



Virginia
Regulatory
Town Hall

Exempt Action Final Regulation Agency Background Document

Agency Name:	Department of Rehabilitative Services
VAC Chapter Number:	22VAC30-20
Regulation Title:	Provision of Vocational Rehabilitation Services
Action Title:	Amend existing VR regulations to comply with 2001 CFR
Date:	February 19, 2003

Where a regulation is exempt in part or in whole from the requirements of the Administrative Process Act (§ 2.2-4000 *et seq.* of the *Code of Virginia*) (APA), the agency may provide information pertaining to the action to be included on the Regulatory Town Hall. The agency must still comply the requirements of the Virginia Register Act (§ 2.2-4100 *et seq.* of the *Code of Virginia*) and file the final regulation with the Registrar in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

Note agency actions exempt pursuant to § 2.2-4006(4) (c) do not require filing with the Registrar a Notice of Intended Regulatory Action, or at the proposed stage. When the regulation is promulgated and submitted to the Registrar, the agency need only provide a statement citing the specific Virginia Code section referencing the exemption and an authority certification letter from the Attorney General's Office. No specific format is required.

This form should be used for actions **exempt from the Administrative Process Act pursuant to § 9-6.14:4.1(C)** at the final stage. Note that agency actions exempt pursuant to § 9-6.14:4.1(C) of the APA do not require filing with the Registrar a Notice of Intended Regulatory Action, and at the proposed stage.

Summary

Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation, instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Amending 22VAC30-20-10 through 22VAC30-20-200 to make existing state regulation on the provision of vocational rehabilitation services conform to federal vocational rehabilitation regulations.

22VAC30-20-10. Definitions. Revisions to definitions of assistive technology service, comparable services and benefits, designated state unit, employment outcome, extended employment, extended services, impartial hearing officer, individual with a disability, individual

with a most severe disability, individual with a severe disability, individual's representative, maintenance, non-profit community rehabilitation program, on-going support services, physical or mental impairment, post-employment services, supported employment, supported employment services, transition services, and transportation. New definitions added: clear and convincing evidence, local workforce investment board, mediation, qualified and impartial mediator, and state workforce investment board. Definition deleted: IWRP.

22VAC30-20-20 Processing referrals and applications. Adds statement that the state plan must assure standards for the prompt and equitable handling of referrals to include referrals of individuals from One-Stop service delivery centers. Adds that an individual shall receive an exploration of abilities, capabilities, and capacity to perform in work or an extended evaluation if eligibility cannot be determined within 60 days. Adds the requirement that applications for vocational rehabilitation services be available in the One-Stop centers established under section 121 of the Workforce Investment Act of 1998. Removes the requirement that a face to face interview is required in order to apply for vocational rehabilitation services.

22VAC30-20-30. Assessment for determining eligibility and priority for services. Deletes requirement that this be a state plan assurance. Adds type of expected outcome and source of referral for vocational rehabilitation services as factors that cannot be considered in an eligibility assessment.

22VAC30-20-40. Eligibility requirements. Adds the requirement that a qualified vocational rehabilitation counselor employed by the designated state unit must determine if an applicant requires vocational rehabilitation services to secure or regain employment. Removes the adjective of gainful from employment. Adds that eligible individuals must intend to achieve an employment outcome that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice and adds that nothing in this section is to be construed to create an entitlement to any vocational rehabilitation service. Adds that a trial work experience or an exploration of the individual's abilities, capabilities, and capacity to perform in a realistic work situation is required to determine whether or not there is clear and convincing evidence to support a determination that an individual cannot benefit in terms of an employment outcome.

22VAC30-20-50 Evaluation of vocational rehabilitation potential. No change.

22VAC30-20-60. Extended evaluation for individuals with significant disabilities. Changes title from individuals with severe disabilities to individuals with significant disabilities

Add statement that if an individual cannot take advantage of a trial work experience or if options for a trial work experience have been exhausted before the state unit can make an eligibility determination, the state unit must conduct an extended evaluation to make this determination.

Removes definition and discussion of clear and convincing evidence because this has been placed in the definition section 22VAC30-20-10.

22VAC30-20-70. Certification of eligibility. No change.

22VAC30-20-80. Procedures for ineligibility determination. Changes the name of individualized written rehabilitation program to individualized plan for employment. Adds statement that if an individual is unable to benefit from vocational rehabilitation services or becomes unable to benefit from services, he shall be referred to other training and employment programs that are part of the One-Stop Service Delivery System under the Workforce Investment Act. Changes the name Department for the Rights of Virginians with Disabilities to Virginia Office of Protection and Advocacy.

22VAC30-20-90. Order of selection for services. Adds new paragraph stating that an order of selection system may not be based on factors such as duration of residency requirement, provided the individual is present in the state; (ii) type of disability; (iii) age, gender, race, color, or national origin; (iv) source of referral; (v) type of expected employment outcome; (vi) the need for specific services or anticipated cost of services required by the individual; or (vii) the income level of an individual or an individual's family. Adds new paragraph stating the designated state unit must (i) implement the order of selection on a statewide basis; (ii) notify all eligible individuals of the priority categories in a state's order of selection, their assignment to a particular category, and their right to appeal their category assignment; (iii) continue to provide all needed services to any eligible individual who has begun to receive services under an individualized plan for employment prior to the effective date of the order of selection, irrespective of the severity of the individual's disability; and (iv) ensure that its funding arrangements for providing services under the State Plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. Adds new paragraph that the State Rehabilitation Council must be consulted regarding the need to establish an order of selection, the priority categories for the order of selection, the criteria for determining individuals with the most significant disabilities, and administration of the order of selection.

22VAC30-20-95 Information and Referral Services. New section that provides for the implementation of a system that will ensure that persons with disabilities receive information and referral to appropriate federal and state programs that are best suited to address their specific employment needs.

22VAC30-20-100 The individualized plan for employment procedures. Changes name from individualized written rehabilitation program to individualized plan for employment and contains order of selection requirement. Adds that the state unit must conduct an assessment for determining vocational needs and, if necessary, conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment services, of the eligible individual, in the most integrated setting possible. Adds that the individualized plan for employment shall be a written document prepared on forms provided by the state unit. The plan may be developed with or without the assistance of the state unit but must be signed and approved by a qualified vocational rehabilitation professional hired by the state unit. Deletes requirement that individual's progress be assessed at least once every 90 days during extended evaluation. Adds requirement for plan amendment. For review of ineligibility determination, adds requirement for referring individual to other One-Stop system.

22VAC30-20-110 Individualized plan for employment content. Changes the term vocational goal to employment outcome and adds that the employment outcome must be consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice of the individual, and results in employment in an integrated setting. Changes the name of Department of Rights of Virginians with Disabilities to Office of Protection and Advocacy. Requires that a statement on the need for post-employment services along with a description of how these services be provided be added to the employment plan. Adds specific requirements for any employment plan that included supported employment.

22VAC30-20-120 Scope of vocational rehabilitation services for individuals. Adds statement that the designated state unit must ensure that vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, or regaining an

employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, informed choice.

Adds statement that assessment for eligibility and vocational rehabilitation needs to be by qualified personnel. Includes a statement regarding referral and other services be available to assist applicants and eligible individuals in securing needed services from other agencies, including components of the workforce investment system, and to advise individuals about the Client Assistance Program. Deletes requirement for individuals to have to meet department's financial need criteria for interpreting services. Deletes recruitment and training services for employment opportunities in fields of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public service employment as a specific vocational rehabilitation service. Add technical assistance and consultation services as a vocational rehabilitation services for an employment outcome of self-employment, telecommuting or establishing a small business operation. Adds personal assistance services as a vocational rehabilitation service.

22VAC30-20-130. Individuals determined to have achieved an employment outcome. Changes IWRP to individualized plan for employment and changes requirement for employment outcome to occur in most integrated setting to an integrated setting.

22 VAC 30-20-140. Authorization of services. No change

22VAC30-20-150. Written standards for facilities and providers of services. Replaces statement that facilities comply with Uniform Accessibility Standards with statement that facilities must comply with the Americans with Disabilities Act of 1990, and §504 of the Rehabilitation Act of 1973, as amended and regulations implementing these laws.

22VAC30-20-160. Participation of individuals in the cost of services based on financial need. Adds statement that the provision of interpreter and reader services and personal assistance services are not subject to financial need. Adds that individuals determined eligible for Social Security benefits under Titles II or XVI of the Social Security Act are exempt from the financial needs test.

22VAC30-20-170. Availability of comparable services and benefits. Changes IWRP to individualized plan for employment. Deletes statement that vocational and other training services are exempt from the determination of comparable benefits. Adds that job-related services including job search and job placement, job retention and follow-up are exempt from a determination of comparable benefits.

22VAC30-20-181. Review of rehabilitation counselor or coordinator determinations.

Adds a new paragraph that allows the state unit and applicant or eligible individual to choose mediation to resolve disputes. Removes definitions from this section because they are covered in 22VAC30-20-10 . Time a hearing officer has to conduct a hearing from after the individual has filed the request has increased from 45 days to 60 days.

Deletes statement that the commissioner may review the fair hearing officer's decision.

Adds a paragraph on the implementation of the fair hearing officer's decision. Adds a paragraph explaining how a party that disagrees with the decision of the fair hearing officer may bring a civil action with respect to the matter in dispute.

22VAC30-20-190. Protection, use, and release of personal information. No change

22VAC30-20-200. Review of extended employment and other employment under special certificate provisions of the Fair Labor Standards Act.

Provides that the status of any individual whose record of service is closed while engaging in employment compensated under special certificate procedures of the Fair Labor Standards Act shall be reviewed annually for 2 years, and thereafter if requested, to determine if the individual has the interests, priorities, or needs to enter competitive employment.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On _____ the Commissioner of the Department of Rehabilitative Services adopted amendments to existing regulations entitled “Provision of Vocational Rehabilitation Services” (22 VAC 30-20-10 through 22 VAC 30-20-200). These amendments do not differ materially from the related federal regulations 34 CFR Part 361 State Vocational Rehabilitation Services Program

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

In offering guidance and support to parents of individuals with disabilities, these regulations will strengthen parents’ ability to assist children who are disabled in obtaining vocational training or other services to assist that individual in becoming independent and self-supporting. These regulations will encourage the economic self-sufficiency of persons with disabilities by assisting them to become employed and enabling them to contribute to the financial support of their families. Regulations provide for counseling and guidance and job placement for all eligible persons with disabilities. Other services such as training, maintenance, physical and mental restoration are provide according to an economic need assessment. The end result of these services is an employment outcome for eligible individuals. If individuals with disabilities become employed, they will earn wages that will increase the disposable family income.