



Virginia
Regulatory
Town Hall

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Proposed Regulation Agency Background Document

Agency name	Department for the Blind and Vision Impaired
Virginia Administrative Code (VAC) citation	<u>22 VAC 45-50</u>
Regulation title	Regulation Governing Provision of Services in Vocational Rehabilitation
Action title	Repeal existing regulations and promulgate new regulations
Date this document prepared	11-29-2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The proposed regulations incorporate updated federal language, remove agency policy language, eliminate one section that is not necessary to ensure compliance with federal regulations, separates one section into two separate sections to provide greater clarification, and combines two sections that were duplicative. Due to the extensive changes, the Department proposes to repeal (22 VAC 45-50) and promulgate new regulations (22 VAC 45-51.)

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

Department for the Blind and Vision Impaired (DBVI)
Individualized Plan for Employment (IPE)

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Code of Virginia § 51.5-65 authorizes the Commissioner to promulgate regulations to carry out the provisions of this title.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

This proposed action repeals existing regulations (22 VAC 45-50) concurrently with the promulgation of new regulations (22 VAC 45-51) in order to update Virginia's Regulations Governing Provision of Services in Vocational Rehabilitation. The action ensures that blind, visually impaired, and deafblind citizens receiving vocational rehabilitation services from the DBVI have accurate and clearly articulated regulations regarding vocational rehabilitation services that are consistent with federal regulations.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

22 VAC 45-50 is outdated and subsequently inconsistent with federal regulations. 22 VAC 45-51 updates existing regulations from the Federal Regulations (34 CFR Part 361), incorporates the name changes for two agencies, removes Department for the Blind and Vision Impaired policy language, removes one section that is not necessary to ensure compliance with federal regulations, separates one section into two separate sections to provide greater clarification and combines two other sections that were duplicative. Additionally, the new regulations are easier to read and understand.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

The proposed regulatory action poses no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The proposed regulations are not more restrictive than federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected by the proposed regulations.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, DBVI is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the DBVI is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to **Susan Davis Payne, Vocational Rehabilitation Director, Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, Virginia 23227, (804)371-3185, FAX (804) 371-3351, susan.payne@dbvi.virginia.gov].** Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>The DBVI incurs no additional cost to implement and enforce the proposed regulation since the existing regulation (22 VAC 45-50 Regulation Governing Provision of Services in Vocational Rehabilitation) is already in effect and enforced.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Entities affected by the proposed regulation are individuals who are blind and visually impaired receiving vocational rehabilitation services.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Approximately 1400 citizens of the Commonwealth who are blind and visually impaired will be affected</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There will be no additional costs incurred by individuals, businesses, or other entities.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Increased numbers of blind, visually impaired, and deafblind citizens of the Commonwealth who enter into competitive, integrated employment and become taxpayers.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The DBVI considered revising existing regulations to include updated federal language and removal of agency policy language, elimination of an unnecessary requirement, and combining two sections; in fact, the DBVI began the revision process and determined that repealing existing regulations and promulgating new regulations to be the least burdensome alternative.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while

minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The DBVI’s compliance and reporting requirements for the provision of vocational rehabilitation to customers who are blind and visually impaired are mandates by federal regulation and do not directly impact small business.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

Blind, visually impaired, and deafblind citizens, their family members, consumer groups, state and local government entities, and others in the Commonwealth will benefit from the promulgation of these new regulations which are easier to understand than the existing regulations. The proposed regulations accurately explain the vocational rehabilitation services available to eligible Virginian’s.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
None	22VAC45-51-10	No other state regulations or law	(Definitions) Definitions are updated and expanded to provide greater clarification and understanding of terms referenced in the regulations.
None	22VAC45-51-20	No other state regulations or law	[Protection, use, and release of personal information.] Section renamed. Requires DBVI to safeguard the confidentiality of all personal client information, including photographs; ensures that information be used only for the purpose directly connected with the administration of the DBVI vocational rehabilitation program. DBVI may release information upon written request; release personal information to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program; upon written consent of the individual or, if appropriate, the individual’s representative. DBVI may release personal information to another agency or organization for its program purposes; releases any personal information required by federal and state laws or regulations; releases personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by federal or state laws and regulations and in response to an order issued by a judge, magistrate, or other authorized judicial officer; upon the request of the U.S. Secretary of Education or his designee, DBVI shall release to the Governor or his designee a complete and

			certified copy of the case record including transcripts of the fair hearing decision for the purpose of the Governor’s review of the final decision. Necessary for compliance with the federal regulation. Language refers to “requirements” or “regulations” rather than “grant.”
None	22VAC45-51-30	No other state regulations or law	(Processing of referrals and application) Simplifies appropriate steps in applying for VR services. Necessary for compliance with federal regulations. Language refers to “requirements” or “regulations” rather than “grant.”
None	22VAC45-51-40	No other state regulations or law	(Eligibility for vocational rehabilitation services.) Section renamed and details the eligibility that must be met for services, such as, blind or visually impaired; blindness or visually impairment must constitute or result in a significant impediment to employment; individual must require vocational rehabilitation services to prepare for, secure, retain, or regain employment; and individual must be able to benefit in terms of an employment outcome from the provision of vocational rehabilitation services. Necessary for compliance with the federal regulations. Language refers to “requirements” or “regulations” rather than “grant.”
None	22VAC45-51-50	No other state regulations or law	(Comprehensive assessment of qualification for individualized plans for employment.) Section is renamed and addresses the assessment the DBVI shall administer to make a determination of the employment outcome and nature and scope of vocational rehabilitation services to be included in the individuals individualized plan for employment. Necessary for compliance with the federal regulations. Language refers to “requirements” or “regulations”

			rather than “grant.”
None	22VAC45-51-60	No other state regulations or law	(Order of selection for services) Section renamed with minor changes. Discusses actions DBVI will take when unable to serve all potentially eligible individuals due to insufficient funds. An order of selection for services shall be implemented: DBVI will consult with the State Rehabilitation Council regarding (i) the need to establish an order of selection, (ii) establishment of categories in the order of selection, (iii) establishment of criteria for each category, and (iv) administration of the order of selection; conduct a public hearing prior to implementation of the order of selection; continue to provide services to all individuals currently receiving services under an Individualized Plan for Employment. Necessary for compliance with federal regulations. Language refers to “requirements” or “regulations” rather than “grant.”
None	22VAC45-51-70	No other state regulations or law	[Scope of vocational rehabilitation services for individuals who are blind or vision impaired.] Section renamed. Vocational rehabilitation services shall be available to assist individuals who are blind or visually impaired in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, and interests. Language refers to “requirements” or “regulations” rather than “grant.”
None	22VAC45-51-80	No other state regulations or law	[Development of the individualized plan for employment] Section renamed. Requires DBVI to conduct an assessment for determining vocational rehabilitation needs, if appropriate, for each eligible individual or, if DBVI is operating under an order of selection, for

			<p>each eligible individual to whom DBVI is able to provide services. The purpose of this assessment is to determine the employment outcome and the nature and scope of vocational rehabilitation to be included in the individualized plan for employment (IPE) DBVI shall assure that an IPE is developed and implemented in a timely manner for each individual determined to be eligible for vocational rehabilitation services or, if DBVI is operating under an order of selection for each eligible individual to whom DBVI is able to provide services; and services shall be provided in accordance with the provisions of the IPE. Requires the IPE to be designed to achieve the specific employment outcome selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and to the maximum extent appropriate, result in employment in an integrated setting. Language refers to "requirements" or "regulations" rather than "grant."</p>
None	22VAC45-51-90	None	<p>[Provision of services for individuals who are blind or visually impaired.] Section renamed. Specifies the provision of vocational rehabilitation services be based on the rehabilitation needs of each individual as identified in that individual's IPE and shall be consistent with the individual's informed choice. DBVI shall not place arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome. Necessary for compliance with the federal regulations. Language refers to "requirements" or "regulations" rather than "grant."</p>
None	22VAC45-51-100	None	<p>[Participation of individuals in</p>

			<p>the cost of services based on financial need and use of comparable services and benefits.] Section renamed. Requires DBVI to consider the financial need of eligible individuals who receive rehabilitation services; identifies the specific rehabilitation services to be exempt from a determination of the availability of comparable services and benefits; to consider the financial needs of eligible individuals using a financial need test; the financial need test shall provide for certain allowances and exclusions; annually, make a determination of the financial contribution of the individual. Necessary for compliance with the federal regulations. Language refers to “requirements” or “regulations” rather than “grant.”</p>
None	22VAC45-51-110	No other state regulations or law	<p>[Participation of individuals in use of comparable services and benefits.] Section renamed. Specifies that prior to providing any vocational rehabilitation services to an eligible individual, or to members of the individual’s family, DBVI shall determine whether comparable services and benefits exist under any other program and whether those services and benefits are available to the individual unless such a determination would interrupt or delay the progress of the individual toward achieving the employment outcome identified in the individualized plan for employment; an immediate job placement; or the provision of vocational rehabilitation services to any individual who is determined to be a extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional. Necessary for compliance with the federal regulations. Language refers to “requirements” or “regulations”</p>

None	22VAC45-51-120	No other state regulations or law	rather than "grant." [Periodic review of ineligibility determinations.] Section renamed. Specifies that when DBVI determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an IPE is no longer eligible for services DBVI shall: make a determination of ineligibility only after providing the individual, or as appropriate, the individual's representative, with an opportunity for full consultation; inform the individual in writing, supplemented as necessary by other modes of communication consistent with the informed choice of the individual, of the ineligibility determination including reasons for that determination; the means by which the individual may express and seek remedy for dissatisfaction, including the procedures for review of determinations by DBVI; provide the individual with a description of services available from the Client Assistance Program established in the Virginia Office for Protection and Advocacy. Necessary for compliance with the federal regulation. Language refers to "requirements" or "regulations" rather than "grant."
None	22VAC45-51-130	No other state regulations or law	[Periodic review of extended employment] Section renamed. Specifies that DBVI shall annually review and reevaluate the status of each individual with a disability who has achieved an employment outcome either in an extended employment setting or in a community rehabilitation program or in any other employment setting in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act for 2 years after the individual achieves the employment outcome (and thereafter if

			requested by the individual or, if appropriate, the individuals representative) to determine the interests, priorities, and needs of the individual with respect to competitive employment or training for competitive employment. Language refers to "requirements" or "regulations" rather than "grant."
None	22VAC45-51-140	No other state regulations or law	[Review of determinations made by DBVI] Section renamed. Specifies that an applicant or eligible individual who is dissatisfied with any determination made by DBVI that affects the provision of vocational rehabilitation services may request, or, if appropriate, may request through the individual's representative, a timely review of that determination. Requires DBVI to develop an informal process for resolving a request for review and provides the applicant or eligible individual with mediation or a formal hearing. Necessary for compliance with the federal regulations. Language refers to "requirements" or "regulations" rather than "grant."

Enter any other statement here