



STATE REPRESENTATIVE

SAMANTHA KERKMAN

**2017 Senate Bill 510 / 2017 Assembly Bill 617
Administrative Rule for the Supervised Business Initiatives Program**

Senate Committee on Workforce Development, Military Affairs and Senior Issues
Wednesday, January 31, 2018

Chairman Testin and Members of the Committee, thank you for holding a hearing today on Senate Bill 510 and giving me the opportunity to testify in favor of this bill.

Senate Bill 510 was prepared by the Department of Workforce Development (DWD) and introduced by the Joint Legislative Audit Committee for legislative consideration.

In December 2015, the Legislative Audit Bureau released Report 15-18 on their audit of the Division of Vocational Rehabilitation. Included in the audit report was the finding that the Department had not promulgated a statutorily required rule regarding the Supervised Business Initiatives program. The audit recommended that the Department either promulgate the rule or – if DWD finds the rule unnecessary – that they request that the Legislature modify statutes to remove this requirement.

The Division of Vocational Rehabilitation indicated to auditors that although the relevant services are provided, a formal Supervised Business Initiatives program has not been established and no rule has been promulgated. Senate Bill 510 is the Department of Workforce Development's response to the audit recommendation.

Accompanying this testimony are a copies from the relevant sections of the audit report program and a copy of the report highlights. Copies of Report 15-18 are available by request from the Legislative Audit Bureau at or online at <http://legis.wisconsin.gov/lab>.

Thank you for your consideration of 2017 Senate Bill 510.

Future Considerations ■

Program expenditures and the number of participants increased in recent years, and they may continue to increase in future years as a result of recent changes to federal law. The cost to serve additional participants in future years is currently unknown, in part, because the details for implementing the recent changes to federal law have not yet been established. It will be important for DVR to serve these additional participants consistently, particularly because we found considerable variation among workforce development areas in annual average expenditures for services per participant and rehabilitation rates. It will also be important for DWD either to promulgate one statutorily required rule or request that the Legislature modify statutes to remove this requirement. We recommend DWD report to the Joint Legislative Audit Committee on its plans for complying with the recent changes to federal law and how it will address each of our other audit recommendations.

Administrative Rule

Section 47.03 (11), Wis. Stats., requires DWD to provide vocational rehabilitation services, including vocational training and a Supervised Business Initiatives program, to participants with severe disabilities. Statutes allow DWD to own, lease, manage, supervise, or operate businesses for the benefit of such participants, with the goal of these individuals operating their own businesses. Statutes allow DWD to charge each business a portion of the Supervised Business Initiatives program's expenses, and they require DWD to

promulgate rules that establish the formula for how it will charge such expenses.

DWD should promulgate a statutorily required rule.

DVR indicated that it has not established a formal Supervised Business Initiatives program, although it provides the relevant services to participants with severe disabilities. It also indicated that no Supervised Business Initiatives program expenses have been charged, and the statutorily required rule has not been promulgated. DWD should promulgate the statutorily required rule. However, if it believes this rule is unnecessary, it could request that the Legislature modify statutes to remove this requirement.

Recommendation

We recommend the Department of Workforce Development comply with statutes by promulgating a rule for charging relevant businesses with a portion of its expenses to operate the Supervised Business Initiatives program.

Workforce Innovation and Opportunity Act

The federal Workforce Innovation and Opportunity Act of 2014 affects how DVR will be required to serve participants.

The federal Workforce Innovation and Opportunity Act of 2014 affects how DVR will be required to serve participants. Since FFY 2014-15, the Act has required DVR to reserve at least 15.0 percent of its federal rehabilitation grants each federal fiscal year for high school students with disabilities. DVR indicated that it is conducting outreach efforts to high schools around the state, which has resulted in increased participation among high school students.

Beginning in July 2015, the Act modified the performance indicators DVR must report to the federal government. Rehabilitation rates must now be measured as the percentage of all former participants employed during the second and fourth quarters after leaving the program. The Act also now requires DVR to report additional performance measures, including those that focus on the educational attainment of participants.

Beginning in July 2016, federal law will require DVR to ensure that all individuals with disabilities who are paid less than the federal minimum wage receive certain services.

Beginning in July 2016, the Act will require DVR to ensure that all individuals with disabilities in the state who are paid less than the federal minimum wage receive annual career counseling, information, and referral services, to be provided either by DVR or another entity. DWD estimates that there are approximately 9,000 such individuals in the state. In October 2015, DVR indicated it was preparing a request for proposal for the provision of such services, but it does not plan to issue a request for proposal until the federal government promulgates rules for administering the Act's

Division of Vocational Rehabilitation

Department of Workforce Development

December 2015

Report Highlights ■

Annual average expenditures for services per participant varied considerably among DVR's 11 workforce development areas.

Our review of 100 cases closed indicated that DVR generally served these participants appropriately, but we identified some concerns.

The annual rehabilitation rate of participants increased steadily in recent years.

Rehabilitation rates varied considerably among DVR's 11 workforce development areas and among participants with different characteristics.

The Division of Vocational Rehabilitation (DVR) in the Department of Workforce Development (DWD) administers Wisconsin's vocational rehabilitation program, which helps individuals with disabilities to obtain or retain employment. Individuals may participate in the program if they have a physical or mental impairment that is a substantial impediment to employment and they can benefit from vocational rehabilitation services, such as training, job search assistance, and rehabilitation technology. In federal fiscal year (FFY) 2013-14, the program served 33,025 participants.

In state fiscal year (FY) 2014-15, DVR spent \$100.7 million, almost two-thirds of which was for services for participants. The program's primary funding source is a federal grant that provides 78.7 percent of funding and requires a partial state funding match of 21.3 percent. As of June 2015, DVR had 344.0 full-time equivalent (FTE) staff, including 132.0 FTE vocational rehabilitation counselors who worked out of 41 offices located in 11 workforce development areas, determined the eligibility of program applicants, and authorized services that participants needed to achieve their specified employment outcomes.

To complete this audit, we analyzed:

- program expenditures, participants, staffing, and services; and
- the outcomes of participants, including the extent to which participants achieved specified employment outcomes and were considered rehabilitated.

Expenditures and Staffing

DVR's expenditures increased from \$78.1 million in FY 2011-12 to \$100.7 million in FY 2014-15, or by 28.9 percent. Much of the increase occurred because 2013 Wisconsin Act 58 increased DVR's general purpose revenue (GPR), and these funds were used to match additional federal funds.

In order to obtain federal funding, DVR must annually submit to the federal government a State Plan describing how it will serve participants. State Plans in recent years indicate that DVR's goal for the average statewide caseload per counselor and counselor-in-training is no more than 125.0 participants and applicants. The average statewide caseload per counselor and counselor-in-training was less than 125.0 in June 2012, June 2013, and June 2014.

Annual turnover among counselors and other staff who directly serve participants increased from 10.4 percent to 14.1 percent from June 2012 through June 2015.

Service-Delivery Issues

Federal law and program policies require DVR to determine an applicant's eligibility for the program within 60 days of application, unless an extension is approved. From October 2011 through March 2015, DVR did not approve extensions for 2,559 applicants, or 5.3 percent of all applicants, whose eligibility had not been determined within 60 days. Not determining an applicant's eligibility in a timely manner can delay an applicant obtaining employment or result in an applicant not retaining employment.

Within 90 days after a participant is eligible for services, federal law and program policies require a counselor and a participant to complete a written individualized plan for employment, unless an extension is approved. This plan describes a specific employment outcome consistent with a participant's abilities and interests and the services needed to achieve that outcome. From October 2011 through March 2015, DVR did not approve extensions for 2,027 individualized plans for employment, or 7.2 percent of the total completed, that had not been completed within 90 days. Not completing such a plan in a timely manner can delay a participant obtaining employment or result in a participant not retaining employment.

We analyzed annual average expenditures for services per participant from FFY 2011-12 through FFY 2013-14 and found considerable variation among workforce development areas. Annual average expenditures per participant ranged from 163.4 percent to 72.8 percent of the \$1,563 statewide average in FFY 2013-14. Annual average expenditures per participant in the Fox Valley, Bay Area, and Milwaukee workforce development areas were lower than the statewide average in the three-year period we reviewed.

Key Facts and Findings

The average statewide caseload per counselor and counselor-in-training was less than DVR's goal of 125.0 cases in June 2012, June 2013, and June 2014.

Annual turnover among counselors and other staff who directly serve participants increased from 10.4 percent to 14.1 percent from June 2012 through June 2015.

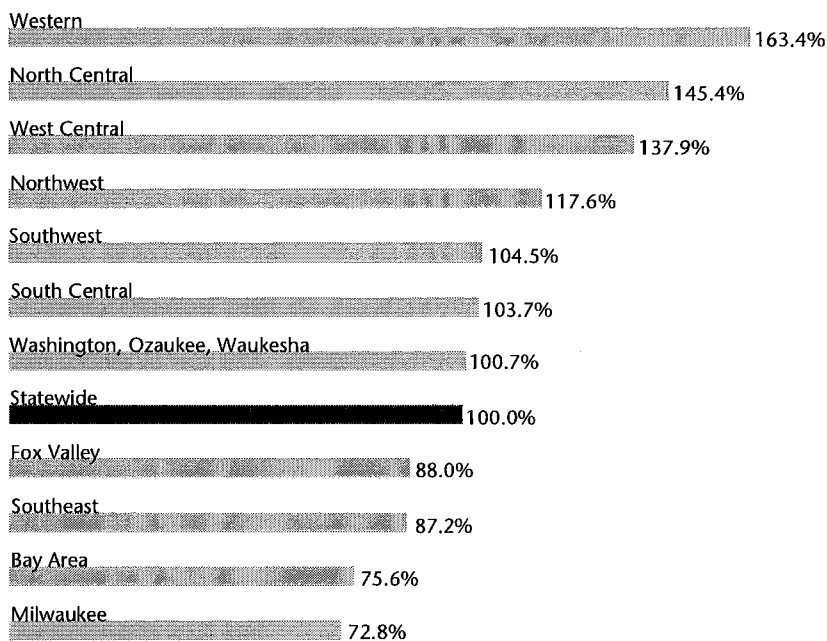
DVR did not consistently determine participants' program eligibility in a timely manner.

From October 2011 through March 2015, DVR closed 48,606 cases, including 50.6 percent that it closed before having provided the participants with any services.

DVR's annual rehabilitation rate may be inaccurate.

The federal Workforce Innovation and Opportunity Act of 2014 will likely require DVR to provide additional services to individuals.

**Annual Average Expenditures for Services per Participant as a Percentage
of the Statewide Average, by Workforce Development Area
FFY 2013-14**



DVR's central office indicated that it does not regularly monitor variation in expenditures per participant among workforce development areas. To some extent, variation is to be expected because participants have unique disabilities and needs for services. However, considerable variation could indicate that participants are not being served consistently statewide.

To assess in greater detail how DVR served participants, we reviewed the files for 100 cases DVR closed from October 2014 through March 2015. Our review indicated that DVR generally served these participants appropriately, including by declining to provide services that appeared to be unnecessary for participants to achieve their specified employment outcomes. However, our file review identified concerns with how DVR served some participants. For example, a number of case files did not indicate that counselors attempted to contact participants at least monthly, as they are typically required to do. Not being contacted at least monthly can delay a participant obtaining employment or result in a participant not retaining employment.

Participant Outcomes

From October 2011 through March 2015, DVR closed 48,606 cases, including 50.6 percent that it closed before having provided the participants with any services. A case may be closed for various reasons before any services are provided. For example, a participant may find employment without DVR's assistance.

Rehabilitation rates increased steadily from FFY 2011-12 through the first six months of FFY 2014-15. Wisconsin's rate ranked fourth among seven midwestern states and was higher than the national average in FFY 2012-13, which was the most recent available for other states at the time of our audit.

However, the rehabilitation rate that the federal government annually calculates based on information submitted by DVR may be inaccurate. Our file review found that DVR inaccurately considered some participants rehabilitated and closed their cases when, in fact, the available information indicates the participants were not rehabilitated.

We found that rehabilitation rates varied considerably among workforce development areas. They also varied considerably based on the employment status of participants at application and the demographic characteristics of participants. To some extent, variation is expected because participants have unique educational backgrounds, employment histories, and job skills, all of which help to determine how likely participants are able to achieve their employment outcomes. However, considerable variation could indicate that participants are not being served consistently statewide.

Future Considerations

The federal Workforce Innovation and Opportunity Act of 2014 will likely require DVR to provide additional services to individuals, but the cost of these services is uncertain. Because the Act provides no additional federal funding, DVR indicated that it may need to place some eligible applicants on a waiting list in order to have sufficient funds to provide services to the individuals specified in the Act.

Recommendations

We include recommendations for DWD to:

- ☑ consistently determine an applicant's eligibility and complete a participant's individualized plan for employment within the required time periods or approve extensions (*pp. 31, 36*);
- ☑ at least annually examine and assess the variation in annual average expenditures per participant among workforce development areas and implement a plan, if necessary, to address the variation and ensure participants are served consistently statewide (*p. 40*);
- ☑ ensure consistent compliance with DVR's State Plan, federal law, and program policies when serving participants (*p. 44*);
- ☑ improve the accuracy of its annual rehabilitation rate (*p. 52*);
- ☑ at least annually examine and assess the variation in rehabilitation rates among workforce development areas and among participants with different characteristics and implement a plan, if necessary, to address the variation and ensure participants are served consistently statewide (*p. 56*);
- ☑ promulgate the statutorily required rule for charging a portion of expenses to operate the Supervised Business Initiatives program (*p. 62*);
and
- ☑ report to the Joint Legislative Audit Committee by June 30, 2016, on its plans to comply with the federal Workforce Innovation and Opportunity Act and the status of its efforts to address each of our audit recommendations (*p. 63*).



Legislative Audit Bureau | State Auditor: Joe Chrisman

Address questions regarding this report to the State Auditor at (608) 266-2818 or at AskLAB@legis.wisconsin.gov.

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Scott Walker, Governor
Reginald J. Newson, Secretary

December 11, 2015

Joe Chrisman
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Dear Mr. Chrisman,

Thank you for the opportunity to respond to the Legislative Audit Bureau's evaluation of the Department of Workforce Development's (DWD) Division of Vocational Rehabilitation (DVR) program expenditures, service delivery, and participant outcomes from October 2011 to March 2015. As Wisconsin's DVR is already an award-winning and nationally recognized system, we appreciate the LAB's thorough analysis and recommendations, and we look forward to implementing all of the LAB's recommendations as part of our commitment to excellence and continuous improvement.

Commitment to Excellence Ranks Wisconsin's DVR Top Among States

As the Legislature may be aware, DVR won the 2012 National Council on Rehabilitation Education (NCRE) President's Award for Excellence in Rehabilitation. The President's Award recognizes a truly superior state-federal vocational rehabilitation program and honors excellence among state agencies.

Wisconsin DVR senior leaders also were recognized twice, including as recently as 2014, as national leaders in serving people with disabilities and for raising public awareness about the contributions that people with disabilities bring to the workplace.

In January 2015, DWD announced the elimination of its DVR wait list for people with significant disabilities for the first time since October 2004. This achievement was made possible through Wisconsin Act 58, which Governor Walker signed in December 2013 with the bipartisan support of the Wisconsin Legislature. The measure provided DWD with additional state funding to capture the full federal match of available dollars, hire additional DVR staff and serve an additional 3,000 job seekers with disabilities over the biennium. It should be noted that the wait time for this group of DVR applicants was approximately five months before the Governor signed this legislation.

In addition, Wisconsin's rehabilitation rate for job seekers with disabilities is currently at 57.4 percent, which exceeds federal requirements.

DWD Is Already Implementing or Committed to Implementing All LAB Recommendations

DVR appreciates the helpful recommendations that LAB included in its evaluation. The recommendations will help DVR further improve the delivery and outcome of its nationally recognized programs and services. Furthermore, the recommendations validate that DVR is heading in the right direction relative to policy revisions and changes in service delivery that began prior to LAB's review.

We take the LAB's findings and recommendations seriously. To this end, I have directed the Division to review all applicable federal laws and policies and develop recommendations to:

- Ensure DVR consistently determines service eligibility and approves extensions in a timely manner. We thank the LAB for recognizing that factors beyond DVR's control, such as an applicant's responsiveness

and delayed access to important records, affect when determinations are issued.

- Ensure DVR consistently completes individualized plans for employment (IPEs) or approves extensions in a timely manner. We appreciate the LAB's acknowledgment that factors such as the level of cooperation by individual applicants and the difference in an applicant's competencies and their desired employment outcomes, can require additional counseling and affect when an IPE can reasonably be completed.
- Consistently follow all state and federal requirements to contact DVR consumers in a timely manner, approve exceptions when appropriate, and ensure that attempts to contact consumers prior to case closure are fully documented. It is worth noting that over half – almost 58 percent – of cases reviewed by LAB were closed **because participants either were no longer interested in receiving services or because the participants could not be located or did not respond to DVR's attempts to contact them.**
- Review current practices to document and report case closures to the federal government and ensure DVR continues to adhere to federal reporting guidelines. We appreciate that **LAB's report validates Wisconsin's rehabilitation rate, as defined under federal performance standards, surpasses the federally required rate of 55.8 percent.** We respect and will take under consideration the LAB's suggestion that DVR establish and track an alternate rehabilitation rate calculation that differs from the federally required calculation used by all states. It's important to note that such an alternate calculation could not be used to accurately compare Wisconsin's performance to other states.
- Continue to closely monitor average expenditures per participant among the 11 Workforce Development Areas (WDAs) on a recurring basis and aggressively seek opportunities to further increase consistency across all WDAs. We appreciate the LAB's recognition that, just as each DVR consumer has unique abilities and individualized employment goals, the per-participant cost to help that consumer achieve their goal will vary based on factors such as cost and availability of services in a particular area, even as we seek to strengthen consistency across all WDAs. We also thank the LAB for recognizing DVR's efforts to strengthen management over per-participant expenditures in areas such as farm equipment, including draft policies we developed in September 2015.
- Continue to closely monitor rates of eligibility determinations and rehabilitation rates by WDA and expand a successful third-party eligibility determination pilot to all 11 WDAs by mid-2016. We thank the LAB for recognizing that rehabilitation rates differ for various reasons, including the socioeconomic backgrounds of participants, the labor market in different areas of the state, the availability of transportation to places of employment, and the extent to which participants moved their residences.
- Seek the repeal of Section 47.03(11), Wis. Stats., as the program under this statute is not utilized by DVR because the Division does not own, lease, manage or supervise or operate businesses for the benefit of persons with disabilities. Seeking the repeal of this statute makes it unnecessary to promulgate an administrative rule for the program at this time.
- Prepare to deliver a complete report to the Joint Legislative Audit Committee by June 30, 2016 on DWD's efforts to (a) implement the federal Workforce Innovation and Opportunity Act (WIOA) and determine whether to seek additional federal funds and (b) implement all of LAB's recommendations. The federal government has advised states that it expects to issue final WIOA rules in spring 2016.

DWD Is Committed to Timely, Accurate Responses to Data Requests

We respect the vital role that the LAB plays in helping the Legislature fulfill its oversight of state agency operations.

As with previous LAB reviews of specific DWD programs and operations, we worked cooperatively and in good faith to provide the LAB with the information and data they requested in a timely and complete manner. To this end, we appreciate the LAB's note that DVR was unable to provide them with accurate data in a timely manner due to errors with an initial data pull that required DWD to extract, compile and ensure the accuracy of additional pulls of data to fulfill the LAB's request. We also thank the LAB for acknowledging that their requests required DVR to assemble portions of its data in new ways and the effort to do so took time. All requested data was completely and accurately delivered in approximately 60 days.

We would like to point out that the data requested by LAB contained personally identifiable information, such as but not limited to consumers' names, dates of birth and social security numbers, all of which are vigorously protected in our data system. DWD was conscientious of these privacy concerns and wanted to ensure that the data provided to LAB was complete and correct. DWD staff spent hundreds of hours pulling over 940,000 lines of data to provide the requested information, even as we effectively managed other high-priority technology projects across the agency.

In closing, DWD extends our deep appreciation for the cooperation and understanding of the LAB team as it conducted its review. We look forward to sharing our progress in addressing the LAB's recommendations in the months ahead.

Sincerely,

A handwritten signature in cursive script that reads "Reggie Newson". The signature is written in black ink and is positioned above the typed name.

Reggie Newson
Secretary

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Scott Walker, Governor
Ray Allen, Secretary

Senate Committee on Workforce Development, Military Affairs and Senior Issues

Testimony on Senate Bill 510

Andrew Evenson, Policy Advisor, Department of Workforce Development

Chairperson Testin and members of the Senate Committee:

I am Andrew Evenson, the Policy Advisor for the Department of Workforce Development (DWD). On behalf of DWD, I would like to thank you for allowing me to testify in favor Senate Bill 510.

Section 47.03 (11), Wis. Stats., requires DWD to provide vocational rehabilitation services, including vocational training and a Supervised Business Initiatives program, to participants with severe disabilities. Statutes allow DWD to own, lease, manage, supervise, or operate businesses for the benefit of such participants, with the goal of these individuals operating their own businesses. Statutes allow DWD to charge each business a portion of the Supervised Business Initiatives program's expenses, and they require DWD to promulgate rules that establish the formula for how it will charge such expenses.

In December of 2015, the Legislative Audit Bureau released its audit on the Division of Vocational Rehabilitation. One of the findings was DVR has not established a formal Supervised Business Initiatives program, although it provides the relevant services to participants with severe disabilities. No Supervised Business Initiatives program expenses have been charged, and the statutorily required rule has not been promulgated. The audit recommended that DWD if it believes this rule is unnecessary, it could request that the Legislature modify statutes to remove this requirement.

SB 510 repeals the requirement for DWD to run the Supervised Business Initiatives program.

DWD estimates that if SB 510 became law that the repeal of this provision will not have a fiscal effect.

I would be happy to answer any questions you may have. Thank you again for your time and for the opportunity to testify today.