

## **Background**

The Pennsylvania Bulletin issued on May 4, 2019, announced a 30-day public comment period from May 4, 2019, to June 4, 2019, on the proposed amendment to temporarily close all categories of the Order of Selection (OOS) in description (m) of the VR Services Portion of the Pennsylvania WIOA Combined State Plan.

The Office of Vocational Rehabilitation (OVR) provided the public, including individuals with disabilities, the opportunity to provide input regarding OVR's request to temporarily close the OOS. Interested persons were invited to submit written comments by mail to OVR or by email at [OVRFeedback@pa.gov](mailto:OVRFeedback@pa.gov) until 5:00 p.m. on June 4, 2019. In-person public meetings were held statewide at OVR district offices on May 22, 2019, and individuals who wanted to participate but were unable to attend in-person were offered the opportunity to participate via phone.

The total number of participants at the public meetings included 320 in-person participants at the OVR district offices, and a total of 150 lines connected for those participating virtually.

When the comment period ended, OVR had received and recorded a total of 150 verbal comments from individuals participating in person at the public meetings and 98 emailed/mailed comments. Also, there were articles in two newspapers on the proposed changes to vocational rehabilitation services that would create a waiting list for new customers.

The public comment process and resulting dialogue emphasized impacts on current OVR customers, students with disabilities, and external stakeholders/partners that included the following general "themes": communicate with stakeholders to include business, general, Office of Developmental Programs (ODP)/Office of Long Term Living (OLTL), service providers; fiscal; service provider concerns; parent concerns; process concerns; Pre-Employment Transition Services; and service disruption to customers, schools, and providers. A separate document will capture frequently asked questions (FAQs).

A summary of the public comment themes follows.

### **OOS Closure Comments Summary – Stakeholders**

Many stakeholder commenters opposed the proposed temporary OOS closure of all categories and urged OVR to explore and consider other cost saving measures instead of creating a waiting list. These commenters expressed concern and stated inadequate stakeholder engagement, rushed timeline for implementation, and inconsistency with the Pennsylvania Employment First Act of 2018. Rather than close the order July 1, 2019, the following was recommended:

- Convene an open, transparent workgroup of interested stakeholders who will engage with OVR to discuss all possible options to address the current financial situation;
- Delay any closure of the OOS until OVR publishes a summary including its analysis and data to explain all options considered and why closing the order is the best option for OVR and Pennsylvanians with disabilities;
- Delay any closure of the OOS until OVR provides an additional thirty-day public comment period in response to OVR's published summary and data;
- Engage with the state legislature to urge allocation of additional state funds so that OVR services may continue uninterrupted;
- Delay closure of the OOS until a report from the Governor's Advisory Committee for People with Disabilities can be presented to the governor. The report would develop and propose a plan to coordinate between the departments, policies, and processes that will remove the barrier that this policy presents and will enable people with disabilities seeking employment and needing support to maintain their employment and to receive the services they need for employment; and
- Overhaul the process by which OVR provides services. This might be necessary given the new economic reality that OVR faces.

### **OOS Closure and Office of Developmental Programs (ODP)/Office of Long Term Living (OLTL)**

Stakeholder commenters sought to suspend the referral requirement to OVR for waiver participants prior to receiving Medicaid-funded employment services through the Office of Developmental Programs (ODP)/Office of Long Term Living (OLTL). Some of these commenters raised various concerns about the OOS closure impact on ODP waiver participants and urged OVR to request ODP to suspend their requirement to refer waiver participants to OVR and make them wait 120 days before ODP can pay for employment services.

Similarly, commenters stated that OVR should immediately communicate to ODP and OLTL and urge them to suspend the requirement in the waivers (Consolidated, Person/Family Directed Support, Community Living) and Community HealthChoice's contracts to refer participants to OVR before allowing their own funding to be used. If a person referred to OVR is going to be placed on a waiting list, then VR funding is by definition not available, and Medicaid-funded employment should be allowed to commence without delay, at least until such a time that OVR rescinds its policy to place people on a waiting list.

A few commenters proposed that immediate notification must be provided to the Pennsylvania Department of Education and the Office of Developmental Programs as this proposed change impacts students and ODP customers. Pennsylvania Department of Education/Bureau of Special Education: Teachers, Transition Coordinators, Parents, and Transition Youth must be fully informed to consider their

need for Pre-Employment Transition Services (PETS) as early as possible and PRIOR to eligibility determination.

### **OOS priority category determinations – consistency**

A few commenters expressed concern about the lack of consistency among OVR staff to implement OOS selection criteria in the same fashion, stating that an individual with significant needs may be denied eligibility in one district office, while another person, with very similar needs, is accepted. A commenter said that once the OOS is reopened, consistency across all OVR offices is needed, and this should be accomplished via training, technical assistance, and accountability.

### **Waiting List Concerns**

One commenter sought clarification on whether individuals with waivers must wait on the list for employment services through OVR or whether they could access waivers. Commenters expressed concern that because of the waiting list, providers/ stakeholders could potentially not have new referrals coming in for a lengthy period; individuals will be on the waiting list too long and become discouraged about working.

### **OVR Response**

OVR recognizes and appreciates the comments provided regarding stakeholder concerns related to the temporary closure of the OOS. OVR is in a collaborative process and dialogue with ODP on amending the OVR/ODP bulletin that will apply to obtaining ODP waiver services during a period when OVR's Order of Selection is closed. OVR will look for creative solutions to service provision models and seek input from stakeholders on significant policy changes as they are developed.

There are a variety of factors that are impacting OVR's ability to maintain services, including the Centers for Medicaid and Medicare Services rule and referral requirements mandated for the ODP/OLTL and the inability of OVR to restrict PETS to potentially eligible and eligible students. OVR is hopeful that by making additional changes to various service provision models that over time OVR will be able to resume operations without the waiting list.

### **OOS Closure Comments Summary – Fiscal**

Some commenters said:

- Additional funding should be diverted to OVR to avoid a waiting list. The governor and legislators should consider the cost savings that OVR generates by assisting people with disabilities to become tax payers and avoid reliance on public benefits. With the commonwealth's commitment to Employment First, the federal funding should be viewed as the minimum investment and will render Pennsylvania's efforts to be a model Employment First state meaningless if a

wait list is implemented. Additional barriers should not be added to prevent people with disabilities from obtaining employment. Other agencies like ODP have existing waiting lists for their waiver services, and it takes months/years for customers to receive services. Focus on improving the OVR system with existing resources or allocate additional funds as this program is essential for many people with disabilities seeking employment. This is a terrible option for people with disabilities trying to seek employment. The disability community is severely underserved and discriminated against economically and socially. The wait list alone does not seem to be the answer and will be difficult for customers to achieve their goals once implemented. Consideration should be given to leverage funds from other state and federal agencies and to ensure that managed care organizations are meeting their obligations to provide services under Community Health Choices.

- A funding shortage reaching 1,200 people per month is unacceptable and we should ensure that funding is allocated to avoid a waiting list. Many unique programs and vendors are supported by OVR and ensure people with disabilities have high quality services.
- It is recognized that programs related to workforce development have been cut federally; however, the demand for those programs continues to increase. While the need for additional funding is recognized, a temporary closure of the order may allow OVR to review its policies and procedures to ensure that funding can be directed to those who can benefit the most. All programs and services should be reviewed including the Hiram G. Andrews Center in Cambria County for cost saving.
- Prior to the 15% PETS mandate, OVR struggled to serve all the people in Pennsylvania who needed their services. Their mission was more simple and direct prior to the Workforce Innovation and Opportunity Act (WIOA), and their services have been diluted as a result. The federal change to WIOA was an unfunded mandate that puts an unfair burden on the traditional vocational rehabilitation program customers. Clearly OVR has not received the funding necessary to perform both mandates. The PETS services have proven valuable to students with disabilities, but additional clarification and management of the PETS program is necessary for consistent application. Students with disabilities are some of our most vulnerable residents, and OVR should look for other ways to ensure that all customers can benefit from services. Other federal mandates have contributed to this situation, and mandatory referrals from ODP and OLTL will continue to exacerbate the situation until additional cost savings and programmatic changes can be made.
- Pennsylvania is an Employment First state; however, the requirement of the 15% reserve for PETS and no additional funds from the federal government requires OVR to take funds previously used for adults for those new services. Vendors of services are already having a difficult time breaking even and

managing the level of reporting and credentialing now required for many services. With these various mandates and lack of funding, it will be difficult for Pennsylvania to truly become employment first. OVR should be allocated additional state and federal funds to ensure that Employment First is able to happen in Pennsylvania. People with disabilities should have access to Competitive Integrated Employment and should not be forced back into segregated settings paying less than minimum wage.

- OVR services to students have been very valuable, and OVR staff have been very helpful. However, there needs to be more consistency in the way services are approved and funds are managed to ensure that the most people can be served.
- An additional impact of the closure of the Order of Selection will be on the variety of community rehabilitation providers and other vendors that OVR purchases services from. Small vendors and providers may not be able to sustain their workforce or their business model as a result of the delays in services that result from a wait list. The provider community can be part of the solution, and assistance and advice should be sought to aid OVR in correcting the issues that have been caused by the new mandates and funding issues.
- OVR faces a significant fiscal crisis, and the closure of the Order of Selection will not be sufficient to resolve the budgetary projections. A total overhaul of how OVR provides services may be necessary. OVR should involve community stakeholders and advocates in these changes to ensure that the disability community has a clear voice in how OVR should proceed.

## **OVR Response**

OVR recognizes and appreciates the comments provided regarding fiscal matters related to the temporary closure of the OOS. OVR is reviewing policies, procedures, administrative costs, brick and mortar, staffing, and other ways to conserve funds moving forward. OVR is looking for creative solutions to service provision models and seeking input from stakeholders on significant policy changes as they are developed. There are a variety of factors that are impacting OVR's ability to maintain services. These factors include changes made in WIOA related to the provision of PETS services, referral requirements mandated by the ODP and OLTL, and the inability of OVR to obtain additional funds from the federal government when the state has offered additional match to do so. OVR is hopeful that making additional changes to various service provision models will enable us to resume operations without the waiting list. However, many factors will impact the ability to do so, and the situation will need to be monitored carefully to ensure compliance with federal laws and regulations.

## **OOS Closure Comments Summary – Service Providers**

Various providers commented on the disruption of services that will inevitably happen because of a closure of the OOS. The following concerns were expressed by commenters:

- Providers being unable to maintain their staffing levels without OVR support;
- Providers were concerned about getting information regarding someone who goes to work without OVR being as involved in the case;
- OVR needs to be clear in its messaging on the OOS to customers and families; and
- OVR needs to clearly communicate this information to business since they will see a decline in referrals from OVR.

\*Note that some comments from service providers are also captured in the stakeholder response category above.

### **OVR Response**

OVR recognizes and appreciates the comments provided by our providers related to the temporary closure of the OOS. OVR is cognizant of its responsibility to ensure providers, stakeholders, customers, and families are well informed. OVR is in the process of developing various materials to be shared with these groups. OVR is also aware that closing the OOS and creating a wait list will cause some service disruption and may be difficult for providers. OVR intends to work closely with everyone to minimize the disruptions as much as possible.

## **OOS Closure Comments Summary – Parents**

Parents expressed concern about the lack of services for students coming into the system now. One commenter said, "In the real world, in terms of jobs, kids need guidance." Another commenter said the support is not in the schools. Another expressed frustration at OVR not being involved enough.

### **OVR Response**

OVR recognizes and appreciates the comments provided regarding parental concerns related to the temporary closure of the OOS. Potentially eligible students with disabilities will continue to receive PETS. Eligible students with disabilities can continue to receive ongoing PETS while placed on an Order of Selection wait list, if they have participated in a Pre-Employment Transition Service before being determined eligible for vocational rehabilitation services. We are hopeful these services will help to bridge the gap while the OOS is temporarily closed.

## **OOS Closure Comments Summary – Process**

Two commenters stated that the category of Most Significant Disability (MSD) should be looked at more carefully instead of closing the OOS. One said, closing the OOS does not solve the fiscal crisis. Unless the definition of MSD is revised to clearly distinguish between NSD, SD, and MSD, the overwhelming number of eligible customers will continue to be classified as MSD. This effectively eliminates the purpose of the Order of Selection, which is, first and foremost, to provide services to individuals with the most significant disabilities. Another commenter expressed support of OVR for being in this situation and hopes the Order of Selection will be a solution that can help OVR. One commenter encouraged OVR to prioritize job retention services. Another commenter wanted to ensure that everyone's needs would be considered equally when evaluating someone to be placed on the OOS.

### **OVR Response**

OVR recognizes and appreciates the comments provided regarding the process of the temporary closure of the OOS. OVR is evaluating numerous things to ensure that it will be in a more solid fiscal situation in the coming years, including evaluating our current definitions within the OOS. However, these changes cannot happen fast enough to alleviate the current fiscal situation. Be assured OVR will continue to evaluate these long-term strategies. Additionally, OVR will fully evaluate a person's needs when considering their placement on the OOS. OVR has added to the 2020-2024 VR Services Portion of the PA Combined State Plan the following language to address job retention:

*Any applicant who has been determined eligible due to their disability, is in immediate risk of losing their job due to the disability, and is determined to be in a category not currently being served, may only receive the services or goods needed to maintain the job.*

- 1. The job must be in a competitive integrated setting. If services are needed for other purposes, they may not be delivered, and the applicant must wait until their name is removed from a waiting list category and placed into active service. This means that if the individual needs services that are not directly tied to maintaining current employment, the individual's ability to receive those services from the VR program depends on the individual's placement on the waiting list.*
- 2. Immediate need means that the individual would almost certainly lose their current job if not provided specific services or equipment in the very near future that would enable them to retain that employment.*
- 3. Immediate risk of losing the job due to the disability does not include economic conditions and non-disability related factors.*

## **OOS Closure Comments Summary – Service Disruption**

Comments were received from public commenters related to the possible disruption of services from closing the OOS.

- Twenty respondents included specific requests that the Order of Selection not be closed.
- Six comments were from individuals concerned about a negative impact on individuals who are blind or visually impaired.
- Two had questions related to how a wait list would work (answers can be found in FAQ document).
- One commenter suggested OVR cut bureaucratic “red tape” vs. implementing a wait list.
- One commenter believes a wait list may lead to increased cost to families if their adolescent or young adult is unable to become employed immediately upon graduation.
- Two comments shared concerns about a negative impact on collaboration/relationship between OVR and local school districts.
- One commenter believes customers on a wait list will need to access additional support services from waiting, and this could lead to increased cost to OVR.
- One commenter working in a PA CareerLink® is concerned about a delay in services for dual enrolled customers accessing the PA CareerLink® and OVR since OVR documentation is often used for other program eligibility.

Other common themes or concerns are:

- The impact on OVR's relationship with stakeholders, vendors, school districts;
- Concerns about losing momentum with youth and Project SEARCH;
- Potential challenges faced by CRPs without OVR's support;
- Critical need for more funding for OVR;
- Risk to Employment First;
- Concerns the PA CareerLink® system is not prepared to serve all customers with disability related needs;
- Possible increased costs to other community providers;
- Possible increased costs to families if the young adult is unable to become employed and develop self-sufficiency;
- Impact of closing the Order of Selection on Section 301 from the Social Security Red Book and SSI/SSDI recipients being able to satisfy participation in vocational planning;
- The need for continued operational analysis within OVR and L&I to understand the reason and need for the changes to OOS;
- Advocacy with state legislature and federal representatives regarding the unexpected negative impact of WIOA on the VR program; and
- Outreach to community partners/stakeholders for brainstorming and problem solving.

## **OVR Response**

OVR recognizes and appreciates the comments provided regarding service disruption related to the closure of the OOS. OVR recognizes that there will be some disruption in

services. We will work to minimize these service disruptions as much as possible by providing information and referral services as appropriate. Customers are OVR's primary concern, and OVR will work to ensure their needs are met through other providers and funding sources. OVR will also continue to closely collaborate with school districts, employers, providers, and stakeholders throughout the process.

### **OOS Closure Comments Summary – Pre-Employment Transition Services**

Many commenters express concerns about WIOA's new requirements for 15% of the federal allocation to be reserved for PETS, causing OVR's inability to financially support services to both potentially eligible students and eligible customers with open VR cases. One commenter expressed concerns that OVR will no longer fund a successful PETS group service in his area. At least two commenters suggested that OVR reduce the 15% reserve requirement for PETS. One commenter expressed concern about OVR's lack of a consistent policy regarding PETS and urged OVR to develop a better model because the students OVR is currently serving are only the tip of the iceberg.

### **OVR Response**

OVR recognizes and appreciates the comments provided regarding PETS. Under a closed OOS, OVR will still be able to fund necessary and valuable PETS group services for potentially eligible students. OVR still must assess the students' need for these services, but a closed OOS will not have an impact on the provision of PETS for potentially eligible students. In addition, students who have received one of the five required PETS before being placed on a closed OOS priority category may continue to receive the necessary and valuable PETS while on the OVR waiting list. They cannot, however, receive individualized VR case services while on a waiting list.

The 15% reserve of the federal allocation to OVR is mandatory under WIOA. It cannot be reduced to a lower percentage. In addition, an arbitrary "cap" cannot be placed on the number of students who are able to receive PETS. OVR is federally required to provide PETS to all students with disabilities who meet the definition of a "student" and who are determined to need PETS.

According to federal law, when a VR agency cannot serve all eligible customers with disabilities, the agency must implement an OOS which seeks to serve the customers with the most significant disabilities (MSD) first. OVR has temporarily closed the OOS until the agency is financially able to serve eligible customers who have the most significant disabilities.

OVR thanks and appreciates the efforts of everyone who took the time to attend the public meetings and make public comment.