentional alignment between the two bodies of work.

John acknowledged the importance and congruence with the Minnesota Employment First Policy and said there is intention to support the policy's implementation as part of the drafting process. David Sherwood-Gabrielson added that the Minnesota First Policy applies broadly to the employment and employment-related services of the Department of Employment and Economic Development, the Department of Human Services and the Department of Education.

Jeff Bangsberg asked if the EE Rule might reinforce the Minnesota First Policy by referencing it within the 'Certification' section of the rule. David noted that the Minnesota Employment First Policy does not provide much specificity of implementation however it is clear that there can be no Minnesota Employment First Policy absent Informed Choice which the EE Rule Advisory has discussed at length as key to the revision.

At this point in the meeting, the facilitator asked the question and received complete committee agreement regarding the importance of Informed Choice as integral to the EE Rule revision. Anita Kavitz will review the Minnesota Employment First Policy as well as Informed Choice and bring any recommendations as it relates to the EE Rule draft to the next advisory meeting on October 20.

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Related to 3300.2015 Eligibility draft review:

Upon review of the draft, questions were raised on the potential requirements of the federal executive order on paid benefits, and specifically as it relates to employer requirements for minimum paid sick leave. One suggestion was to update the draft language to include 'meeting state and federal minimums'. Anita Kavitz made a note to review the executive order and make any recommendations as it relates to draft rule.

Clayton Liend asked for clarification on positions funded by DHS referenced in Subp6. Several members noted that the intention of this language is to prevent 'double-dipping' for services and the advisory engaged in a discussion about how to best reflect that in the draft language. The committee approved a recommendation by Anita Kavitz to remove proposed 'D' noting that the intention of the draft is met by surviving draft items 'A', 'B', 'C', and 'E'. Anita will revise the draft to remove 'D' and renumber.

Related to 3300.2020 Program Planning, Service Delivery, and Case Records draft review:

The advisory committee discussed the pros and cons of the existing/draft requirement of 'two in-person contacts... per month' in Subp.6 Clayton Liend noted that this can present difficulties for providers in rural areas who cover significant geographic distances for in-person meetings. Anna MacIntyre of Department of Human Services said that their agency has been reviewing potential technologies for remote access to services for similar service requirements and offered to send EE Program staff any draft materials that might be helpful for EE rule drafting purposes.

Related to 3300.2052 Withdrawal of Allocated Funds and 3300.2055 Appeal Procedure draft review:

Anita provided an overview of these drafts with no significant questions or follow-up items generated

Olmstead Plan Update

David Sherwood-Gabrielson provided an update on the ongoing work with the Minnesota Olmstead Plan. "Putting the Promise of Olmstead into Practice: Minnesota's Olmstead Plan, August 10, 2015 Revision" was approved on September 29, 2015 by Judge Donovan Frank. David distributed copies of the Employment Section found on pages 48-53 of the approved plan. He reviewed the three employment goals and work plan framework as well as the six key strategies of the Olmstead Employment Plan.

David credited the mediation work of Magistrate Judge Becky R. Thoreson who convened a large number of interested parties - including advocates, attorneys and

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eight different agencies - to develop the agreed-upon measurable goals in the approved plan. Minnesota's Olmstead Plan clearly supports the movement from segregated to integrated competitive employment.

Jeff Bangsberg asked about the courts understanding of the resource constraints and resource reallocation challenges and what can be done to fulfill the implementation without negative consequences for those currently served by the current program. David said there continue to be significant resource considerations for Olmstead's implementation and achieving the vision of the Plan including interagency and individual agency challenges with data systems, staff capacity, funding for eligible populations and service/outcome reporting.

Don Lavin asked why Minnesota couldn't consider allowing monies to 'go to individuals' and then with the use of informed choice, individuals could 'vote with their feet' to pursue self directed services of their choosing. Don said he believes such an approach could also help move some of the individuals who may currently be 'overserved' by the system into more integrated employment resulting in the freeing up of additional resources for those with the most significant disabilities.

David wrapped up the discussion noting that one of the biggest benefits of the arduous Olmstead process has been the achievement of a greater level of interagency coordination than he has seen in his career. He noted the leadership of Olmstead Subcabinet Chair Mary Tingerthal as key to this progression.

Recap

The committee devoted the majority of the working session to review and discussion of five draft sections of the EE Rule as follows:

- 3300.2010 Certification

- 3300.2015 Eligibility

- 3300.2020 Program Planning, Service Delivery, and Case Records

- 3300.2052 Withdrawal of Allocated Funds

- 3300.2055 Appeal Procedure

There was general support for the drafts as presented. There were a few areas identified for follow-up which are listed below within Next Steps.

John reiterated how valuable it is for VRS as writing of EE Rule continues to have access to this body for review and input.

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Next Steps

1. The EE Rulemaking Advisory Committee is scheduled for three additional draft review meetings yet in 2015 as follows:
 - a. October 20
 - b. November 17
 - c. December 15
2. Anna MacIntyre of Department of Human Services will check on the status of draft/updated language pertaining to technology and face to face service requirements and share any information helpful to the EE Rule Advisory Committee's contemplation of the rule revision.
3. Anita Kavitz will incorporate the draft language reviewed with the EE Rule Advisory Committee today and review the Minnesota Employment First Policy, Informed Choice and the federal executive order on paid benefits for any implications to the draft rule changes.
4. John Sherman will continue drafting sections for EE Rule Advisory Committee review and input at the October 20th meeting.
5. The advisory committee will continue proactive sharing and cascading of the work of the VRS EE Rule Revision Advisory Committee with other EE system members notably the membership of Minnesota Organization for Habilitation and Rehabilitation (MOHR) for the benefit of input and support for the proposed draft rule.

Meeting Adjourned

The meeting was adjourned at 3:00pm.

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