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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/.

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Department of Employment and Economic Development

Adopted Permanent Rules Relating to Extended Employment Services

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. **CARF.** "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~~ years 2019 and 2020, is or is not owned or operated by the individual's service 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; and

(2) for state fiscal year ~~2020~~ 2021 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~~ years 2019 and 2020, is or is not, directly or indirectly, the individual's extended employment provider; and

(2) for state fiscal year ~~2020~~ 2021 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~~ 8.

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

(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 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;

(3) job skill training at the work site;

(4) regular observation or supervision of the individual;

(5) behavior and symptom 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~~ a professional who ~~are~~ is licensed, certified, or registered in the state where the professional practices, and who ~~provide~~ 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.

~~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~~ through 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 time, paid vacation time,

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

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. For state fiscal year 2021 and thereafter, 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. Individuals on a medical assistance waiver receiving extended employment services prior to state fiscal year 2021 are exempt from this provision and remain eligible to receive extended employment services.

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~~ with 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~~ update 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~~ update the plan at least once per year. The new or updated extended employment support plan shall be maintained in the case file. The review and ~~development~~ update of the plan shall include the individual, the provider, and anyone else the individual would like involved. The review and ~~development~~ update of the plan 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;

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~~ other state department ~~who~~ that 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

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.

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 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. The cap is effective beginning in state fiscal year 2021.

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.

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~~ one-time 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~~ one-time 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 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/~~ on the department's extended employment web page. 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.

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.

MINNESOTA
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January 22, 2019

VIA EMAIL ONLY
Nancy Breems
Secretary of State, Elections Division
180 State Office Building
100 Rev Dr Martin Luther King Jr Blvd
St. Paul, Minnesota 55155-1299
official.documents@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. Breems:

Enclosed for filing is an electronic copy of the above-entitled adopted rules.

Please send the agency copy of the rules to:

Kim Babine
Department of Employment and Economic Development
First National Bank
332 Minnesota St
Ste E200
Saint Paul, MN 55101

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

Enclosures
cc: Kim Babine (via email)