

IN THE SENATE

SENATE BILL NO. 1329

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO THE EXTENDED EMPLOYMENT SERVICES PROGRAM; REPEALING CHAPTER 63, TITLE 33, IDAHO CODE, RELATING TO THE EXTENDED EMPLOYMENT SERVICES PROGRAM; AMENDING TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 17, TITLE 56, IDAHO CODE, TO DEFINE TERMS, TO ESTABLISH THE EXTENDED EMPLOYMENT SERVICES PROGRAM IN THE DEPARTMENT OF HEALTH AND WELFARE, TO ESTABLISH PROVISIONS REGARDING PROGRAM ELIGIBILITY AND ADMINISTRATION, TO ESTABLISH PROVISIONS REGARDING COVERED SERVICES AND INDIVIDUAL PROGRAM PLANS, AND TO ESTABLISH PROVISIONS REGARDING PROGRAM PROVIDERS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 63, Title 33, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 17, Title 56, Idaho Code, and to read as follows:

CHAPTER 17

EXTENDED EMPLOYMENT SERVICES PROGRAM

56-1701. DEFINITIONS. As used in this chapter:

(1) "Competitive integrated employment" means work performed on a full-time or part-time basis:

(a) For which an individual is compensated at a rate that shall not be less than the higher of the rate specified in section 6(a)(1) of the fair labor standards act of 1938 or the rate specified in the applicable state or local minimum wage law; and is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or in the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or perform similar tasks and who have similar training, experience, and skills; and who is eligible for the level of benefits provided to other employees;

(b) That is at a location where the employee interacts with other persons who are not individuals with disabilities, not including supervisory personnel or individuals who are providing services to such employee, to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and

1 (c) That presents opportunities for advancement that are similar to
2 those for other employees who are not individuals with disabilities and
3 who have similar positions.

4 (2) "Department" means the department of health and welfare.

5 (3) "Extended employment services" means long-term maintenance
6 services that assist participants in maintaining employment or gaining
7 employment skills in preparation for community employment or that provide
8 assistance to adult participants within an industry or a business setting or
9 a community rehabilitation program intended to maintain paid employment.
10 Extended employment services include individual community-based supported
11 employment, group community-based supported employment, and work services.

12 (4) "Fading" means the incremental reduction of support on the job as
13 the participant gains skills and independence. Fading begins once the par-
14 ticipant has mastered parts of the job to ensure the participant does not be-
15 come dependent.

16 (5) "Group community-based supported employment" means self-employ-
17 ment or paid employment that is:

18 (a) For a group of no more than eight (8) participants who are paid at
19 least minimum wage and who, because of their disabilities, need ongoing
20 support to maintain employment;

21 (b) Conducted in a variety of community and industry settings where
22 participants have opportunities to interact with coworkers or others
23 without known paid work supports, at least to the extent that those op-
24 portunities typically exist in that work setting;

25 (c) Supported by training and supervision needed to maintain that em-
26 ployment; and

27 (d) Not conducted in the work services area of a provider.

28 (6) "Individual community-based supported employment" means self-em-
29 ployment or paid employment:

30 (a) For which a participant is paid a competitive wage;

31 (b) For which the participant, because of the participant's disabili-
32 ty, needs ongoing support to maintain the employment;

33 (c) That is conducted in a community or industry setting where persons
34 without known paid work supports are employed; and

35 (d) That is supported by authorized activities needed to sustain paid
36 work by persons with disabilities, including but not limited to super-
37 vision and training.

38 (7) "Individual program plan" means a plan for extended employment ser-
39 vices appropriate for an individual participant based on the participant's
40 needs and personal goals.

41 (8) "Noncompetitive employment" means employment where individuals
42 with disabilities are not paid the same rate as people without disabilities
43 for doing the same or similar work, there are no opportunities for advance-
44 ment, and wages are productivity-based with no lower limit.

45 (9) "Nonintegrated employment" means employment where work is per-
46 formed at a location where the employee does not have the opportunity to
47 interact with individuals without disabilities. Typically, these employ-
48 ment settings are created for the express purpose of employing people with
49 disabilities in a provider-owned facility or group congregate setting.

1 (10) "Participant" means a person eligible for and enrolled in the pro-
2 gram established pursuant to this chapter.

3 (11) "Program" means the extended employment services program estab-
4 lished by this chapter.

5 (12) "Provider" means a community rehabilitation program services
6 provider approved by the department to provide extended employment ser-
7 vices.

8 (13) "Work services" means activities, typically conducted on provider
9 premises, intended to assist participants in understanding the value and de-
10 mands of work and developing functional capacities that increase or maintain
11 the skill sets needed to achieve and maintain employment.

12 56-1702. PROGRAM ESTABLISHED. (1) There is hereby established in the
13 department an extended employment services program for the purpose of in-
14 creasing employment opportunities for program participants. The program
15 shall be administered by the department. Extended employment services of-
16 fered under this program are separate and apart from any federal program but
17 may be collaborative with and supportive of federal programs.

18 (2) Program services shall be:

19 (a) Provided when eligible individuals do not have access to comparable
20 services or have fully utilized comparable services for which they are
21 eligible; and

22 (b) Separate and apart from and delivered subsequent to vocational re-
23 habilitation services as defined in 29 U.S.C. 705(40), provided by the
24 Idaho division of vocational rehabilitation.

25 56-1703. PROGRAM ELIGIBILITY AND ADMINISTRATION. (1) A person is eli-
26 gible to participate in the program if the person:

27 (a) Has a disability that constitutes a barrier to maintaining paid em-
28 ployment without long-term vocational support;

29 (b) Is sixteen (16) years of age or older; and

30 (c) Is an Idaho resident.

31 (2) The department will annually review and evaluate a participant's
32 service level needs, encourage the exercise of informed choice, and address
33 any specific concerns.

34 (3) Program participants may request that the program conduct an addi-
35 tional case review to evaluate service level needs at any time. The process
36 will be collaborative with the participant and other stakeholders, as appro-
37 priate, and include the exchange of information on the array of employment
38 type options.

39 (a) Case file reviews, interviews, and other methods may be used to de-
40 termine an individual's service level needs.

41 (b) Individuals may be referred to other programs that provide employ-
42 ment or other supports that the extended employment services program
43 does not provide.

44 (c) In order to receive extended employment services, a participant
45 must either take part in an annual case review or request that the pro-
46 gram assume the responsibility for developing an individual program
47 plan with the participant.

1 (4) Each participant has the right to select the provider used, as
2 applicable to the type and level of services identified, and may choose to
3 receive services from a different provider at any time, subject to provider
4 availability. A participant will contact the program manager to request
5 services from a different approved provider.

6 (5) A participant may be referred for group community-based supported
7 employment options with documentation of a qualifying disability if the in-
8 dividual participates in a choice meeting facilitated by the department pur-
9 suant to 34 CFR 397.40, and the individual requests group community-based
10 supported employment service of a program provider and accepts a noncompeti-
11 tive employment placement; or if the department finds demonstrated need af-
12 ter the individual was found ineligible for federal vocational rehabilita-
13 tion services pursuant to 34 CFR 397.

14 (6) A program participant may choose work services for noncompetitive
15 employment or nonintegrated employment. Eligible applicants for noncom-
16 petitive employment or nonintegrated employment must provide documentation
17 of a qualifying disability, excluding youth where subminimum wage is ap-
18 plied pursuant to 34 CFR 397, must request services and accept nonintegrated
19 noncompetitive employment, and must complete career counseling with the
20 department; or the department may establish demonstrated need after the
21 individual was found ineligible for the federal vocational rehabilitation
22 program pursuant to 34 CFR 397.

23 (7) Eligible program participants receiving services in any category
24 may choose to receive services in a different category if criteria estab-
25 lished by the department are met.

26 (8) An individual who is unable to participate in program services for
27 any period exceeding ten (10) consecutive calendar days will be placed into
28 interrupted service status. Interrupted service for documented medical
29 reasons may not exceed six (6) months. Interrupted service for nonmedical
30 reasons may not exceed three (3) months.

31 (a) Interrupted service timelines do not apply to competitive inte-
32 grated employment participants who remain connected to the competitive
33 integrated employment employer.

34 (b) Interrupted service extended beyond the specified time frame may
35 result in case closure.

36 (c) Providers will notify the program within five (5) business days of
37 receipt of notice that a participant is not participating in program
38 services.

39 (9) Case closures require written notification to the participant by
40 the provider. A good faith effort must be made to notify the participant if
41 the case is closed. Cases will be closed from the program if one (1) or more
42 of the following reasons are met and must include documentation in the case
43 record that supports such reason:

44 (a) The participant has moved out of state;

45 (b) The participant has retired from employment;

46 (c) The participant no longer needs program services;

47 (d) The participant is eligible for or utilizing medicaid waiver em-
48 ployment supports for competitive integrated employment;

49 (e) The employer is providing long-term supports;

50 (f) The participant has received an employment type transfer;

- 1 (g) The participant is no longer interested in pursuing employment;
 2 (h) The participant is medically not released to work for an extended
 3 period of time;
 4 (i) The participant is noncompliant, is not following through with
 5 program requirements, is no longer able to utilize the program, or has
 6 died; or
 7 (j) The program manager is unable to locate or contact the participant.
 8 (10) When there is a statewide waitlist:
 9 (a) Applicants will be placed on the waitlist by date of program eligi-
 10 bility;
 11 (b) Service hours for all new participants will be limited to twenty
 12 (20) hours per week until such time as there is no longer a waitlist;
 13 (c) Service hours for existing participants will be limited to existing
 14 authorized hours until such time as there is no longer a waitlist; and
 15 (d) Exceptions to exceed twenty (20) hours for demonstrated need will
 16 be considered by the program, contingent upon funding availability.
 17 (11) The department will review program service rates and contract
 18 with third-party vendors to conduct cost surveys every five (5) years. The
 19 department will survey all providers. The program may terminate or revoke
 20 the approval status and discontinue authorizing or purchasing services from
 21 providers that refuse or fail to respond to the periodic state surveys.

- 22 56-1704. COVERED SERVICES -- INDIVIDUAL PROGRAM PLANS. (1) Subject to
 23 available funding, the program shall provide the following services to par-
 24 ticipants, as appropriate:
 25 (a) Individual community-based supported employment;
 26 (b) Group community-based supported employment; and
 27 (c) Work services.
 28 (2) The services provided to a participant shall be based on the partic-
 29 ipant's individual program plan.
 30 (3) Program services must:
 31 (a) Be individually planned by using person-centered principles and
 32 person- or people-first language;
 33 (b) Provide assistance to participants as unique individuals with
 34 varying interests, preferences, and aptitudes;
 35 (c) Be in the most integrated employment setting appropriate to the
 36 needs of a participant and consistent with the choice of the participant
 37 regarding services, providers, and goals;
 38 (d) Provide the participant compensation for work performed pursuant
 39 to federal and state wage and hour laws. Uncompensated or volunteer
 40 work is not billable under the program;
 41 (e) Safeguard participants against conflicts of interest, whether real
 42 or perceived; and
 43 (f) Allow a participant to pursue an alternate employment type and
 44 assist the participant with referral to the applicable state agency or
 45 program provider. Any changes to the employment type must be approved
 46 by the department.
 47 (4) Individual community-based supported employment services include:
 48 (a) Competitive integrated employment-allowable activities that are
 49 limited to competitive integrated employment job coaching and:

- 1 (i) Increase the participant's independence, inclusion, in-
 2 tegration, and opportunities with the competitive integrated
 3 employment employer;
 4 (ii) Reinforce employer training and expectations;
 5 (iii) Develop, encourage, and reinforce natural supports with em-
 6 ployer supervisors and coworkers;
 7 (iv) Provide short-term additional supports for employer-di-
 8 rected job task changes within the same job title; or
 9 (v) Ensure job stability and fading as appropriate;
- 10 (b) Offsite job coaching, which may be included in an individual's
 11 program plan when determined by the individual, provider, and program
 12 staff to be the most appropriate strategy to meet the participant's
 13 needs;
- 14 (c) Provider-directed supervision of a participant, which will be ap-
 15 proved when the general community employer requires it as part of the
 16 terms of the participant's employment; and
- 17 (d) Focused mentoring and extended or ongoing job coaching for competi-
 18 tive integrated employment.
- 19 (5) Group community-based supported employment-allowable activities
 20 are limited to:
- 21 (a) Promoting and advocating for increasing the participant's indepen-
 22 dence, inclusion, integration, and community employment goals;
- 23 (b) Supervising, observing, and job coaching of the participant to
 24 maintain employment; and
- 25 (c) Training for specific job duties and tasks.
- 26 (6) Work services area-allowable activities are limited to:
- 27 (a) Promoting and advocating for increasing the participant's indepen-
 28 dence, inclusion, integration, and community employment goals;
- 29 (b) Supervising, observing, and job coaching the participant to main-
 30 tain employment;
- 31 (c) Training for specific job duties and tasks;
- 32 (d) Training in other skills that increase the participant's employ-
 33 ability for group community-based supported employment or competitive
 34 integrated employment;
- 35 (e) Providing onsite personal assistance;
- 36 (f) Providing simulated work training and work activities, including
 37 career counseling and information and referral support services, which
 38 assist a participant receiving subminimum wage to participate in career
 39 counseling and information and referral provided by Idaho division of
 40 vocational rehabilitation staff; and
- 41 (g) Increasing the participant's understanding of various career
 42 pathways and expectations of general community employers. These ac-
 43 tivities will include a component in the greater community, away from
 44 the provider-owned facility, where the participant can observe various
 45 competitive integrated jobs based on the participant's interests.
- 46 (7) Preapproval is required for needed supports that exceed the quar-
 47 terly individual program plan service level, including:
- 48 (a) Short-term additional supports; and
 49 (b) Transportation as follows:

1 (i) Group transportation delivered by the provider to commu-
2 nity-based supported employment participants between home or the
3 provider premises to the group community-based supported employ-
4 ment worksite using provider-insured vehicles. One (1) unit of
5 transportation equals one (1) round trip; and

6 (ii) Work services area transportation where the provider trans-
7 ports a work services area participant between home and the work
8 services area of a provider using provider-insured vehicles. One
9 (1) unit of transportation equals one (1) round trip.

10 (8) Providers are required to report any allegations or suspicions of
11 participant abuse to the program manager, the adult protection authority,
12 and any other entity required under state or federal law, including as re-
13 quired by section 39-5303, Idaho Code.

14 (9) The following services are not allowable services:

15 (a) Initial training. The program will not fund initial competitive
16 integrated employment or self-employment job training;

17 (b) Recreational activities such as parties, social gatherings,
18 outings, and community events outside of work schedule and employer
19 requirements;

20 (c) Day habilitation activities typically conducted by an adult day
21 services setting such as crafts, movies, relaxation, and outings;

22 (d) Career exploration or career training activities provided to in-
23 dividuals opposed to pursuing competitive integrated employment. The
24 program may authorize a maximum of two (2) career exploration activi-
25 ties annually before requiring an amended individual program plan with
26 updated goals to reflect the participant's interest in pursuing compet-
27 itive integrated employment;

28 (e) Supports for which the provider's individual staff is unqualified
29 to perform, such as professional counseling, including suicide coun-
30 seling, grief counseling, and marriage or relationship counseling, and
31 medical services, including medication management and medical trans-
32 portation;

33 (f) Personal support activities that support staff provide on an ongo-
34 ing basis to ensure employment requirements are met, such as daily re-
35 minder phone calls for hygiene needs or other personal care needs; and

36 (g) Any available service provided by another government program,
37 which may require an individual to apply for such services. The program
38 may request documentation of application and denial of comparable ser-
39 vices.

40 (10) Development of individual program plan.

41 (a) The participant and provider will develop the participant's indi-
42 vidual program plan using the program template. The individual program
43 plan will include a brief summary of the participant's involvement.

44 (b) Individual program plans must be signed by the participant or, if
45 applicable, the participant's legal guardian and the provider staff who
46 assisted with the plan preparation.

47 (c) The provider will not receive payment for any services provided
48 without an approved individual program plan.

49 (d) Providers are not required to provide services after an individual
50 program plan expires.

1 (e) An individual program plan must use person-centered principles and
2 people-first language and detail vocational goals, corresponding mean-
3 ingful measurable objectives, and the participant's desired employment
4 outcomes. A participant's individual program plan goals will be dis-
5 cussed, modified, revised, and updated yearly based on data from the
6 participant's progress reports to help the participant achieve employ-
7 ment goals.

8 (f) The participant's provider is responsible for submission of the in-
9 dividual program plan to the program. Revisions may be requested by the
10 program to the individual program plan before approval. If a conflict
11 of interest exists, the program will assume responsibility to complete
12 the individual program plan. Timelines for submission of the individ-
13 ual program plan will be detailed in the provider agreement and the par-
14 ticipant rights and responsibilities document.

15 (g) The participant and provider will review progress toward voca-
16 tional goals and next steps necessary to meet vocational goals. The
17 participant will sign the progress report to acknowledge review of
18 the report. The provider will submit a semiannual progress report for
19 each participant to the program for each six (6) month period, starting
20 with the individual program plan start date. Progress reports are due
21 no later than one (1) month after the reporting period. The provider
22 will submit an annual progress report for the twelve (12) months after
23 the individual program plan start date, due no later than one (1) month
24 after the end of the term date. Failure to submit a progress report in
25 a timely manner will subject the provider to administrative review and
26 corrective action.

27 56-1705. PROGRAM PROVIDERS -- REQUIREMENTS -- REVOCATION OF APPROVAL
28 -- AGREEMENT REVIEW. (1) Extended employment services providers must be ap-
29 proved by the department prior to participation in the program. The depart-
30 ment shall enter an agreement with each approved provider. The agreement
31 shall specify:

32 (a) Minimum provider requirements.

33 (i) Providers must be accredited by an approved national or re-
34 gional accrediting body, specific to vocational supports for in-
35 dividuals with disabilities. Approved program accrediting bodies
36 will be published annually to the department's website;

37 (ii) Providers must remain in good standing with their accredit-
38 ing body; and

39 (iii) Providers must ensure that staff delivering program ser-
40 vices have forty (40) hours or more of employment supports train-
41 ing annually, maintain first aid and cardiopulmonary resuscita-
42 tion certification, and pass a criminal history background check
43 annually;

44 (b) Services to be offered by the provider;

45 (c) Scope of work under the agreement;

46 (d) Service fees; and

47 (e) Other terms, conditions, and provisions as determined by the de-
48 partment.

1 (2) The department may terminate or revoke the approval status and dis-
2 continue authorizing or purchasing services from providers for actions in
3 violation of the agreement or program requirements.

4 (3) A provider agreement shall be reviewed annually by the department
5 and is subject to revision as required by the department.

6 (4) Providers must maintain program participant files for five (5)
7 years from the last date of service.

8 (5) The program may audit billing records and other documentation sub-
9 mitted by providers to verify the accuracy of such records.

10 (6) The program may deny, revoke, or recover service payments if the
11 provider fails to comply with the terms of the provider agreement.

12 SECTION 3. An emergency existing therefor, which emergency is hereby
13 declared to exist, this act shall be in full force and effect on and after
14 July 1, 2022.