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Practice Report

The Need for Reciprocity between States in Creating Employment Opportunities in the Randolph-Sheppard Program

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This report is based on a paper that was presented at the 2004 Biregional Randolph-Sheppard Training Conference in Philadelphia.

The Randolph-Sheppard Act of 1936 (20 U.S.C. Section 107 et seq.) established the Randolph-Sheppard Vending Facility Program, more commonly known in most states as the Business Enterprise Program (BEP). The BEP provides persons who are legally blind with remunerative employment and self-support through the operation of vending facilities on federal and other properties. Subsequent amendments to the act in 1954 and 1974 strengthened the program, widened the scope of the types of facilities that are included in the program (vending machines, cafeterias,

snack bars, "fast-food" facilities, and gift or card shops), and extended economic opportunities to facility managers who are blind (also referred to as operators or vendors) (Moore & Tucker, 1994). Most BEP facilities operate on the premises of a host facility, such as federal, state, or municipal property or on private property that houses industrial or manufacturing entities.

The BEP is unusual in that it is a combination of a business enterprise, usually food service oriented, and a vocational rehabilitation (VR) program. BEP facilities operate in a partly competitive, partly subsidized, market environment (Partos & Kirchner, 1986). A facility manager is not an owner, but is licensed by a state licensing agency (SLA), as mandated by federal regulations through the Rehabilitation Services Administration (RSA).

Each SLA must supervise and manage each facility according to its own rules and regulations, federal regulations (34 CFR Part 395), and the terms and conditions of the permit or contract with the host facility.

The field of disability research has made little effort to investigate the Randolph-Sheppard Program, particularly the turnover of facility managers and the potential link of that situation to the decline in BEP facilities (Schaefer, 2002). The decline in both the number of legally blind facility managers and the

overall number of vending facilities has been well documented (Moore & Cavanaugh, 2003; Schaefer, 2003; Schaefer & Moore 2002). In a national survey of BEP directors (Tucker & Moore, 1997), the 39 states that responded reported that almost half (44%) have more facilities available than licensed managers to fill them. In that survey, almost 25% of the BEP directors reported that they had a backlog of qualified referrals to the BEP. In the states that had more facilities than licensed facility managers who were blind to assign to them, the directors noted the lack of qualified referrals; the loss of managers through death, retirement, or resignation; geographic locations that were not suitable to some managers; and the lack of licensed managers to manage new or existing full-range food service operations or cafeterias.

Recognition of licensure and training

Given the inequity that seems to exist between those states with more licensed managers than they can employ and those SLAs that have more facilities than licensed managers to fill them, there is a significant need to develop strategies for filling vacancies in a more timely manner. Legislative attempts to alter the Randolph-Sheppard Act have galvanized the blindness community and created a new level of cooperation and communication among the various constituencies that are interested in the Randolph-Sheppard Vending Facility Program (P.L. 74-732), as amended, and the

Javits Wagner O 'Day Program (P.L. 92-28). Recent legislation—both the National Defense Authorization Act for fiscal year (FY) 2004 (P.L. 108-136) and the Ronald W. Reagan National Defense Authorization Act for FY 2005 (PL 108-375)—has allowed licensed facility managers to continue existing food service contracts for the operation of a military mess hall or a military troop dining facility that were entered into prior to the date of enactment of each respective act. It is estimated that approximately 38 military dining facilities are operated by facility managers who are blind (personal communication from Kevan Worley, president, National Association of Blind Merchants, January 28, 2005). Although these facilities tend to be lucrative, the overall number of facilities nationwide is steadily declining (see [Table 1](#)), and the annual number of successful BEP case closures of consumers who are legally blind is likewise gradually declining (see [Table 2](#)). Given the need for more self-employment opportunities for people who are blind (Moore, 1999; Moore & Cavanaugh, 2003; Schaefer, 2003) and the unevenness in these opportunities among states, the issue of reciprocity among SLAs needs to be addressed. Since the Department of Defense (DOD), especially the Navy Exchange, promotes military bundling (a solicitation process that promotes regional food service contracts), there will be an ever-increasing need for reciprocity agreements among the SLAs that operate dining facilities for military troops.

Webster's Third New International Dictionary (Gove, 1993) defines *reciprocity* as "a mutual exchange of courtesies between two states or institutions (i.e., a recognition by each state or institution of the validity of licenses or privileges granted by the other to its citizens or members)." The Randolph-Sheppard Act itself does not specifically address the issue of reciprocity or prohibit two states from entering into a reciprocal agreement that relates to an SLA recognizing the licensure and training of facility managers who are trained and licensed in other states. Furthermore, it does not specifically address one state operating a BEP facility in an adjoining state. The Randolph-Sheppard regulations (34 CFR 395.7), however, contain some language that suggests that only SLAs can license persons who are blind and that the state VR agency has to certify the individual as being qualified to operate a facility in that state. This language may be interpreted by some to indicate that the individual must be a VR client in that state, so he or she can be certified as being sufficiently qualified to operate a vending facility. The SLA and the VR agency are generally considered synonymous, and hence this particular regulation should not deter states from entering into reciprocal agreements that create job opportunities for adults who are legally blind.

The basic challenges that must be addressed include procurement or purchasing statutes or laws; getting permission for BEP staff to travel routinely out of state to provide managerial services or to repair machines;

conducting a property inventory audit in another state; and having state property physically located outside the state's boundaries. An example of the need for reciprocal agreements is illustrated by a recent situation in which a vendor in northern Mississippi was interested in setting up a vending route in south-central Tennessee, which is relatively rural in nature. The SLA in Tennessee did not have a licensed facility manager in close proximity to the vending route, and the Mississippi SLA was unable to provide managerial services, repair services, and the like for a facility that is located outside the state's boundaries. Most rehabilitation professionals would agree that employment opportunities should not be lost, particularly in situations in which a vendor who is blind is not readily available in a rural area in one state but the area is in close proximity to a state that has licensed vendors readily available and where relocation is not required. This scenario may occur more frequently in rural areas that could support vending routes (multiple locations managed by one blind vendor).

Some states allow a vendor who is blind to operate a facility without an actual license, whereas other states require that the individual be licensed for the particular facility. This policy does not address the issue of "license portability" (the recognition of training and licensure from another state). Most SLA state policies allow in-state vendors to apply for or bid on a particular location before a vendor from out of state

can come into the state and operate a facility. Many SLAs emphasize the vendor's length of service in the program, while other states emphasize the vendor's "relevant experience," rather than seniority or number of years in the program.

Potential barriers and opportunities

Only a limited number of models involving reciprocal agreements currently exist. Nevada operates a facility (Hoover Dam) in Arizona, but it should be noted that Nevada does not report state or federal expenditures in the operation of its entire Randolph-Sheppard program. The District of Columbia and Maryland also share contracts in some instances, so there are agreements in place that can serve as models. Given the parameters that are imposed by procurement laws, the maintenance of state-imposed property inventory systems, and getting permission for out-of-state travel to provide managerial services, it may well be easier for SLAs to enter into an out-of-state venture in a private setting as opposed to a public location. It would also seem to be easier for SLAs that use nominee agreements to enter into reciprocal agreements with other states (a nominee is a nonprofit agency or organization designated by the SLA through a written agreement to act as its agent in the provision of services to blind licensees under the state's vending facility program).

A review of various SLA policy manuals by the author revealed no specific SLA policies on reciprocity or guidelines on setting up and managing facilities out of state or on the recognition of other states' licensure of blind facility managers or training programs. Although all SLAs operate under the same federal statute and the same federal regulatory guidelines, each has its own unique procurement laws and property-control inventory systems, and some operate under a nominee agreement by which they may have more flexibility or freedom to operate a facility outside the boundaries of their own states. Each SLA is also governed by its own "little" Randolph-Sheppard Act, or state enabling legislation, that may limit what it can or cannot do in relation to the issue of reciprocity.

SLAs need to be proactive in their efforts to expand and improve the program. Potential strategies include the following:

- Strengthen state BEP statutes (so-called little Randolph-Sheppard Acts) in relation to the priority of the law at the state level (that is, to ensure that the state statute or enabling legislation gives both a priority and a preference to the SLA in state and municipal buildings)
- Identify and cultivate relationships with potential partners to develop multistate proposals for large facilities (such as military dining facilities)
- If not already in place, obtain the services of an

agency attorney, rather than the Attorney General's Office, for issues related to the Randolph-Sheppard Act

- Consider strategies for developing reciprocity agreements with surrounding states and review upward mobility policies in relation to recognizing licenses that are awarded by other SLAs
- Consider strategies for developing a national oral or written examination that is related to the operation of specific types of vending facilities in an effort to speed up the licensure process
- Develop strategies to support the relocation of licensed facility managers, so they can bid on facilities in other locations, as well as in other states
- Encourage all licensed facility managers to become actively involved in a consumer organization (such as the National Association of Blind Merchants or Randolph-Sheppard Vendors of America).

SLAs are becoming far more proactive in addressing the plethora of issues that are facing the Randolph-Sheppard program. BEP directors must look at these barriers as either stepping stones or stumbling blocks in their efforts to strengthen the program in their respective states.

The bottom line and the most pressing challenge for SLAs is to be creative in developing strategies that allow them to take advantage of business opportunities in surrounding states or that present an opportunity to collaborate with another SLA in creating a job opportunity for a licensed facility manager. The DOD has recommended the closing of 33 bases and realigning more than 800 other military facilities, many of which serve as home for Randolph-Sheppard facilities. Recommendations made by the Defense Base Closure and Realignment Commission (web site <www.brac.gov>) will have a significant impact on the program if they are adopted by Congress. Given the current efforts by the DOD and the Navy Exchange to promote regional or multistate food service contracts, especially what the Marine Corps has already implemented in relation to multistate contracts, SLAs need to be prepared to join together in collaborative efforts to create new and better self-employment opportunities for licensed facility managers through the use of reciprocal agreements. Such agreements could help facilitate the combining of fiscal and human resources to create more and higher-quality jobs for facility managers who are blind than would be possible by a single SLA bidding in isolation for DOD food service contracts.

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