

1 P R O C E E D I N G S

2 TUESDAY, MAY 19, 2015

3 (9:27 a.m.)

4 CHAIRMAN ALCANTAR: Good morning, Larry,
5 Reagan, Laurie.

6 I'd like to start this meeting -- this
7 work session on the notice of proposed rulemaking.
8 Who's up first, Larry?

9 MR. TEMPLE: Laurie.

10 CHAIRMAN ALCANTAR: Laurie, good morning.

11 MS. BISCOE: Good morning, Commissioners.
12 For this work session we're going to be discussing WIOA
13 provisions relating to vocational rehabilitation.

14 All of these provisions are found in the
15 notices of proposed rulemaking relating to Title IV of
16 the WIOA that amended the Rehabilitation Act of 1973.

17 We've reviewed these regulations from the
18 perspective of how they reflect to the -- reflect the
19 integration of Workforce services to all individuals,
20 including individuals with disabilities.

21 Key to those integration efforts will be
22 the manner in which the state plan must reflect the
23 coordination across entities and the delivery of
24 Workforce services.

25 As with other provisions of the notices of

1 proposed rulemaking if staff hasn't identified any
2 concerns with proposed regulations we're recommending
3 commenting that we agree with the proposed rate
4 provisions.

5 Over the past month or so we've worked
6 with the staff at the Department of Assistive and
7 Rehabilitative Services or "DARS" to review and discuss
8 the notices of proposed rulemaking.

9 For the most part, we understand that the
10 regulations primarily reflect the statutory provisions
11 and/or are consistent with much of DARS' current
12 operations in the delivery of vocational rehabilitation
13 programs.

14 In addition to the comments that we are
15 recommending, we understand that DARS will also comment
16 on several provisions relating to the implementation of
17 specific service delivery provisions with which they
18 have concerns and/or questions.

19 We'll continue to work with the DARS staff
20 between now and the final submission of comments by both
21 agencies and we'll keep you informed of those
22 coordinated efforts.

23 CHAIRMAN ALCANTAR: Okay. Great.

24 MS. BISCOE: And with that, unless you
25 have questions, I'll proceed with walking through the

1 document.

2 CHAIRMAN ALCANTAR: Any questions,
3 Commissioners?

4 COMM. CONGLETON: No questions.

5 CHAIRMAN ALCANTAR: Please proceed.

6 MS. BISCOE: All right. For the most --
7 just to set the stage, in all of the recommended
8 comments in the document that we've distributed to you,
9 we are recommending reflecting agreement with the
10 exception of two areas.

11 So I'm going to fairly quickly walk
12 through the provisions. If you've got questions, please
13 stop me and we'll proceed in that direction.

14 So Section 361.1, in this section the
15 purpose for the regulations is laid out. The purpose
16 highlights the new statutory focus on the provision of
17 services to individuals with disability that lead to
18 competitive integrated employment and economic
19 self-sufficiency.

20 That term, "competitive integrated
21 employment," is one that we'll hear over and over again
22 throughout the regulations which is consistent with the
23 statutory changes.

24 Sections 361.2 to .5, these sections
25 relate to the state planning requirements, other

1 applicable regulatory provisions and definitions that
2 are used in the chapter.

3 Section 361.10 references the requirements
4 for a state's unified or combined state plan to include
5 a portion specific to the provision of vocational
6 rehabilitation services.

7 361.11 relates to the authority for the
8 secretary to withhold funds under certain circumstances
9 and the appeal and due process if those events are to
10 occur.

11 361.12 requires that the state plan
12 reflect that the state has methods of administration to
13 effectively and efficiently carry out all functions
14 required of the state.

15 361.13 requires the state plan to indicate
16 whether the state has an agency or a division of an
17 agency that is specifically concerned with vocational
18 rehabilitation services.

19 361.14 provides for the designation of a
20 substitute agency if funds are withheld. 361.15
21 provides for a local agency to administer the vocational
22 rehabilitation program under the supervision of a state
23 agency.

24 361.16 and .17 require the state plan to
25 assure that the agency either designates an independent

1 commission or a state rehabilitation council and the
2 responsibilities for coordination between that entity
3 and the state agency. In Texas there is a
4 rehabilitation council that would comply with this
5 regulatory provision.

6 Section 361.18 establishes the requirement
7 that the state plan include a description of procedures
8 the agency undertakes to establish a comprehensive
9 system of personnel development, to ensure that an
10 adequate supply of qualified rehabilitation personnel
11 are employed by the state agency.

12 The plan must establish the education and
13 experience requirements to ensure that personnel have a
14 21st Century understanding of the evolving labor force
15 and the needs of individuals with disabilities.

16 361.19 requires the state plan to assure
17 that the -- establishes that the state agency assures
18 that it will employ qualified individuals with
19 disabilities. 361.20 and .21 relate to various
20 requirements for soliciting input on the development of
21 policies and procedures and on the state plan.

22 These provisions include requirements for
23 public hearings, receiving input from persons with
24 disabilities, service providers from the state
25 rehabilitation council and consultations with the Client

1 Assistance Program. The Client Assistance Program is a
2 provision that we'll talk about later in the document,
3 but in Texas that entity is known as "Disability Rights
4 Texas."

5 361.22 relates to the required
6 coordination between the Vocational Rehabilitation
7 Agency and education officials for the coordination of
8 services to students with disabilities to assist in
9 transitioning students from education to the receipt of
10 vocational rehabilitation services.

11 361.23, this is one of the two areas in
12 which we're recommending a comment. For Section 361.23
13 we recommend noting that either the title of the
14 regulatory section should be revised or additional
15 content added.

16 The section is currently titled
17 "Requirements Related to the Statewide Workforce
18 Development System." However, this section as proposed
19 only addresses the need for a Memorandum of
20 Understanding regarding the supported employment
21 program.

22 It references that there are other
23 provisions regarding the connections with the employment
24 system in other parts of the regulations, but it could
25 be confusing if it remains as it is currently proposed.

1 CHAIRMAN ALCANTAR: Commissioners.

2 COMM. ANDRADE: I agree.

3 MS. BISCOE: 361.24 relates to the
4 partnerships between vocational rehabilitation agency
5 and other local, state and federal organizations needing
6 to be in place and reflected in the state plan.

7 361.25 and .26 relate to requirements for
8 vocational rehabilitation services to be provided on a
9 statewide basis. 361.27 and .28 relate to shared
10 responsibilities and funding for the provision of
11 vocational rehabilitation services and the requirement
12 for any partnerships to be reflected in the state plan.

13 361.29 is the second section for which
14 we're recommending that we make a comment other than
15 agreement.

16 This section of the proposed regulations
17 relates to the requirement for state agencies and the
18 rehabilitation council to conduct a comprehensive
19 statewide assessment every three years.

20 This assessment is comparable to the LMI
21 analysis that we are familiar with for the state plan,
22 which is required to be prepared every four years with
23 possible modifications every two years.

24 We're recommending that we comment that
25 these time frames, although established by statute under

1 WIOA, would have been a good opportunity for the
2 Departments of Labor and Education to coordinate and
3 request a technical statutory amendment to align these
4 time frames.

5 CHAIRMAN ALCANTAR: Commissioners.

6 COMM. ANDRADE: I agree to disagree.

7 (Laughter)

8 COMM. CONGLETON: I'm fine with asking
9 them.

10 CHAIRMAN ALCANTAR: So what is the
11 appropriate time frame in terms of aligning these two
12 and having this requirement?

13 MS. BISCOE: Our recommendation would be
14 that the four-year timeline that -- or time frame that
15 has been laid out for the integrated or unified or
16 combined state plan would be an appropriate time frame
17 for this type of analysis and needs assessment.

18 CHAIRMAN ALCANTAR: Okay.

19 MS. BISCOE: All right. Section 361.30
20 requires an assurance in the state plan that American
21 Indians with disabilities are served to the same extent
22 as other individuals with disabilities.

23 Section 361.31 provides that the state
24 plan must describe how agreements are established with
25 nonprofit vocational rehabilitation service providers.

1 Section 361.32 provides that funds may be expended by
2 the state agency to educate and provide services to
3 employers who hire or are interested in hiring
4 individuals with disabilities.

5 361.34 requires that the state plan
6 include an assurance that the state has an acceptable
7 supported employment plan.

8 361.35 relates to the use of a portion of
9 allotted funds for the development and implementation of
10 innovative approaches to improving vocational
11 rehabilitation services.

12 361.36 and .37 relate to the requirements
13 for states determining whether they are able to provide
14 services to all eligible individuals or whether an order
15 of selection procedure is in place to be used in
16 determining individuals to be provided vocational
17 rehabilitation services.

18 Our understanding in coordination with the
19 staff at DARS is that they have not needed to use an
20 order of selection process for quite a number of years.

21 361.38 relates to required policies for
22 safeguarding personally identifiable information.

23 361.39 provides that the state agency must identify any
24 state-imposed regulations or policies.

25 361.40 relates to reporting requirements

1 regarding applicants and eligible individuals receiving
2 services.

3 361.41 through .47 relate to eligibility
4 determinations, requirements for individualized
5 employment plans and information that must be contained
6 in records for eligible individuals.

7 So I'm moving to Section 361.48 that
8 relates to the allowable services for students and
9 others with disabilities.

10 The regulatory provision includes new
11 requirements for vocational rehabilitation agencies to
12 coordinate with education agencies for the provision of
13 preemployment transition services to students with
14 disabilities.

15 These services include things such as job
16 exploration and base-learning experiences. Under WIOA
17 15 percent of the state's allotment for vocational
18 rehabilitation must be for the provision of these
19 preemployment transition services for students with
20 disabilities.

21 361.49 relates to providing services to
22 groups of individuals rather than services provided on a
23 one-on-one basis. New under the statutory provisions
24 and in the proposed regulations is the allowance to
25 provide transition services for youth.

1 This would include things such as tours of
2 universities and vocational training programs, employer
3 visits, career fairs, those types of things.

4 361.50 through .52 relate to required
5 policies relating to services provided, facilities for
6 the provision of service -- provision of services and
7 the requirement that consumers are provided with
8 information and support services to make informed
9 choices throughout the rehabilitation process.

10 Sections 361.53 and .54 relate to the
11 cost-of-services, an application of financial need
12 relative to vocational rehabilitation services.

13 361.55 relates to the review requirements
14 for individuals served and obtaining employment at wages
15 below minimum wage.

16 Now, the agency must review semi-annually
17 for the first two years versus the current requirement
18 for annual reviews of these individuals who are employed
19 at wages below minimum wage.

20 Based on our discussions with the DARS
21 staff consumers of vocational rehabilitation services in
22 Texas are not placed in employment that is below the
23 minimum wage.

24 361.56 and .57 provide guidance regarding
25 the closure of cases and procedures to be followed if an

1 individual is dissatisfied with the determination made
2 regarding the provision of vocational rehabilitation
3 services.

4 361.60 through .65 are fiscal provisions
5 relating to match maintenance of effort and limitations
6 on funding. A new requirement under WIOA, as I
7 mentioned before, is the requirement to reserve at least
8 15 percent of the state's allotment for preemployment
9 transition services.

10 So I'm going to move to a new section and
11 cover all of the provisions regarding part 363 which
12 relates to the supported employment program.

13 Under this program, it is a separate grant
14 that is intended to assist states in providing supported
15 employment services to individuals, including youth,
16 with the most significant disabilities.

17 The funds are used in helping these
18 individuals obtain competitive integrated employment.
19 Under 361.22, this reflects a new requirement under WIOA
20 that 50 percent of these supported employment program
21 funds must be used to provide supported employment
22 services to youth with the most significant
23 disabilities.

24 With that, I'm going to move to Page 14
25 and --

1 CHAIRMAN ALCANTAR: As relates to 363.61,
2 would you take another look at that and look at it from
3 the perspective of the -- I think that's the one
4 where --

5 MS. BISCOE: 361.61?

6 CHAIRMAN ALCANTAR: Yes. I'm sorry.
7 We're at 363 -- 363.1. Are we there already?

8 MS. BISCOE: We are.

9 CHAIRMAN ALCANTAR: Okay. Yeah, 363.1.
10 Could you take another look at that one from the
11 perspective of state flexibility in terms of the time
12 frames?

13 MS. BISCOE: We certainly will.

14 CHAIRMAN ALCANTAR: All right. Thank you.

15 MS. BISCOE: All right. With that, we'll
16 move to Section 370 on Page 14.

17 In part 370, this is the provisions in the
18 regulations that relate to the Client Assistance
19 Program. As I mentioned earlier, in Texas that entity
20 is called "Disability Rights Texas."

21 The Client Assistance Program provides
22 information to individuals with disabilities about
23 available services and benefits, rights under the
24 American Disabilities Act and advocacy and legal
25 representation to individuals seeking or receiving

1 vocational rehabilitation services.

2 And, finally, section -- or Part 397 has
3 been added to provide regulatory guidance consistent
4 with the statutory provisions that were added under WIOA
5 regarding documentation and outreach to youth and other
6 individuals in subminimum wage employment.

7 These provisions appear to restate the
8 statutory provisions based on our review. And with
9 that --

10 CHAIRMAN ALCANTAR: Commissioners, do we
11 have any questions of staff on any of these items?

12 COMM. CONGLETON: No questions.

13 COMM. ANDRADE: Great job.

14 CHAIRMAN ALCANTAR: Appreciate it. Thank
15 you for all the hard work. I certainly want to take
16 another look at these once we examine DARS' comments and
17 appreciate all the hard work.

18 Have a good day. Larry, any final
19 comments before we complete this work session?

20 MR. TEMPLE: No. Just one observation.

21 In most cases these rules just restate the statute.

22 So unless there was an interpretation of
23 the law that we thought either cut our flexibility or
24 was in a way different than our business model, then we
25 agreed. So just --

1 CHAIRMAN ALCANTAR: Great. Thank you.

2 This concludes this work session.

3 Have a good day.

4 (Proceedings concluded at 9:46 a.m.)

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1 C E R T I F I C A T E

2 STATE OF TEXAS)

3 COUNTY OF TRAVIS)

4 I, William C. Beardmore, Certified Shorthand
5 Reporter in and for the State of Texas, do hereby
6 certify that the above-mentioned matter occurred as
7 hereinbefore set out.

8 I FURTHER CERTIFY THAT the proceedings of such
9 were reported by me or under my supervision, later
10 reduced to typewritten form under my supervision and
11 control and that the foregoing pages are a full, true,
12 and correct transcription of the original notes.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 and seal this 21st day of May 2015.

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