

Dear Senators MORTIMER, Thayn, Buckner-Webb, and
Representatives VANORDEN, McDonald, Kloc:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the Vocational Rehabilitation:

IDAPA 47.01.02 - Rules and Minimum Standards Governing Extended Employment Services -
Proposed Rule (Docket No. 47-0102-1801).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 12/06/2018. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 01/07/2019.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Education Committee and the House Education Committee
FROM: Principal Legislative Drafting Attorney - Elizabeth Bowen
DATE: November 16, 2018
SUBJECT: Vocational Rehabilitation

IDAPA 47.01.02 - Rules and Minimum Standards Governing Extended Employment Services - Proposed Rule (Docket No. 47-0102-1801)

Summary and Stated Reasons for the Rule

This rule makes multiple revisions to rules regarding the Extended Employment Services Program in the Division of Vocational Rehabilitation, for purposes of clarification. Changes include several new definitions and language intended to clarify several rules, including rules regarding the application process, evaluation of eligibility requirements, and record retention requirements.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted, and there is no anticipated negative fiscal impact on the state general fund.

Statutory Authority

I.C. 33-2211 and 33-2303, Idaho Code.

cc: Vocational Rehabilitation
Tracie Bent

*** PLEASE NOTE ***

Per the Idaho Constitution, all administrative rules must be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 47 – DIVISION OF VOCATIONAL REHABILITATION

47.01.02 – RULES AND MINIMUM STANDARDS GOVERNING EXTENDED EMPLOYMENT SERVICES

DOCKET NO. 47-0102-1801

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 33-2211, and 33-2303, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed amendments make technical corrections, add defined terms, and update the referral and eligibility requirements for the Extended Employment Services Program. Added definitions include: Extended Employment Services, Customer Rights and Responsibilities, Enclave Group Community-Based Non-Integrated Support Employment, Fee, Individual Community Supported Employment, Provider Agreement, and Work Services. Amended definitions include: CARF and Individual Program Plan. Updates and clarification is made to the application process, evaluation of the eligibility requirements, process for payment services and submission of individual program plans, and record retention requirements.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 2, 2018 Idaho Administrative Bulletin, [Vol. 18-5, page 147](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tracie Bent at (208) 332-1582 or tracie.bent@osbe.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018.

Dated this 31st day of August, 2018.

Tracie Bent, Chief Planning and Policy Officer
State Board of Education
650 W. State Street
P.O. Box 83720
Boise, Idaho 83720-0037
Phone: (208)332-1582
Fax: (208)334-2632

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 47-0102-1801
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following terms and abbreviations are used as herein defined. (3-14-07)

01. CARF. The ~~Rehabilitation Commission on~~ Accreditation ~~Commission~~ of Rehabilitation Facilities, an international independent, nonprofit accrediting body of employment and community services providers. ~~(3-29-17)~~()

02. Customer. An individual residing in the state of Idaho who has applied for, and who is eligible to receive EES. A customer must be at least sixteen (16) years of age. (3-29-17)

03. Certified Extended Employment Services (~~EES~~) Provider. A community rehabilitation program services provider sometimes referred to in these rules as a provider, that has been approved by EES program to provide extended employment services. ~~(3-29-17)~~()

04. Extended Employment Services Customer Rights and Responsibilities. Extended Employment Services document outlining customer protections and reasonable service expectations during all phases of EES. ()

05. Enclave Group Community-Based Non-Integrated Supported Employment. Self-employment or paid employment which is: ()

a. For a group of no more than eight (8) customers who are paid not less than minimum wage and who, because of their disabilities, need ongoing support to maintain employment; ()

b. Conducted in a variety of community and industry settings where the customers have opportunities to interact with co-workers or others without known paid work supports at least to the extent that those opportunities typically exist in that work setting; ()

c. Supported by training and supervision needed to maintain that employment; and ()

d. Not conducted in the work services area of an EES provider. ()

046. Extended Employment Services (EES). Long term maintenance services that assist customers in maintaining employment, or in gaining employment skills in preparation for community employment, or which provide assistance to adult customers with disabilities within an industry/business community setting or a community rehabilitation program, intended to maintain paid employment. Such services include individual supported employment, group community-based non-integrated supported employment, and work services. (3-29-17)

07. Fee. Payment(s) made to EES providers for long-term employment supports as outlined in a customer's annual Individual Program Plan. Fee rates are established through the annual EES Provider Agreement. ()

08. Individual Community Supported Employment. Self-employment or paid employment that is: ()

a. For a customer paid not less than minimum wage and who, because of his or her disability(ies), needs ongoing support to maintain employment; ()

b. Conducted in a community or industry setting where persons without known paid work supports

are employed; and ()

c. Supported by authorized activities needed to sustain paid work by persons with disabilities, including but not limited to supervision, training, and transportation, and; ()

d. Not conducted in the work services area of an EES provider. ()

09. Idaho Division of Vocational Rehabilitation (IDVR). The Idaho Division of Vocational Rehabilitation, a state agency under the Idaho State Board of Education, with administrative oversight of the EES program. ()

105. Individual Program Plan. The EES plan ~~to be provided to~~ that outlines the annual service need for an individual customer ~~to maintain employment.~~ (3-29-17)()

0611. Idaho Division of Vocational Rehabilitation (IDVR). The Idaho Division of Vocational Rehabilitation, a state agency under the Idaho State Board of Education, with administrative oversight of the EES program. (3-29-17)

12. Provider Agreement. An annual written contract between EES and EES providers, entered into in accordance with these rules. ()

0713. RSAS. Rehabilitation Services Accreditation Systems, a national accrediting body of vocational rehabilitative services providers. (3-29-17)()

14. Work Services. A program that utilizes individual and group work to assist individuals in understanding the value and demands of work, enhancing positive work attitudes, and developing functional capacities that will enhance the ability to achieve and maintain an employment outcome. Limited non-paid work-related activities and transportation may be billed only when authorized on an Individual Program Plan. Work services are typically conducted on EES provider premises. ()

011. -- 099. (RESERVED)

100. PROGRAM YEAR.

01. Program Year and Application Submission Date. For purposes of these rules, the EES program fiscal year is July 1 of a given year through June 30 of the next succeeding year. ~~An EES Provider Agreement for a fiscal year must be submitted on or before the first business day of May preceding the fiscal year for which approval is sought.~~ (3-29-17)()

101. -- 199. (RESERVED)

200. EXTENDED EMPLOYMENT SERVICES PROVIDER AGREEMENT.

01. Standard Form. (3-29-17)

a. Prior to providing services, a provider shall enter into an annual EES Provider Agreement with the EES program which will specify the terms and conditions of the approval. Such agreement shall be on a standard form approved by the EES program, ~~after consultation with the EES provider.~~ When changes to the provider agreement are considered, EES will engage with providers to request input prior to finalizing the new agreement. Such EES Provider Agreement shall detail the provider requirements, services, scope of work, other special provisions, and fees for service. The EES program will make the EES Provider Agreement available the first business day of ~~April~~ May. (3-29-17)()

b. Approval to provide EES will be provided by the EES program ~~on or before the first business day of June preceding such fiscal year.~~ If approved by the EES program, a provider is eligible to deliver EES ~~effective July 1, the first day of such fiscal year~~ when all required provider eligibility criteria are met. An agreement that is denied may be reconsidered during the course of a fiscal year. ~~The EES program has the discretion to add a new or~~

~~additional providers after July 1, if there have been significant developments in a region that justify the need for new or additional providers. In such event, the EES program will give preference to denied applications based on date of application. An approval will be based on the applicant demonstrating they have met all Provider Qualifications as outlined in IDAPA 47.01.02.300.~~ (3-29-17)(____)

02. Annual Provider Agreement. This agreement must be signed ~~prior to the beginning~~ **by June 1** of the EES fiscal year by an authorized representative of the provider and the IDVR ~~State~~ Administrator or a designee ~~prior to providing extended employment services to EES customers.~~ (3-29-17)(____)

03. Provider Agreement Revision. The agreement shall be entered into annually, and is subject to revision, as may be required by the EES program. The EES program will provide providers notification of any changes to the agreement, with as much notification as possible. (3-29-17)(____)

201. -- 299. (RESERVED)

300. PROVIDER QUALIFICATIONS.

An approved EES provider shall meet all of the following requirements: (3-29-17)

~~**01. Experience.** A new provider must have a minimum of three (3) full years of experience working with customers who are receiving Medicaid Waiver or must have worked with IDVR customers in employment services, or both.~~ (3-29-17)

021. Accreditation. ~~Receive and m~~Maintain accreditation by CARF or RSAS **and provide IDVR a copy of the accreditation.** (3-14-07)(____)

~~**032. Staff.** All staff will meet the following requirements:~~ (3-29-17)

a. Satisfactorily complete a criminal history background check, to be obtained by the provider; (3-14-07)

b. Be eighteen (18) years of age and, if less than twenty-one (21) years of age, have not less than ~~six (6) months~~ **seven hundred fifty (750) documented hours of** experience with people with disabilities; (3-29-17)(____)

c. Demonstrate the ability to deliver services as specified in the Individual Program Plan for each customer; and (3-29-17)

d. Document completion of not less than forty (40) hours of training directly related to vocational support for people with disabilities. Training must be documented no later than six (6) months from the date of hire and include all of the following topics: (3-14-07)

i. Behavior technology, especially positive behavioral support; (3-14-07)

ii. Instructional techniques; (3-14-07)

iii. Strategies for dealing with aberrant or maladaptive behavior; (3-14-07)

iv. Integration/normalization; (3-14-07)

v. Functional impact of disabilities, particularly developmental disabilities and mental illness; (3-29-17)

vi. Strategies for remediation and accommodation. (3-14-07)

vii. Ethics and confidentiality; (3-29-17)

viii. The development and use of measurable objectives; and (3-29-17)

- ix. Overview of assistive technology. (3-29-17)

(BREAK IN CONTINUITY OF SECTIONS)

500. EXTENDED EMPLOYMENT SERVICES CUSTOMER REFERRAL, ELIGIBILITY, AND CASE CLOSURE.

01. Referral Application. ~~Each applicant to be a customer for EES under these rules will be referred by a Vocational Rehabilitation Counselor, employed by IDVR, who will provide the applicant with information on the services available from EES providers. An individual can apply for EES through:~~ (3-29-17)()

a. ~~Demonstrated need for EES long-term supports. An individual that has a demonstrated need for a specific EES service will be referred to the EES program by a Vocational Rehabilitation Counselor (VRC) employed by IDVR.~~ ()

b. ~~Individual Informed Choice. An individual who expresses an interest in non-integrated employment and who has received career counseling on integrated employment from a VRC employed by IDVR may be referred to the EES program. IDVR will document completion of career counseling at the time of referral to EES.~~ ()

02. Application Process. The application process is complete when the following has occurred: ()

a. ~~The referring IDVR counselor provides EES with a completed EES referral form; and~~ ()

b. ~~The rights and responsibilities form has been reviewed and signed by the applicant and guardian (when applicable); and~~ ()

c. ~~The guardianship documentation has been received (when applicable).~~ ()

023. Eligibility. ~~The EES program will assess the eligibility of each applicant for services. Applicants who are eligible for and have access to other public funding sources for long term support services are not eligible for EES services.~~ Eligibility will be determined for each customer based on the following: ()

a. ~~For customers requesting non-integrated employment, the EES Program Manager or designee will conduct a records review and interview(s) with the customer and when applicable, the customer's guardian. Based on information gathered, the EES Program Manager or designee will determine if long-term supports are necessary to maintain employment, and that the customer is choosing non-integrated employment. If determined eligible, EES will assist with the informed choice process to select an EES provider.~~ ()

b. ~~A customer who has engaged in the VR process and demonstrates a need for long-term supports will be referred to EES by the customer's IDVR counselor.~~ ()

c. ~~Applicants who are eligible for Medicaid Waiver funding must use Medicaid Waiver funding for long-term employment support services when the customer's IDVR counselor recommends individual community supported employment for the customer. If, after service needs are assessed, and an individual has service needs greater than what Medicaid will approve for long-term job coaching, EES will require Medicaid to provide written documentation denying such funding prior to EES providing this service.~~ ()

04. Disability Criteria. Eligible applicants must have a disability that falls into one (1) of four (4) categories described below, and such disability must constitute a barrier to such person maintaining paid employment without long term vocational support: (3-29-17)()

a. ~~Developmental Disabilities. Pursuant to Section 66-402, Idaho Code, a chronic disability of a person that appears before the age of twenty-two (22) years; and~~ (3-14-07)

i. Is attributable to impairment, such as intellectual disability, cerebral palsy, epilepsy, autism, or other condition found to be closely related to or similar to one (1) of those impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; (3-29-17)

ii. Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (3-14-07)

iii. Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and individually planned and coordinated. (3-14-07)

b. Mental Illness. A person has been assessed by a qualified professional and been diagnosed under DSM-IV or later editions with schizophrenia, schizoaffective disorder, major affective disorder, delusional disorder or ~~a~~ borderline personality disorder, in which this psychiatric disorder must be of sufficient severity to cause a disturbance in role performance or coping skills in at least two (2) of these areas on either a continuous or an intermittent (at least once per year) basis: vocational/academic, financial, social/interpersonal, family, basic living skills, housing, community, or health. ~~(3-29-17)()~~

c. Specific Learning Disability. A disorder in one (1) or more of the psychological processes involved in understanding, perceiving, or using language or concepts (spoken or written). A disorder which may manifest itself in problems related to speaking, reading, spelling, or mathematical calculations (or to a lesser extent, listening, thinking, or writing), and seriously limit two (2) or more functional capacities (mobility, communication, self-care, self-direction, work tolerance or work skills). (3-14-07)

d. Traumatic Brain Injury. A traumatically acquired insult to the brain that may cause physical, intellectual, emotional, social, and vocational changes. A closed head injury may be caused by a rapid acceleration/ deceleration, as in a motor vehicle accident. An open head injury is visible insult and may be the result of an accident, gun-shot wound, or other physical injuries. Immediate effects are loss of consciousness, loss of memory, or change in vision, strength, coordination, or sensory function. Anatomical abnormalities may be present, such as cerebral hemorrhage or skull fracture. Long term effects may include physical, cognitive, and psycho-social-behavioral-emotional impairments. (3-14-07)

035. Case Closure. Cases will be closed from the EES program for the following reasons and will include documentation in the case record that supports such reason: (3-29-17)

- a. Unable to locate or contact customer; (3-29-17)
- b. Customer is eligible for or utilizing Medicaid Waiver services for CSE; ~~(3-29-17)()~~
- c. Customer's disability is too significant to benefit from services; ~~(3-29-17)()~~
- d. Customer is non-compliant or has not followed through with EES services; (3-29-17)
- e. Customer has retired from employment; (3-29-17)
- f. Customer no longer interested in pursuing employment ~~or receiving EES services;~~ ~~(3-29-17)()~~
- g. Customer no longer needs EES services; (3-29-17)
- h. Customer has moved out of state; or (3-29-17)
- i. All other appropriate reasons Death of customer. ~~(3-29-17)()~~

501. -- 599. (RESERVED)

600. COVERED SERVICES.

The Extended Employment Services that may be provided to customers by providers are described below. EES typically follow the completion of other vocational rehabilitation services, such as vocational evaluation, job site development, and initial training at the job site. Such covered services include: (3-29-17)()

01. Individual Community Supported Employment. ~~Self employment or paid employment that is:~~ (3-29-17)()

~~a. For a customer paid not less than minimum wage and who, because of his or her disability(ies), needs ongoing support to maintain that employment;~~ (3-29-17)

~~b. Conducted in a community or industry setting where persons without known paid work supports are employed; and~~ (3-14-07)

~~c. Supported by authorized activities needed to sustain paid work by persons with disabilities, including but not limited to supervision, training, and transportation.~~ (3-14-07)

02. Group Community-Based Non-Integrated Supported Employment (Enclave). ~~Self employment or paid employment which is:~~ (3-29-17)()

~~a. For a group of no more than eight (8) customers who are paid not less than minimum wage and who, because of their disability(ies), need ongoing support to maintain that employment;~~ (3-29-17)

~~b. Conducted in a variety of community and industry settings where the customers have opportunities to interact with co-workers or others without known paid work supports at least to the extent that those opportunities typically exist in that work setting;~~ (3-29-17)

~~c. Supported by training and supervision needed to maintain that employment; and~~ (3-14-07)

~~d. Not conducted in the work services area of an EES provider.~~ (3-29-17)

03. Work Services. ~~The work services program utilizes individual and group work to assist individuals in understanding the value and demands of work, enhancing positive work attitudes, and developing functional capacities that will enhance the ability to achieve and maintain an employment outcome. Limited non-paid work related activities and transportation may be billed only when authorized on an Individual Program Plan. Work services are typically conducted on EES provider premises.~~ (3-29-17)()

(BREAK IN CONTINUITY OF SECTIONS)

800. SERVICE PROVISION.

01. Services on Individual Program Plan. EES ~~for~~ with each individual customer must be based on the Individual Program Plan developed for such customer. (3-29-17)()

02. Development of Individual Program Plan. Those involved in developing the Individual Program Plan must include, but are not limited to, the following: (3-14-07)

a. The customer. Efforts must be made to maximize the customer's involvement in the planning process by providing him or her with information and education regarding rights, and available options; and (3-29-17)

b. The customer's legal guardian, if one has been appointed by the court; and (3-29-17)

c. The EES provider program staff, responsible for the implementation of the Individual Program Plan. (3-29-17)

03. Submission of the Individual Program Plan. The ~~Certified~~ EES provider must submit the Individual Program Plan ~~to the EES program using the standard format provided or approved by the EES program. The program will either accept the Individual Program Plan as submitted, or may require revisions to the Individual Program Plan before acceptance~~ as outlined in the annual Provider Agreement. (3-29-17)()

04. Timeline for Submission. The Individual Program Plan must be submitted ~~to the EES program within thirty (30) days from the beginning of the provision of EES. No payment will be made for EES without receipt of the Individual Program Plan covering those Extended Employment Services~~ as outlined in the annual Provider Agreement. (3-29-17)()

05. Revision. The EES provider must submit an updated Individual Program Plan for each customer to the EES program at least annually based on the criteria outlined in the annual Provider Agreement. (3-29-17)()

06. Progress Reports. The EES provider must submit ~~a~~ progress reports ~~on each customer to the EES program at six (6) month intervals. A standardized format provided or approved by the EES program must be used~~ as outlined in the annual Provider Agreement. (3-29-17)()

801. RECORDS.

01. Customer Files. EES providers shall maintain individual customer files; as outlined in the Provider Agreement. The EES program will maintain an EES customer file with all records specific to the individual and those records submitted by the EES provider as required which ~~must, at minimum, will~~ include the following: (3-29-17)()

- a. Referral information; (3-14-07)
- b. Eligibility; (3-14-07)
- c. Authorization for services; (3-14-07)
- d. Contact information; (3-14-07)
- e. Legal guardianship information; (3-14-07)
- f. Individual Program Plan(s); (3-14-07)()
- ~~g. Progress Reports;~~ (3-14-07)
- ~~h.g.~~ Documentation of service; and (3-14-07)()
- ~~h.~~ Release of information. ()
- ~~i.~~ Satisfaction measures; (3-14-07)
- ~~j.~~ Releases of information; and (3-14-07)
- ~~k.~~ Documentation that updates to customer information were provided to IDVR. (3-29-17)

02. Storage. Files must be maintained for five (5) years from the date of discharge of the ~~Client~~ customer to whom the file pertains. (3-14-07)()

802. -- 899. (RESERVED)

900. PAYMENT FOR SERVICES.

01. Fee for Service. The IDVR ~~State~~ Administrator or designee shall set the fees for covered services, ~~after discussion with EES providers~~ after annual input from EES providers. Such fees shall be set forth in the annual

EES Provider Agreement. ~~Such fees shall be reviewed annually, and may be adjusted by the IDVR State Administrator to take effect at the beginning of the fiscal year.~~ (3-29-17)()

02. Pre-Authorization. All EES services must be pre-authorized by the EES program, and shall be set forth in the Individual Program Plan for each customer. Service needs that exceed the approved and authorized hours outlined in the individuals Individual Program Plan may be requested. The EES approval process is outlined in the Provider Agreement. (3-29-17)()

03. Billing Procedures. (3-14-07)

a. EES providers must submit a monthly billing statement for each customer served, in a format approved by an EES program and within timelines set forth in the annual EES Provider Agreement. (3-29-17)

b. Bills may only be submitted for EES that have been identified and accepted by the EES program, as stipulated in an Individual Program Plan. (3-29-17)

c. All bills submitted by providers are subject to prepayment and post payment review. Documentation sufficient to support each payment item shall be available for review, and must be maintained for five (5) years from the date of service. The provider must submit copies of the documentation regarding the provision of such services upon written request from an EES program. (3-29-17)

04. Audits. The EES program may perform audits of billing records and other documentation submitted by providers in order to verify the accuracy of such records. (3-29-17)

05. Denial/Revocation of Payment. The EES program may deny payment, or seek reimbursement or set-off for payments previously made, if the provider is not in compliance with these rules, the signed Employment Services Provider Agreement, or if the provider does not provide the services as set forth in a customer's Individual Program Plan. (3-29-17)