Understanding The Complexities Of Supported Employment Services

Presenters:
Cheryl Bates-Harris
Ron Hager
Amy Scherer
National Disability Rights Network (NDRN)
August 23, 2017
According to Congress

• **Work** is a valued activity both for individuals and society.

• It fulfills the need to be productive, promotes independence, enhances self-esteem and allows for participation in the mainstream of society.

• Individuals with the **most significant disabilities** have demonstrated the ability to achieve gainful competitive employment in integrated settings if given proper supports.
Supported Employment Services: Basic Premises

• If individuals plan to use supported employment services to reach their employment goal, this choice should be indicated in their Individualized Plan for Employment (IPE).

• There are two different supported employment programs – one program is funded by regular VR funds and the other program – the State Supported Employment Program – is a separate grant program.
Supported Employment Services: Basic Premises

• Under WIOA, it is now possible for youth (under the age of 25) with the most significant disabilities to receive “extended services” which can provide supported employment services to an individual for up to an additional 4 years.
Who Does The Supported Employment Program Serve?

[34 CFR §§361.5(c)(53) and 363.1(b)]

29 U.S.C.A. §705(38)]

• Individuals, with a most significant disability, who are pursuing Competitive Integrated Employment (CIE) including Customized Employment:
  – For whom competitive employment has not historically occurred or
  – For whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability and
  – Who because of the nature and severity of their disability need intensive supported employment services and extended services
Who Does The Supported Employment Program Serve? [34 CFR §§361.5(c)(53) and 363.1(b) 29 U.S.C.A. §705(38)]

• Supported employment should not be considered automatically as the first choice for individuals with significant or the most significant disabilities.

• For those individuals “who need intensive services and ongoing supports to achieve an employment outcome and should be considered after a comprehensive assessment of the rehabilitation needs of the individual when determining an individual’s employment goal consistent with his or her unique strengths, priorities, concerns, abilities, capabilities, interests, and informed choice.”
  • RSA Supported Employment FAQs, page 3 (May 2017)
What Are Supported Employment Services?
[34 CFR §361.5(c)(54)
29 U.S.C.A. §705(39)]

• Ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability

• Organized and made available, singly or in combination, in such a way as to assist an eligible individual to achieve competitive integrated employment.

• Based upon the needs specified in the Individualized Plan for Employment (IPE).
“Ongoing Support” Defined
[34 CFR §361.5(c)(37)]

• May include activities such as an assessment of employment stability and the provision or coordination of specific services at or away from the worksite that are needed to maintain stability.

• May include supplementary assessments of rehabilitation needs, the provision of skilled job trainers for the individual at the worksite, social skills training, follow-up services, facilitation of natural supports at the worksite, and other applicable services defined within the scope of services in 34 CFR §361.48(b).

RSA Supported Employment FAQs, page 4 (May 2017)
“Ongoing Support” Defined
[34 CFR §361.5(c)(37)]

• Ongoing support is furnished by the VR agency, using funds under the State Supported Employment program and/or the VR program, from the time of job placement until the transition to extended services.

• Following that, by one or more extended services providers, including the VR agency, in accordance with 34 CFR §363.4(a)(2) -- more on this later -- throughout the individual’s term of employment in a particular job placement.
  – RSA Supported Employment FAQs, page 4 (May 2017)
“Ongoing Support” Defined
[34 CFR §361.5(c)(37)]

• Supported employment services also may include post-employment services, if these services are required from the VR agency because they are unavailable from an extended services provider and are necessary to maintain or regain the job placement or advance in employment.

  – RSA Supported Employment FAQs, page 4 (May 2017)
Employment Outcome Changed Under WIOA

[§ 361.5(c)(53)(i) and § 363.1(b)
29 U.S.C.A. §705(39)]

• Desired VR Employment Outcome under WIOA → Competitive Integrated Employment (CIE)

• If an individual is pursuing a supported employment outcome and is currently employed in an integrated setting, but is not making competitive wages (at least minimum wage), this must be a “short-term” arrangement
Supported Employment Definition: “Short-Term Basis” [§ 7(38) of the Rehabilitation Act, as amended by WIOA]

• “The inclusion of the short-term basis provision in the definition of “supported employment” in section 7(38) of the Act clearly indicates Congress’ intent that individuals with the most significant disabilities should not linger in subminimum wage employment for long periods of time and should achieve competitive integrated employment.”

-RSA Supported Employment FAQs, page 5 (May 2017)
Supported Employment Definition: “Short-Term Basis” [§ 7(38) of the Rehabilitation Act, as amended by WIOA]

The six-month short-term basis period [an additional six months may be available in limited circumstances] begins after an individual has completed up to 24 months of supported employment services (unless a longer period of time is necessary based upon the individual’s needs) and the individual has achieved a supported employment outcome -- the individual is stable in the supported employment placement for a minimum period of 90 days following the transition to extended services. [RSA Supported Employment FAQs, page 5 (May 2017)]

• Comments to the regulation: “6 months...is consistent with the intent of the Act.” [Fed Reg. Aug. 18, 2016, page 55704]

• At this point, the individual has achieved a supported employment outcome under 34 CFR §363.54.
Supported Employment Definition: “Short-Term Basis” [§ 7(38) of the Rehabilitation Act, as amended by WIOA]

• “It would not be appropriate to put an individual in an unpaid internship, pre-apprenticeship, apprenticeship (including a Registered Apprenticeship), or transitional employment for a short-term basis because the short-term basis period occurs after the achievement of the supported employment outcome.
  • RSA Supported Employment FAQs, page 5
  May 2017
WIOA: Clear Definition of “Competitive, Integrated Employment” [§ 361.5(c)(9) 29 U.S.C.A. §705(5)]

• The optimal employment outcome under WIOA:
  – Full or part-time work at minimum wage or higher
  – Wages and benefits similar to those without disabilities performing the same work
  – Fully integrated with co-workers without disabilities
  – Same promotion/advancement potential as co-workers without disabilities
Supported Employment Outcome Changed Under WIOA
[§ 361.5(c)(53)(i) and § 363.1(b)]

• Clear “expectation (emphasis added) that individuals with the most significant disabilities can – and will – achieve competitive wages.”
  • RSA Supported Employment FAQs, page 7 May 2017
Supported Employment Services Timeframe [§ 361.5(c)(54)(iii) 29 U.S.C.A. §705(39)(C)]

• The standard supported employment services timeframe has been extended from 18 to 24 months – with an option to increase it, if needed.
Supported Employment Services: Timeframe Extension [§ 361.5(c)(54)]

- “The extension provides additional time for individuals with the most significant disabilities to receive the services and supports necessary to achieve an employment outcome in supported employment, either in competitive integrated employment or working on a short-term basis to achieve competitive integrated employment” [Fed. Register, Aug. 18, 2016, page 55705]
Supported Employment Services: Timeframe Extension [§ 361.5(c)(54)]

- It would be incorrect to assume that an individual with a disability is going to require supported employment services for longer than 24 months at the start of the process.

- This happens frequently! Sometimes, VR says that they won’t even begin the provision of VR services until a long-term funding source has been identified.

- For a number of reasons, this is the wrong approach.
Supported Employment Services

• The goal is to identify a position that the individual can do without the need for long-term supports.

• It really comes down to identifying the person’s interests and skills and finding the appropriate job match.

• Customized employment may need to be considered.

• Don’t forget about the possibility of an extension of the 24-month time frame.
WIOA: Clear Definition of “Customized Employment”

- Customized employment is now considered a legitimate employment outcome that can be provided/supported by VR [§361.5(c)(11); 29 U.S.C.A. §705(7)]:
  - Competitive, integrated employment
  - For an individual with a significant disability
  - Based on an individualized determination of the individual’s “strengths, needs and interests”
  - Designed to meet the specific abilities of the individual and the business needs of the employer
  - Carried out with “flexible strategies”
More about Customized Employment

• Especially effective for individuals with high or complex support needs
• Circumvents the comparison of applicants made in competitive hiring
• Relies on natural relationships/supports and training
More about Customized Employment

• Individualization necessary: must be one person at a time

• Requires negotiation of job duties and/or employer expectations

• Employment development is determined by the individual, not job openings or market demand

• Identifies the ideal conditions of employment using “Discovery” – a process used to get to know the individual and to determine his/her talents, skills, interests and strengths.
Customized Employment: Resource Ownership

- Job seeker brings a resource to the job that allows the business to increase profit
- Examples: a piece of equipment, tools, a vehicle, a college degree
- Creates work
- Creates workplace prestige
- Improves productivity
- Creates community economic development
State Supported Employment Services
State Supported Employment Services
[§363.21]

• Purpose of this program is to enable individuals with the most significant disabilities – especially youth with disabilities -- to achieve a supported employment outcome in a competitive, integrated environment.

• The regulations applicable to this program are found in a different section than the general VR regulations – 34 CFR Part 363.
State Supported Employment: A Supplementary Grant Program

[§363.1(a)]

• Grants made under the State supported employment services program supplement a State's vocational rehabilitation program grants under 34 CFR part 361.
State Supported Employment: Award Eligibility

[§363.2
29 U.S.C.A. §603(d)]

• Any State that submits the documentation required by § 363.10, as part of the vocational rehabilitation services portion of the Unified or Combined State Plan under 34 CFR part 361, is eligible for an award.

• If you aren’t sure if your state is receiving this grant or if you know that your state is not receiving this grant, talk to your State Rehab Council.
• Determined eligible for VR services

• Individual has been determined to have a “most significant disability”

• An employment outcome in supported employment is necessary based on a comprehensive assessment of rehabilitation needs.
State Supported Employment Services
[§363.22
29 U.S.C.A. §603(d)]

• **50% of the money** received under these state supported employment grants must be used to **support youth (up to age 24) with the most significant disabilities** and these individuals may receive ongoing support

• **For up to 4 years** following the transition of support from VR [§363.4(a) and (b)] – after the traditional SE has been utilized.

• Again, ongoing support is **only** available to youth with the most significant disabilities under this grant.
State Supported Employment: Authorized Services [§ 363.4]

• Provide supported employment services

• Provide extended services, as defined in 34 CFR 361.5(c)(19), to youth with the most significant disabilities for a period of time not to exceed four years, or until such time that a youth reaches the age of 25 and no longer meets the definition of a youth with a disability.

• Leverage other public and private funds to increase resources for extended services and expand supported employment opportunities.
State Supported Employment: Authorized Services [§ 363.4]

• Discrete post-employment services may be provided.

• Coordination with other agencies should occur to avoid duplication of services.
Successful Supported Employment Outcome

• Individuals in supported employment may not have achieved employment that satisfies all the criteria of “competitive integrated employment” initially since they may be earning non-competitive wages on a short-term basis.

• This very narrow exception is the only instance in which the statute permits that all criteria of “competitive integrated employment” need not be satisfied for an individual to achieve an employment outcome.

RSA Supported Employment FAQs, page 7
(May 2017)
Successful Supported Employment Outcomes: Requirements That Must Be Satisfied
[RSA Supported Employment FAQs, page 7 – May 2017]

• First, the individual must have completed supported employment services, which may be received for up to 24 months (or longer).

• **Sidenote**: Any other VR services listed on the IPE provided to individuals who are working on a short-term basis toward the achievement of CIE in supported employment need not be completed prior to satisfying the achievement of an employment outcome. However, the case should not be closed since the individual is still receiving VR services.

• Second, the individual has transitioned to extended services provided either by the VR agency for a youth with the most significant disability, or another provider (34 CFR §§363.4(a)(2) and 363.22).
Successful Supported Employment Outcomes: Requirements That Must Be Satisfied
[ RSA Supported Employment FAQs, page 7 – May 2017]

• Third, the individual has maintained employment and achieved stability in the work setting for a minimum of 90 days after transitioning to extended services and

• Finally, the employment must be individualized and customized consistent with the strengths, abilities, interests, and informed choice of the individual.
When To Close A Supported Employment Case
(34 CFR §363.54 and §363.55)

• **Scenario 1:** Bob has been placed in a competitive wage job in an integrated setting individualized and customized for him that is consistent with his strengths, abilities, interests, and informed choice; has completed up to 24 months of supported employment services; has transitioned to extended services provided by a provider other than the VR agency; and has been stable for a minimum of 90 days after transitioning to extended services.

  • Successful Employment Outcome → YES
  • Case Closed → YES
When To Close A Supported Employment Case (34 CFR §363.54 and §363.55)

- **Scenario 2:** In the previous scenario, what if Bob is a youth with a most significant disability and is receiving extended services from the VR agency instead of from another provider?

  - Successful Employment Outcome → YES
  - Case Closed → No – because he is still receiving extended services.
When To Close A Supported Employment Case (34 CFR §363.54 and §363.55)

Case closed when Bob:

- Reaches the age of 25
- Receives services from VR for 4 years or
- If/when he begins receiving extended services from a different provider.
When To Close A Supported Employment Case (34 CFR §363.54 and §363.55)

- **Scenario 3:** Bob is a youth with a most significant disability who has been placed in a job in an integrated setting at a subminimum wage that is individualized and customized for him that is consistent with his strengths, abilities, interests, and informed choice but he reasonably anticipates achieving competitive integrated employment within six months.
When To Close A Supported Employment Case (34 CFR §363.54 and §363.55)

- Successful Employment Outcome → YES

- Case Closed → No – because Bob is continuing to receive extended services funded under the Supported Employment program or the VR program as well as other VR services on a “short-term basis.”
When To Close A Supported Employment Case
(34 CFR §363.54 and §363.55)

Case closed when Bob:

• Achieves competitive integrated employment within the short-term basis period and
• He is no longer receiving VR services provided by the VR agency and/or
• He is no longer eligible to receive extended services provided by the VR agency with funds allotted under the Supported Employment program or the VR program or he has transitioned to another extended services provider
Why Does It Matter If/When The VR Case Is Closed?

• The case closure may seem insignificant, especially if the individual has already reached a successful employment outcome.

• However, the closure has significant implications if, in the future, the individual wants to reapply for services and the VR agency has implemented an Order of Selection (OOS) policy.
NDRN Staff Contact Information

• Amy Scherer, Staff Attorney
  – amy.scherer@ndrn.org

• Cheryl Bates-Harris, Senior Disability Advocacy Specialist
  – cheryl.bates-harris@ndrn.org

• Ron Hager, Senior Staff Attorney
  – ron.hager@ndrn.org
• Questions?