



SOCIAL ENTERPRISES AND AGENCY-OWNED BUSINESSES: GUIDELINES FOR PROVIDERS

These guidelines have been developed for Department of Developmental Services (DDS) providers seeking to develop a social enterprise/agency-owned business that will employ individuals who receive employment supports from DDS. If DDS funding is to be used to support an individual to be employed by such a business, it is the responsibility of DDS to ensure that the employment setting is consistent with the department's focus on integrated employment settings paying at or above minimum wage and the Centers for Medicare & Medicaid Services (CMS) Final Rule on community settings.

Provider agencies seeking to develop a new social enterprise/agency-owned business that will employ individuals receiving employment supports funded by DDS are required to submit a proposal to DDS that addresses the guidelines provided below. The items addressed represent important areas of consideration, and they are intended to assist providers in development of their business models, not as rigid review criteria. However, providers should pay particular attention to issues of inclusion and fair wage payments.

Agencies currently operating an existing social enterprise/agency-owned business developed prior to July 1, 2018 are not required to submit a proposal for review. These guidelines do apply to agencies planning any major expansion of an existing business if the provider receives funding to support individuals working in the social enterprise. Even if not required to submit a proposal, all agencies will be expected to ensure their social enterprise is compliant with the CMS community settings requirements and Section 511 of the Workforce Innovation and Opportunity Act (WIOA).

These guidelines are intended for agency-owned/agency-operated businesses. They are not intended for micro-enterprises or small businesses owned and operated by individuals served by DDS.

Background

What is a social enterprise?

The term "social enterprise" has a variety of definitions. The Social Enterprise Alliance defines it as a business whose primary purpose is the common good, using the "methods and disciplines of business and the power of the marketplace to advance their social, environmental and human justice agendas."

The Social Enterprise Alliance is the national membership organization and key catalyst for the rapidly growing social enterprise movement in the United States. According to the Social Enterprise Alliance, "Three characteristics distinguish a social enterprise from other types of businesses, nonprofits and government agencies:

- It directly addresses an intractable social need and serves the common good, either through its products and services or through the number of disadvantaged people it employs.
- Its commercial activity is a strong revenue driver, whether a significant earned income stream within a nonprofit's mixed revenue portfolio, or a for profit enterprise.
- The common good is its primary purpose, literally "baked into" the organization's DNA, and trumping all others."

www.se-alliance.org/what-is-social-enterprise

The term "affirmative industry" is at times used interchangeably with "social enterprise." Unlike "social enterprise," there has been less of an attempt to define the term "affirmative industry." However, the main distinction between social enterprise and affirmative industry appears to be their primary purpose: the employment of a disadvantaged group (for an affirmative industry), and the generation of revenue through business (for a social enterprise). For the purposes of this document, the term "social enterprise" will be used as an all-encompassing term for these entities.

It is also helpful to understand the term "micro-enterprise," which has been used to describe various business ventures developed by service providers. A micro-enterprise is defined as a business of 5 or fewer employees, and frequently the only employee is the self-employed owner (www.microenterpriseworks.org/). This term is best applied to self-employment efforts, rather than businesses developed by agencies.

Role of Social Enterprises in Social Services

Social enterprises are well established in a range of social service sectors. In Boston, for example, Haley House (www.haleyhouse.org) operates a bakery/café that provides on-the-job training for individuals who face significant barriers to employment, including homelessness. In California, Homeboy Industries (www.homeboyindustries.org) operates 7 job-training sites for men and women with former gang involvement.

What most social enterprises have in common is a focus on job training and time-limited engagement to support financial independence for participants. Employment by the social enterprise is generally for a specific time span. In Massachusetts, a number of DDS providers have embraced social enterprises as an employment option for individuals they support.

Social Enterprise and Implementation of Employment First

Some service providers have operated social enterprises both to generate revenue for the organization and to provide employment opportunities. However, social enterprises more recently developed in response to the closure of sheltered workshop services are often intended to provide individuals with opportunities for paid employment. With the ongoing commitment to make integrated employment available to all working age adults, DDS and providers will need to continually assess the degree to which the development of a social enterprise should be part of an agency's plan for providing employment options for the individuals they support. Such employment may be on a permanent or temporary basis, and the social enterprise may also be viewed by the service provider as an opportunity for job training. To be successful, however, the social enterprise must also function as a financially viable commercial activity as well..

Alignment with Massachusetts DDS Employment First Policy

When examining the role of social enterprises, we must understand how such an approach is aligned with the DDS Employment First policy, excerpted below:

“This policy, known as the “Employment First” policy, for working age adults served by the Massachusetts Department of Developmental Services, integrated, individual employment is the preferred service option and optimal outcome. In the development of service plans and service

delivery, assistance and supports for individual, integrated employment will be prioritized.

“In implementing this policy, the optimal goal is ‘integrated individual employment.’

“For the purposes of this policy ‘integrated individual employment’ is defined according to the following criteria:

- ***The individual is hired and paid directly by the employer (i.e., the person is not paid via a subcontract with the service provider).***
- ***Employment takes place in a work place in the community, where the majority of individuals do not have disabilities, and which provides opportunities to interact with non-disabled individuals to the same extent that individuals employed in comparable positions would interact.***
- ***The position is an individual job (i.e., not a group or enclave setting).”***

www.mass.gov/eohhs/gov/laws-regs/dds/policies/s-employment-first-policy-2010-2.html

Alignment with Federal Policy

Consideration must be given to federal policy and recent US Department of Justice (DOJ) action in states such as Rhode Island and Oregon. Under Title II of the Americans with Disabilities Act (ADA), a public entity must “administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” The most integrated setting is defined as one that “enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible” (28 CFR 35.130(d)).

Guidance from the Centers for Medicare and Medicaid Services states that “All programs must be implemented consistent with the ADA and the Supreme Court’s *Olmstead v L.C.* decision. Under the law, Long Term Services and Supports must be delivered in the most integrated fashion, in the most integrated setting and in a way that offers the greatest opportunities for active community and workforce participation” (downloads.cms.gov/cmssgov/archived-downloads/CMCSBulletins/downloads/CIB-9-16-11.pdf).

Additionally, Final Rule CMS 2249-F and CMS 2296-F, published on January 16, 2014, has implications for day and employment services. The requirements define a home and community-based setting as one that “provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources and

receive services in the community to the same degree of access as individuals not receiving Medicaid home and community based services” (www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/exploratory-questions-non-residential.pdf). The community settings requirements from CMS apply to both residential and non-residential services.

When considering models for a social enterprise it is important to note that CMS has recently indicated that reverse integration does not comply with the home and community-based services (HCBS) settings rule. Specifically, CMS has stated that “States cannot comply with the rule simply by bringing individuals without disabilities from the community into a setting; compliance requires a plan to integrate beneficiaries into the broader community. Reverse integration, or a model of intentionally inviting individuals not receiving HCBS into a facility-based setting to participate in activities with HCBS beneficiaries is not considered by CMS in itself to be a sufficient strategy for complying with the community integration requirements outlined in the HCBS settings rule.” (CMS response to KY Transition Plan, June 2016).

Providers should also consider the Rehabilitation Services Administration (RSA) interpretation of the phrase “a setting typically found in the community” found in the Workforce Innovation and Opportunity Act. RSA has interpreted this phrase to refer to those in the competitive labor market. RSA has stated that “Settings established by community rehabilitation programs specifically for the purpose of employing individuals with disabilities do not constitute integrated settings because these settings are not typically found in the competitive labor market.” (Rehabilitation Services Administration, RSA: Integrated Location Criteria of the Definition of “Competitive Integrated Employment” FAQs, January 18, 2017).

While RSA does not have any statutory authority as it relates to DDS, this confirms the policy trends at the federal level. Reinforcing this, in an October 2016 guidance document, the US Department of Justice stated that the definition of competitive integrated employment, applies across all state and local publicly funded employment systems in terms of determining what is the “most integrated setting” under the integration mandate of the Americans with Disabilities Act (Statement of the Department of Justice on Application of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v.

L.C. to State and Local Governments’ Employment Service Systems for Individuals with Disabilities).

Related Considerations

A. Integration and social inclusion

A primary challenge of social enterprises is ensuring integration with individuals without disabilities. If these enterprises are to be considered a viable employment option, it will be necessary to define integration and to consider the need, as stated by CMS, to offer the greatest opportunities for community and workforce participation. Additionally, the practice of reverse integration is not considered in itself to be a strategy for complying with the community integration requirement outlined in the HCBS rule. A review of the communication from the US DOJ to the state of RI also suggests that this requirement is not only about the number of employees with and without disabilities, but also about how the work environment is structured and the degree to which full inclusion and meaningful social integration occurs.

B. Individualized person-centered employment

While the creation of a social enterprise may be based on the needs of the individuals with disabilities who will be employed there, there are limits to how well a social enterprise can reflect the person-centered, individualized approach to employment that is a hallmark of best practice. In selecting candidates for employment by the social enterprise, providers will need to ensure the individual employment plans are guided first and foremost by the goals and aspirations of the job seekers. When these goals do not align with the opportunities available within the business, it will be incumbent on the provider to support individuals to obtain jobs consistent with their specific employment preferences.

C. Individual jobs

Current policy has a bias towards individual jobs, not groups or enclave settings. The size and structure of the social enterprise will determine whether the job is an individual job, or more likely a group or enclave. While some social enterprises might be small, with just 1 or 2 individuals with disabilities working there, most are likely to operate as a group employment or enclave setting, or have significant characteristics similar to these settings.

D. Participation in businesses typically found in the labor market

While not specifically delineated within the DDS Employment First policy, a key best practice indicator is participation in labor markets that are generally available to the entire workforce, rather than those specifically for individuals with disabilities. This is also addressed in the RI DOJ letter as it references the opportunities for individuals with intellectual and developmental disabilities (ID/DD) to make meaningful contributions in the labor market. and by the interpretation of the term “setting typically found in the community” by the Rehabilitation Services Administration.

While a social enterprise may be developed to provide opportunities for individuals with disabilities, it must be a viable business that is integrated into the general labor market. It must look and feel like any comparable business. How a social enterprise is branded, how it is represented to the community, the composition of its workforce and the economic value it brings to the community will all impact how the business is viewed and the extent to which it becomes part of the general labor market.

E. Employment relationship

Best practices in employment today assume that each individual works directly for a business. In social enterprises, the employer is the service provider, either directly or via a separate corporation the provider owns. One could argue that because individuals are working for a service provider-owned business, this requirement is met. However, that is not the spirit of this requirement, which is intended to ensure that people are employed in typical work settings in the community. An additional consideration is the wage and benefit structure and the role US Department of Labor 14C certificates allowing subminimum wage may play in these settings and compliance with Section 511 of WIOA.

F. Conflict of interest

In a social enterprise the employer is also the service provider. This has the potential to pose a conflict of interest for providers who have a responsibility to act in the best interest of the individual. Situations may arise where the best interests of the individual and the business conflict. For example, will the provider aggressively pursue opportunities for job placement outside of the social enterprise for an individual who is a strong contributor to the business? Additionally, the provider must consider whether the individual's

employment is contingent on being a recipient of services. If an individual seeks a new employment support provider, for example, would they be able to continue as an employee of the social enterprise?

Social Enterprise and DDS Employment Efforts

While social enterprises pose potentially significant challenges when lined up with state and federal policy, as well as employment best practices for individuals with ID/DD, social enterprise options may play a role in expanding employment opportunities for individuals served by DDS.

Social enterprises may serve as time-limited opportunities for job exploration, situational assessment, and/or skill development. Here are some examples of how this can work:

- **Use as a situational assessment site:** A social enterprise could be used to assess an individual's interests and skills, particularly for people with limited work experience, and/or those who have expressed interest in the type of business the social enterprise engages in. However, this must be done with clear limits and parameters that may include using the social enterprise only as one of several sites where such assessments take place. Ideally, such assessments would be done at typical workplaces in the community, and not in a social enterprise designed for individuals with disabilities. And a social enterprise should not be viewed as part of a continuum, preparing individuals for individual employment. That type of readiness model has been demonstrated to be ineffective.
- **Use for training:** In a survey of state ID/DD agencies conducted by the State Employment Leadership Network, a number of agencies indicated that social enterprises are used in part for training purposes. There may be a limited role for using a social enterprise as a training site, if the nature of the business is aligned with an individual's interests (i.e., a social enterprise that is a restaurant serving as a training site for an individual interested in food preparation). Caution is needed to ensure that such training does not become a prerequisite for individual job placement. Best practice in supported employment emphasizes training on the job in order to promote optimal learning. This approach considers not just specific job tasks, but also the unique manner in which they are performed in a particular business, and the impact that the environment has on learning and retention.

- **Options when individuals are unemployed/underemployed:** Social enterprises could provide opportunities for individuals while they are searching for a job, when they become unemployed, and/or when they are only working a limited number of hours. Use of social enterprises in such a way must be done with caution, as they could potentially become the “easy answer” in such situations, and in addition, individuals (and family members) could get comfortable with the individual working in the social enterprise, resulting in challenges in helping them move to an individual job in the general workforce.
- **Meeting the needs of individuals with unique support needs:** Social enterprises may fill a gap for individuals with unique support needs, for whom other employment options cannot currently be identified. These support needs may come from the nature of their disability, supervision/line of sight requirements, forensic issues, etc. These businesses might be considered for older individuals who have been in a sheltered workshop setting for many years, and for whom, because of individual or family concerns, individual integrated employment in the general workforce is not an option at the time.
- **Distraction from mission:** Starting a social enterprise takes significant time, commitment and energy, often much more than an organization realizes. Thus, a social enterprise—even an effective one—may become a distraction from the organization’s primary mission and goals.
- **Distraction from core goal of individual employment:** One of the major risks for DDS providers is that a social enterprise can end up usurping individual, integrated employment as the primary goal. This is because of the factors cited above, but also because the social enterprise can come to be viewed as the primary means for providing employment, rather than as a supplement to efforts focused on employer-paid, individual jobs integrated within the general workforce.

Review Process for Development of New and Expanding Social Enterprises

Providers seeking to develop a social enterprise that will employ individuals funded by DDS must submit a proposal to the DDS central office for review. DDS will convene a review team that may include central office, area and/or regional staff; a provider (non-competitor) with experience in the targeted business area, and additional consultants as needed. Providers are strongly encouraged to work collaboratively with their DDS area office and to consider having the area office review the proposal prior to formal submission.

The proposal should address the guidelines provided on the next page. These guidelines represent important features and requirements of a social enterprise for consideration and are intended to assist providers in development of their business and service model. Providers must ensure that their business will be aligned with DDS and federal policies and regulations. Recognizing the variability in business models and the uniqueness of different industries these guidelines have not been developed as rigid review criteria. It should be noted however that the six sections marked with an asterisk require special attention and are of critical importance to the development of an integrated business model employing individuals served by DDS.

Additional Issues

In addition to issues specific to disability, there are a number of general factors that general literature on social enterprises has noted:

- **Fiscal challenges:** While a social enterprise must fulfill a social mission, it must also be a successful business from a fiscal standpoint. While starting a social enterprise may seem relatively straightforward, the track record of small business start-ups in general, and the lack of for-profit business experience of typical human service agencies, provide significant cautionary notes. Numerous entities have become a financial drain on the non-profit organization that runs them, and this must be avoided.
- **Proper use of DDS funds:** A key issue for DDS is proper allocation of costs related to operation of the business, including typical training and supervision costs. It is important to separate these from service costs specifically related to supplemental support, such as job coaching, needed by the individual with ID/DD.

Guidelines for DDS Providers

1. Business Plan/Proof of Concept*

- 1.1. A business plan or proof of concept must be submitted that provides an overview of the business and addresses its potential sustainability.
- 1.2. Outline the agency's plan to develop a viable business, documenting how the business will develop and grow over a 3- to 5-year period. Resources to help with this include the U.S. Small Business Association and the Social Enterprise Alliance Knowledge Center. Alternatively, a provider may provide a proof of concept, including documentation that the organization's plan has been reviewed and approved by the agency's board of directors and that the agency has conducted the necessary due diligence.
- 1.3. It is expected that the decision to open and operate the business will be based on market research and demand, and that professionals who have sufficient expertise in the type of business the agency plans to own and operate will support the social enterprise.

2. Integration*

- 2.1. What is the planned ratio of employees receiving DDS-funded employment support (and those receiving support from other disability agencies such as the Massachusetts Rehabilitation Commission) to employees who are not receiving paid supports?
- 2.2. Does the business setting ensure that individuals have the opportunity to interact with the community, and provide opportunities to participate in employment opportunities that are not solely designed for people with disabilities but rather for the broader community? The business cannot comply with the community integration requirements of the rule simply by hiring, recruiting, or inviting individuals who are not receiving services into the business.
- 2.3. Will employees receiving DDS-funded supports be fully integrated, working side by side with individuals without disabilities, and not as a separate group?
- 2.4. Is the level of engagement with other employees and/or the public is typical for the type of job?
- 2.5. Is the level of integration and engagement the same for all employees in similar job categories?
- 2.6. What contact will employees typically have with the public or customers of the business?
- 2.7. Will employees receiving DDS-funded supports take breaks, etc. with co-workers without disabilities?
- 2.8. Will employees receiving DDS-funded supports follow the same work routines and have the same opportunities as those without disabilities, such as work schedules, opportunities for advancement, dress/uniform, initiation into the workplace, participation in social events, etc.?

3. Business Location and Environment*

- 3.1. Will the business be located in an environment that is typical for the type of business? For example, is a warehouse located in industrial park or similar setting? Is a restaurant located in a commercial area?
- 3.2. Will the business be in the same location or adjacent to facilities and/or offices of the human service agency?
- 3.3. How will the business be represented in the community (name, signage, marketing plan)?
- 3.4. Will the business look and feel like other similar types of businesses? For example, is commercial-grade equipment used in a bakeshop? Is the work process, with considerations made for universal design and accommodations, consistent with industry standards?

4. Personnel Policies and Compensation Structures*

- 4.1. Are all jobs open to any applicant, or are some set aside for particular categories of candidates?
- 4.2. Will all potential employees, including those receiving support from DDS, go through a typical hiring process: application, interview, etc.?
- 4.3. Will personnel policies be the same for all employees?

- 4.4. Will there be performance standards and evaluations for all employees?
- 4.5. Will performance improvement strategies/progressive discipline approaches apply to all employees?
- 4.6. Will compensation policies, including both wages and benefits, be consistent for all employees?
- 4.7. Will the business use a 14(c) DOL certificate?

5. Business Operations*

- 5.1. What will the intersection be between business operations and support services?
- 5.2. How will the agency ensure that DDS funds are not used to subsidize or support business operations?
- 5.3. Will natural supports be used as much as possible, with professional intervention only as necessary?
- 5.4. How will this business integrate employment support services into its operations? Will professionals in support roles be clearly distinguished from supervisors, managers, and co-workers? Or will the business use a different approach?
- 5.5. If there is not sufficient work, will decisions regarding hour cutbacks and layoffs be done in a way that is typical of businesses and that is equitable?
- 5.6. If there is not enough work for all employees through the day, will it be expected that individuals leave the worksite, rather than participating in other activities there?

6. Ownership, Equity, Profits

- 6.1. Will the business be a separate incorporated entity? If so, what is the planned ownership structure, and will the business be wholly owned by the agency?
- 6.2. How will business profits be used? Will they be invested in the business, used to support agency operations, or placed into agency savings, reflected on the agency balance sheet?
- 6.3. Will there be profit-sharing? If so, who is eligible? [OPTIONAL]

7. Recruitment of Employees Served By DDS*

- 7.1. How will individuals served by DDS be identified to work at the business?
- 7.2. Will employment opportunities be based on the individual's person-centered plan?
- 7.3. Will there be procedures in place for ensuring that the job seeker has complete choice about working at this business and is fully aware of other employment options?

8. Use of Business for Training and Assessment

- 8.1. Will the business be used as a site for training and assessment?
- 8.2. Is there a clear decision-making process in place for determining whether individuals will spend time at the business site for training and assessment based on individuals' specific needs, interests, and preferences?
- 8.3. Is there a clear structure in place that differentiates between training and assessment vs. employment?
- 8.4. Will there be time limits on how long individuals can be in training and assessment?
- 8.5. Will there be a mechanism in place for documentation of progress on training and assessment?
- 8.6. Will individuals be paid for training and assessment? If not, how will DOL regulations on unpaid training and assessment be adhered to?

9. Transition of Individuals Out of Business

- 9.1. Are individuals served by DDS considered to be permanent employees?
- 9.2. Will efforts be made to transition individuals out of the social enterprise into the general workforce?
- 9.3. How will a determination be made whether employment in a social enterprise is permanent or transitional?

10. Role of Social Enterprise in Overall Employment Program

- 10.1. Is the social enterprise considered an alternative to individual employment only as necessary rather than a preferred option?
- 10.2. What is the expected percentage of individuals employed in the social enterprise vs. non-agency-owned businesses?
- 10.3. What is the expected percentage of agency employment support staff time dedicated to the social enterprise vs. other employment options?
- 10.4. Will the social enterprise be viewed as an option for individuals for whom individual employment options may not be available (i.e., because of individual reluctance, family concerns, forensic/risk management issues)?
- 10.5. What is the service model for employment supports (individual or group employment)? What is the justification for selecting this approach?

11. Options for Innovation

- 11.1. Might there be opportunities for individuals served by DDS to have an ownership stake/equity in the business? [OPTIONAL]
- 11.2. Could there be opportunities for individuals to spin off their own businesses? [OPTIONAL]

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Social Enterprises and Agency Owned Businesses: Guidelines for Providers has been developed by David Hoff and Cindy Thomas of the Institute for Community Inclusion at the University of Massachusetts Boston and Margaret Van Gelder of the Massachusetts Department of Development Services to support the implementation of the Blueprint for Success: Employing Individuals with Intellectual Disabilities in Massachusetts.