



Public Comment & Agency Response **IDAPA 47, Title 1, Chapter 2 (47.01.02)** **Rules and Minimum Standards** **Governing Extended Employment Services**

Public Comment was solicited for IDAPA 47.01.02, Rules and Minimum Standards Governing Extended Employment Services through public meetings across the state. The meeting schedule was posted on the Division's public website, including the meeting notice and the draft proposed changes. Additionally, e-mails were sent to various interested stakeholders making them aware of the public comment process and meeting schedule. Written public comment was submitted via e-mail to the Deputy Administrator through June 7th.

Public meetings were held across the state in Idaho Falls (05-15-2018), Coeur D'Alene (05-22-2018), and (Boise (05-27-2018). The number of attendees ranged from 5-7 individuals at each meeting and included members from Community Rehabilitation programs, state legislators, an LSO analyst, DD Council, SILC, etc. Additionally, ACCSES Idaho members and the Council on Developmental Disabilities submitted written comments, which reflected the comments made during the public meetings.

Public Comment: 004 Incorporation by Reference:

"There are numerous references to the annual EES Provider Agreement in the proposed rule without any specific content to be contained in this agreement; any reference to the content has been from rule. In addition to the EES Provider Agreement, there is reference to EES Rights and Responsibilities which is a relevant document to EES.

Given the provider agreement "shall detail the provider requirements, services, scope of work, other special provisions and fees" and be used to determine approval of a provider, this document should be included in rule. This establishes the EES Provider Agreement's importance in the provision of the service and assurance of quality service to EES customers. By including the provider agreement as well as rights and responsibilities form will also ensure those that support these services have assurance that the intention of their support is being met as well as allow those served to have input into the service delivery system. Without this being included in rule, EES customers have no opportunity to voice their desires or concerns."

Extended Employment Services Response:

The EES program accepts the recommendation to include the definition of “provider agreement” and “customer rights and responsibilities” to section 010 Definitions. The Provider Agreement is a contract between EES and EES service providers. Incorporating a standard contract into rule by reference is not standard practice. EES will follow IDAPA standards and maintain the Provider Agreement as a separate document. The EES Program will not incorporate by reference the Customer Rights and Responsibilities into rule to allow for improvements to the document to be addressed in a timely manner.

Public Comment: 010. Definitions

Recommend “enclave” be included in the Section 010

Extended Employment Services Program Response:

The EES program accepts the recommendation to re-locate this to the definition section from its current location in rule.

Public Comment: 010 Definitions

“EES Provider Agreement should be defined and included within the definitions.”

Extended Employment Services Program Response:

The EES program accepts the recommendation to include the definition of “provider agreement” to section 010.

Public Comment: 010 Definitions:

“Fee needs to be defined; rather than referencing “fee” this should be a reimbursement rate for services rendered to EES customers.”

“I believe that it would be prudent to add definitions for the following: Fees for Service. Customer Rights & Responsibilities, Provider Agreement, and Enclave. This would help those who are new or not regularly within the EES program to understand some terminology.”

Extended Employment Services Response:

The EES Program agrees with expanding the proposed rule to include additional terms in section 010 based on current program standards. EES will remove definitions where redundant in rule.

Public Comment: 010 Definitions:

“With the exception of changing the word client to customer and specifies annual time frame, restores the wording back to the 2007 definition which includes Work Services”

“Definition of each of the services provided under this rule should be established and included under the definition section. The original intent language used to establish the funding of these services can provide the service definitions as set out by the State Legislature.”

Extended Employment Services Response:

The EES program agreed that the definition section will be expanded based on current program standards. After review of previous IDAPA rules and intent language, The EES program does not find proposed changes supported in previous documents referenced.

Public Comment: 200.01.a Extended Employment Services Provider Agreement, Standard Form:

“Returns wording to 2007 rule which specifies that IDVR will consult with Certified Extended Service Providers. Thus ensures those who are providing the service are included in the process.”

“See recommendation listed under [section] .04. Incorporation by Reference; provider agreement should be included in the EES Rule.”

Extended Employment Services Program Response:

Input from providers historically has been and continues to be solicited during the annual Provider Agreement revision process and is not needed in rule. Fee structure for EES services is included in the Provider Agreement, which functions as a contract for service provision between the EES Program and EES providers. Incorporating contracts into rule is not standard practice. EES will follow IDAPA standards and maintain its Provider Agreement as a separate document.

Public Comment: 200.01.a Extended Employment Services Provider Agreement:

“Recommend adding “for service” in proposed language.”

Extended Employment Services Program Response:

The EES Program accepts this recommendation.

Public Comment: Extended Employment Services Provider Agreement, 200.01.b Standard Form:

“What is the approval denial/criteria? Why would preference be given to a denied applicant?”

“Reference to approval, denial and new providers within one section makes it difficult to understand. To gain clarity of the intent of this rule, approval, denial and action taken to add new or additional providers should be separated out into three distinct sections of rule that address the criteria for each. Denial criteria should be specified as well as what needs to occur for the addition of new or additional providers to be considered. At this point in time there is no indication that new or additional providers are needed based on lack of access by customers who desire the service.”

Extended Employment Services Program Response:

Section 300 of IDAPA 47.02.01 outlines required qualifications to provide extended employment services. The EES Program will continue to adhere to this standard when approving EES provider applications. The EES program will remove language specifying application preference to previously denied applicants, as a fee for service structure allows for an open application process. Section 400 outlines termination or revocation of provider status. The EES Program will continue to maintain these sections as minimum standards of practice for providers.

Public Comment Extended Employment Services Provider Agreement, 200.03 Provider Agreement Revision:

“I believe a minimum time frame should be determined and in rule, even federal changes that may affect this state program would allow for time to adjust.”

“Provider Agreement-The proposed rule removes many regulations from the rule and puts them into the Provider Agreement which is signed annually by providers. This would make it possible for the oversight agency to make critical changes to the EES program without going through the rulemaking process. As you know, the rulemaking process is in place to ensure that services are provided in a specified manner.” Any party who wants to propose changes must allow for public input before changes can be made. Considering different opinions is a vital part of the rulemaking

process and often changes the outcome. The Provider Agreement is in place between Voc Rehab and Providers to ensure that the rules are being implemented as outlined. The Provider Agreement content should be included in the rules.”

“As noted previously, the Provider Agreement should be included in the rule. Amendments to the provider agreement should occur through the emergency rule setting process that exists through the legislative process. This will allow all stakeholders invested in this service to participate. Time line should be set for notification of change to providers and time line for implementation of the changes.”

“It is recommended that providers are engaged in the process of developing updates to the Provider agreement.”

“The wording of the rule developed out of a collaborative process, again allows for a collaborative process. Proposed rule is ‘top down driven.’ The word Provider Agreement indicates there is agreement, this language does not provide for input and agreement.”

Extended Employment Services Program Response:

The Provider Agreement functions as a contract for service provision between the EES Program and EES providers. Incorporating contracts into rule is not standard practice; EES will continue to follow IDAPA standards and maintain its Provider Agreement as a separate document. Input from providers historically has been and continues to be solicited during the annual Provider Agreement revision process, with reasonable time allowed for providers to review and provide feedback.

Public Comment: Provider Qualifications, 300.01 Experience:

“This rule fails to define Medicaid Waiver or length of time the provider must have worked with IDVR customer in employment services. The Medicaid Waiver in Idaho encompasses a wide variety of services, many of which are unrelated to employment or vocational training. Only reference to length of time is attached to provision of Medicaid waiver services and not to having worked with IDVR customers in employment services. The reference to “or both” does not add to the requirement. The Medicaid Waiver service that is related to Extended Employment Services is supported employment; this should be added before the reference to Medicaid Waiver. To clarify the length of time a provider must have

worked with IDVR customers three (3) full years of experience should be added before “worked with IDVR customers...”

“What services, Medicaid covers a vast array of services most that are not vocational related, would a home health or personal care services be able to provide EES? Identify a time frame requirement here as well.”

Extended Employment Services Program Response:

The EES program agrees with the recommendation to clarify qualifications program specifically requiring job coaching experience under the Medicaid Waiver program.

Public Comment: Provider Qualifications, 300.02 Accreditation:

Recommend changing “subminimum wage” to “special minimum wage” for consistency with the Fair Labor Standards Act (FLSA).

“This is presently called out in the provider agreement with the exception of providing a copy of the Section 14(c) certificate and age requirement. Given this is already included in the provider agreement, strike it from rule to be consistent with action recommended by IDVR that information contained in the provider agreement not be included in the rule but referenced as what is proposed in sections 800 and 801. This reinforces the importance of the provider agreement being in rule or including the information/guidance in the provider agreement within rule. Given the diversity of services accredited by CARF, it is recommended those services that align with EES be called out as areas accreditation is expected.

Extended Employment Services Program Response:

The EES Program will strike the requirement to provide a copy of the Section 14 (c) certificate requirement from rule, remedying the recommendation to change language from “subminimum” to “special”.

The EES program understands the need for consistent language and interpretation of provider requirements. Future Provider Agreements will align with IDAPA language to maintain consistency for minimum provider qualifications.

The EES Program will maintain current CARF and RSAS accreditation language. The EES program may further evaluate this recommendation, specifically how making such a change would potentially impact existing EES providers.

Public Comment: Extended Employment Services Provider Agreement, 300.03 Provider Agreement Revision:

“As noted previously, the Provider Agreement should be included in the rule. Amendments to the provider agreement should occur through the emergency rule setting process that exists through the legislative process. This will allow all stakeholders invested in this service to participate. Time line should be set for notification of change to providers and time line for implementation of the changes.”

Extended Employment Services Program Response:

The Provider Agreement functions as a contract for service provision between the EES Program and EES providers. Incorporating contracts into rule is not standard practice; EES will continue to follow IDAPA standards and maintain its Provider Agreement as a separate document. Input from providers historically has been and continues to be solicited during the annual Provider Agreement revision process, with reasonable time allowed for providers to review and provide feedback.

Public Comment 400 Termination or Revocation of Provider Status:

“As noted under 200 01.b, denial of certification needs to be defined.”

Extended Employment Services Program Response:

Provider qualification requirements are outlined in Section 300 of IDAPA 47.01.02. Under rule, potential providers must meet all requirements to avoid denial of their application to provide extended employment services.

Public Comment: Termination or Revocation of Provider Status, 400.03 Business Practices:

“Clarify sound fiscal practice”

“References just sound fiscal practice; business practices are much broader than fiscal and should include compliance with state and federal laws, ethical conduct; what standards will be used to evaluate fiscal practice etc.”

Extended Employment Services Program Response:

The EES program will provide a guidance letter regarding intent of current rule and clarifying in future Provider Agreements.

Public Comment: Termination or Revocation of Provider Status, 400.04 Customer Rights:

“Again, I would like to see rights identified so CRP’s and VRC’s are on the same page as to what to include in those rights.”

“Customer rights are not defined in either rule or the provider agreement but referenced as a separate document. Customer rights should be included in rule just as client rights are included in the IDAPA rule governing DDA services. This will provide customers the right to review these rights and comment on potential changes. As it stands now, they have no defined process to have input or appeal in the rights they are afforded under EES.”

Extended Employment Services Program Response:

EES customer rights and responsibilities are outlined in the EES Customer Rights and Responsibilities document, reviewed with customers and guardians, and included in EES customer files. Under the current Provider Agreement, EES providers are responsible for submitting a current Customer Rights and Responsibilities form annually with the customer’s annual IPP. The EES Program will research and develop a more detailed appeals process for EES customers that will be included in the Customer Rights and Responsibilities document. Clarification of provider responsibilities in this area will be address in future provider agreements.

Public Comment: Extended Employment Services Customer Referral, Eligibility, and Case Closure, Referral and Application, 500.01 Referral and Application:

“An alternative referral process should be established for work services, group community non-integrated services, and those who are accessing services that desire to change employment that does not require a referral by an IDVR VRC.”

“Each applicant to be a Consumer for Extended Employment Services under these rules will be referred by a Vocational Rehabilitation Counselor (CRP) employed by IDVR. The CRP will provide the applicant with information on all available services under the EES Program and allow the customer to make an informed choice.”

“Section d. to be added that states at the time of application, potential EES customers are provided information about all services available under EES and process for accessing these services.”

Extended Employment Services Program Response:

The current model of referral and eligibility determination provides a mechanism to refer appropriate individuals to the EES program by qualified vocational rehabilitation professionals who incorporate the principles of customer autonomy and choice into the decision-making process. EES will continue to follow referral protocols and changes in service to ensure customer choice and involvement in the process. For individuals expressing an interest in pursuing non-integrated and/or non-competitive employment only, EES is proposing an expansion of the eligibility process in rule.

Public Comment: Extended Employment Services Customer Referral, Eligibility, and Case Closure, Referral and Application, 500.01 Referral and Application:

“Rights and responsibilities need to be incorporated into the rule”

Extended Employment Services Program Response: *EES customer rights and responsibilities are outlined in the EES Customer Rights and Responsibilities document, reviewed with customers and guardians, and included in EES customer files. The EES program will not incorporate the customer rights and responsibilities into rule by reference to allow flexibility in meeting customer needs outside of the formalized rulemaking process.*

Public Comment: Extended Employment Services Customer Referral, Eligibility, and Case Closure, 500.02 Eligibility:

“There is no recourse for individuals who are waiver eligible but choose not to use entitlement funding from accessing EES services. The rule forces individuals onto Medicaid funding.”

“Define long term support services as related to employment given many services offered to individuals who otherwise qualify for this service may have access to other long term support services that are precluded from being provided in a work setting. Eligibility for EES should not be tied to eligibility for other public funding. If this remains the case, EES rule should be written similar to that under Medicaid where EES funds cannot be expended if services are available to the individual under WIOA or IDEA or their respective amendments.”

“Changes in IDAPA 47.01.02 in 2017 and the currently proposed rule are removing their eligibility and access to these EES dollars. I submit that language in the rule be written to allow continued access to EES funding as per legislative design.”

“Your proposed definition can easily be interpreted to do just the opposite of enhancing opportunity, options, and choice.”

“...I would argue that the DHW budgets are not set up to incorporate vocational needs and are geared more towards assessed medical needs while the EES funds appropriated by the Legislature is specific to those vocational needs identified.”

Extended Employment Services Program Response:

Selecting a public funding stream for services is not part of informed choice. IDVR will continue to determine if Medicaid Waiver funding is available prior to utilizing EES funds for long-term community integrated employment. This is consistent with the guidance from Central Medicaid Services and ensures non-duplication of services. The EES program respectfully requests that questions regarding Medicaid services be address directly with DHW. EES continues to be the funding source for non-integrated and non-competitive long-term employment supports.

Public Comment: Extended Employment Services Customer Referral, Eligibility, and Case Closure, 500.02 Eligibility:

“Right now, I think Medicaid depends on the referral with recommendations that comes from IDVR to help determine the need for long term job coaching unless the person has not been through the VR process but is working. This sentence seems to imply that Medicaid would have to do a job support evaluation of some kind.”

Extended Employment Services Program Response:

The EES program has added language to clarify the eligibility process, including the evaluation process to determine eligibility.

Public Comment: Extended Employment Services Customer Referral, Eligibility, and Case Closure, 500.02 Eligibility:

“The words ‘have access to’ are being removed. This is a problem all over the state but poses a unique problem in Franklin County, and other rural

areas of the state, because there are no Community Supported Employment Medicaid Providers at this time.”

Extended Employment Services Program Response:

Service provision and availability under Medicaid Waiver funding is not under the EES Program’s purview and needs to be addressed with IDHW.

Public Comment: Extended Employment Services Customer Referral, Eligibility, and Case Closure 500.03.a (as numbered in current rule) : Closure, unable to locate or contact customer:

“I would suggest adding the word ‘customer’ before ‘cases’”.

Extended Employment Services Program Response:

The EES program will maintain language as currently proposed in rule.

Public Comment: Eligibility Extended Employment Services Customer Referral, Eligibility, and Case Closure 500.03.a: Closure, unable to locate or contact customer:

“This particular section has several statements that are inconsistent with previous proposed rule and need clarification. The rights of the customer are not identified in regards to disagreeing with the decision to close the case.”

Extended Employment Services Program Response:

The EES Customer Rights and Responsibilities will remain separate from rule. The EES program will review and evaluate the Rights and Responsibilities document and determine if additional language is needed outlining Customer rights regarding case closure.

Public Comment: Eligibility Extended Employment Services Customer Referral, Eligibility, and Case Closure 500.03.a: Closure, unable to locate or contact customer:

“Unable to locate or contact customer; Need to define the process that will be used to communicate with clients and the Community Rehabilitation Program regarding whether someone should be taken off the list.”

“Add after documented reasonable attempts of contacting the customer, written notification will be sent to the customer notifying the customer of the intent to close the case.”

“add some criteria, how many attempts, who attempted, etc.”

Extended Employment Services Program Response:

The EES program will make reasonable attempts to contact the customer and/or guardian prior to closing the case. This is an internal process and therefore will not be included in rule.

Public Comment: Eligibility Extended Employment Services Customer Referral, Eligibility, and Case Closure, 500.03.b: Customer is utilizing Medicaid Waiver services for CSE:

“Strike this reason; if a customer is accessing Medicaid Waivered services for CSE they would not be accessing EES.”

“Customer is utilizing Medicaid Waiver Services for CSE; Medicaid does not pay for Work Services or Group Community Based Supported Employment and thus should be removed.”

Extended Employment Services Program Response:

The EES program does not believe this conflicts with Medicaid intent and will leave the wording as it is.

Public Comment: Eligibility Extended Employment Services Customer Referral, Eligibility, and Case Closure 500.03.c Customer’s disability too significant to benefit from services:

“How is this determined?”

“Need to clarify who would make the determination that a customer’s disability is too severe to benefit from the service given assessment is not an allowed service under EES.”

Extended Employment Services Program Response:

This closure reason will be used when there is adequate documentation collected by the EES program that clearly demonstrates that the significance of the customer’s disability does not allow them to participate in work activities.

Public Comment: Extended Employment Services Customer Referral, Eligibility, and Case Closure 500.03 f. Customer no longer interested in pursuing employment:

“Delete this statement. If a person is pursuing employment and is already an EES customer, their case should not be closed.”

Extended Employment Services Program Response:

The EES program will maintain language as written to support customer choice in whether to participate in work activities and EES.

Public Comment: Extended Employment Services Customer Referral, Eligibility, and Case Closure 500.03.i. all other appropriate reasons:

“All other appropriate reasons; Needs to be defined.”

“Strike all other appropriate reasons and list death as a reason”

“Understand the sensitivity but this is very open ended.”

Extended Employment Services Program Response:

The EES program accepts this recommendation and will change language to “customer death”.

Public Comment: Covered Services, 600.02, Group Community-Based Non-Integrated Supported Employment (Enclave):

“If the term ‘enclave’ is going to be added to the rule, this should be added to the definitions Section 010.”

Extended Employment Services response:

The EES program agrees with this recommendation.

Public Comment: Covered Services, 600.03 Work Services:

“Reference to integrated or non-integrated (02) should be removed from the rule. The level of integration should be decided by the individual participating in services and become part of the informed choice process.”

Extended Employment Services Program Response:

The EES program will maintain current language regarding work services and enclaves. For individuals expressing an interest in pursuing non-integrated employment only, the EES program is proposing an expansion of the eligibility process in rule.

Public Comment 700.01-.04 Excluded Services

“Define the terms used as excluded services and allow assessment to be done by EES. EES is staff by professionals who are credentialed to make

these determinations as well as managed by staff who can certainly make those decisions within EES and not mandate IDVR participation.”

Extended Employment Services Program Response:

The purpose of the EES program is to provide funding for long-term employment supports. The excluded services in section 700 do not support the purpose of the EES program and will remain in rule. The VR process under the Idaho Division of Vocational Rehabilitation continues to be an established mechanism for determining the need for and level of support required for long-term employment supports. The expanded eligibility options for non-integrated employment provide additional means to access non-integrated employment without changing the scope and purpose of EES.

Public Comment, Service Provision, 800.01 Services on an Individual Program Plan:

Recommend changing language “for each individual” to “with each individual”

Extended Employment Services Program Response:

The EES program accepts this recommendation.

Public Comment: Service Provision, 800.03-06:

“I believe that the proposed removal of the following sections would be in error. Rule should be referenced in a provider agreement or contract, not the other way around. Doing so makes the provider agreement rule which takes stakeholders and legislators out of the equation which takes away accountability and puts it all on the agency. I appreciate the attempt at streamlining but CRPs as well as Legislators need to be a part of this process.”

“Recommend all proposed stricken records be reinstated in rule and incorporate the Provider Agreement into rule.”

Extended Employment Services Program Response:

EES will continue to follow IDAPA standards and maintain its Provider Agreement as a separate document.

Public Comment: Records, 801.01 a-k:

“Keep above information (a-k) as determined in 2007 Roundtable Work Group. The removal of the above would be in error. Rule should be

referenced in a Provider Agreement which by its very name indicates is developed out of a collaborative process. The Provider Agreement should not replace the rule.”

“Given that not all documents are not included in the provider agreement, specifically i., j., and k. these should remain in rule. The two documents – provider agreement and rule should be consistent with each other. If a reference is made in the Provider agreement that it is in Rule, it needs to be in rule. If rule references it is in the provider agreement it needs to be in the agreement.”

Extended Employment Services Program Response:

The EES program accepts the recommendation to include minimum standards for EES customer file requirements.

Public Comment: Payment for Services, 900.01 Fee for Service:

“Strike reference to designee. Refer to the JFAC intent language regarding rate setting and establishing a process to for determining rate setting from year to year.”

“Fiscal responsibility should not be delegated. Fees need to be reviewed annually as has, until recently, been the custom.”

Extended Employment Services Program Response:

The intent of “designee” is to ensure continuity of program oversight if needed. The EES program continues to engage with providers regarding fee rates and follow intent language as set forth by JFAC and the Legislature, and has been particularly active in the past year to engage with and request input from EES providers regarding EES provider rates.

Public Comment: Payment for Services, 900.02, Pre-Authorization:

“Strike the reference to “pre” authorization. It is an authorization of for services to be provided based on the IPP.”

Extended Employment Services Program Response:

The intent of “pre-authorization” is to ensure approval is in place prior to service provision to maintain fiscal accountability for program funds and adherence to program requirements. The EES program will maintain language as written.

General Public Comment:

“The proposed EES rules should contain guidance as to the procedures to be followed by IDVR EES in the administration of these services. Specifically, rule should be developed that addresses “waitlist” management.”

“A “Field Service Manual” needs to be established for the EES program. This would provide written guidance on how service delivery is to be managed and processes to be used across the state. This would increase the quality of the service and provide guidance to not only EES but to customers, legislators and community as to how EES will achieve it’s intended purpose. This would also provide some safeguard to EES in the event questions arise.”

Extended Employment Services Program Response:

The EES program agrees that consistency in service delivery is an important component of any program and will review recommendations made in comment.

General Public Comment:

“I’m not sure why all of the discussion around the strike outs. I think the Provider Agreement is the right place for all of that, not rule. Tying hands by putting details into rules doesn’t make sense to me.”

Extended Employment Services Program Response:

The EES program agrees that a balance is needed to ensure consistency in program delivery while maintaining flexibility to address customer, provider, and program needs in a timely manner.