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## TITLE 22. SOCIAL SERVICES

### DEPARTMENT OF REHABILITATIVE SERVICES

Title of Regulation: 22 VAC 30-30. Provision of Independent Living Services (amending 22 VAC 30-30-10, 22 VAC 30-30-20, 22 VAC 30-30-50 through 22 VAC 30-30-120, 22 VAC 30-30-160, 22 VAC 30-30-220, and 22 VAC 30-30-250; adding 22 VAC 30-30-31, 22 VAC 30-30-131, 22 VAC 30-30-141, 22 VAC 30-30-171, 22 VAC 30-30-181, 22 VAC 30-30-191, 22 VAC 30-30-201, 22 VAC 30-30-211, 22 VAC 30-30-241, 22 VAC 30-30-260, 22 VAC 30-30-270, 22 VAC 30-30-280; repealing 22 VAC 30-30-30, 22 VAC 30-30-40, 22 VAC 30-30-130, 22 VAC 30-30-140, 22 VAC 30-30-170 through 22 VAC 30-30-210, 22 VAC 30-30-230, and 22 VAC 30-30-240).

#### PART I.

#### INDEPENDENT LIVING SERVICES PROGRAM AND CENTERS FOR INDEPENDENT LIVING PROGRAM: GENERAL PROVISIONS.

#### 22 VAC 30-30-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the federal Rehabilitation Act of 1973 (29 USC § 701 et seq.), as amended.

"Advocacy" means pleading an individual's cause or speaking or writing in support of an individual. To the extent permitted by state law or the rules of the agency before which an individual is appearing, a nonlawyer may engage in advocacy on behalf of another individual. Advocacy may:

1. Involve representing an individual:

- a. Before private entities or organizations, government agencies (whether state, local, or federal), or in a court of law (whether state or federal); or
- b. In negotiations or mediation, in formal or informal administrative proceedings before government agencies (whether state, local, or federal), or in legal proceedings in a court of law; and

2. Be on behalf of:

- a. A single individual, in which case it is individual advocacy;
- b. A group or class of individuals, in which case it is systems (or systemic) advocacy; or
- c. Oneself, in which case it is self-advocacy.

"Attendant care" means a personal assistance service provided to an individual with significant disabilities in performing a variety of tasks required to meet essential personal needs in areas such as bathing, communicating, cooking, dressing, eating, homemaking, toileting, and transportation.

"Center for independent living (CIL)" means a community based, nonprofit, usually nonresidential program which is controlled by persons with disabilities, provides directly or coordinates indirectly through referral those services which assist severely disabled individuals to increase personal self-determination and to minimize dependency upon others consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency that is designed and operated within a local community by individuals with disabilities and provides an array of IL services.

"Consumer control" means, with respect to a center or eligible agency, that the center or eligible agency vests power and authority in individuals with disabilities, including individuals who are or have been recipients of IL services.

"Cross-disability" means, with respect to a center, that a center provides IL services to individuals representing a range of significant disabilities and does not require the presence of one or more specific significant disabilities before determining that an individual is eligible for IL services.

"Designated state agency" or "state agency" means the sole state agency designated to administer (or supervise local administration of) the state plan for the State Vocational Rehabilitation (VR) Services program.

"Designated state unit" or "DSU" means the state agency or the bureau, division, or other organizational unit within a state agency that is primarily concerned with the vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities and that is responsible for the administration of the State Vocational Rehabilitation (VR) Services program of the state agency; or the independent state commission, board, or other agency that has the vocational rehabilitation, or vocational or other rehabilitation, of individuals with disabilities as its primary function.

"Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, hearing impairment or another neurological condition of an individual, which disability originates before such individual attains age 18, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to such individual.

"Eligible agency" means a consumer-controlled, community-based, cross-disability, nonresidential, private, nonprofit agency.

"Habilitation" is the term used to refer to the education, training and care required by developmentally disabled individuals to reach their maximum potential.

"Independent living (IL)" means control over one's life based on the choice of acceptable options that minimize reliance on others in making decisions and performing every day activities. This includes managing one's affairs, participating in day to day life in community, fulfilling range of social roles, making decisions that lead to self-determination, and the minimalization of physical and psychological dependency on others.

"Individual with a disability" means an individual who (i) has a physical, mental, cognitive, or sensory impairment that

substantially limits one or more of the individual's major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment.

"Individual with a ~~severe significant disability~~" means an individual with a severe physical, mental, cognitive, or sensory impairment whose ability to function independently in the family or community, or whose ability to ~~engage or continue obtain, maintain, or advance~~ in employment is ~~so limited by the severity of his physical or mental disability that independent living rehabilitation services are required in order to achieve a greater level of independence in functioning substantially limited and for whom the delivery of IL services will improve the ability to function, continue functioning, or move toward functioning independently in family or community or engaging or continuing in employment.~~ Independent living rehabilitation services needed by an individual with a severe disability generally are appreciably more costly and of appreciably greater duration than vocational rehabilitation services that might be provided under 34 CFR 361 to continue in employment.

"Individualized independent living plan (IILP)" means a written rehabilitation plan developed jointly by the department or CIL and the individual with a severe disability, and signed by both parties. The IILP indicates the goals established, the services to be provided, and the anticipated duration of the service program and each component service. The IILP is reviewed as often as necessary, but at least on an annual basis, to determine whether services should be continued, modified, discontinued, or whether the individual should be referred to a program of vocational rehabilitation services.

"Legally authorized advocate or representative" means an individual who is authorized under state law to act or advocate on behalf of another individual.

"Minority group" means Alaskan Natives, American Indians, Asian Americans, Blacks (African Americans), Hispanic Americans, Native Hawaiians, and Pacific Islanders.

"Nonresidential" means, with respect to a center, that the center, as of October 1, 1994, does not operate or manage housing or shelter for individuals as an IL service on either a temporary or long-term basis unless the housing or shelter is:

1. Incidental to the overall operation of the center;
2. Necessary so that the individual may receive an IL service; and
3. Limited to a period not to exceed eight weeks during any six-month period.

"Peer relationships" mean relationships involving mutual support and assistance among individuals with significant disabilities who are actively pursuing IL goals.

"Peer role models" mean individuals with significant disabilities whose achievements can serve as a positive example for other individuals with significant disabilities.

"Personal assistance services" mean a range of IL services, provided by one or more persons, designed to assist an individual with a significant disability to perform daily living activities on or off the job that the individual would typically

perform if the individual did not have a disability. These IL services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

"Service provider" means:

1. A DSU that directly provides IL services to individuals with significant disabilities;
2. A center that receives financial assistance under Parts B or C of Chapter 1 (29 USC § 796 et seq.) of Title VII of the Act; or
3. Any other entity or individual that meets the requirements of subsection D of 22 VAC 30-30-20 and provides IL services under a grant or contract from the DSU in response to subsection A of 22 VAC 30-30-270.

"Significant disability" means a severe physical, mental, cognitive, or sensory impairment that substantially limits an individual's ability to function independently in the family or community or to obtain, maintain, or advance in employment.

"State plan" means the state IL plan required under § 704 of Title VII (29 USC § 796 et seq.) of the Act.

"Transportation" means travel and related expenses that are necessary to enable an individual with a significant disability to benefit from another IL service and travel and related expenses for an attendant or aide if the services of that attendant or aide are necessary to enable an individual with a significant disability to benefit from that IL service.

"Unserved and underserved groups or populations" include, but are not limited to, groups or populations of individuals with significant disabilities who:

1. Have cognitive and sensory impairments;
2. Are members of racial and ethnic minority groups;
3. Live in rural areas; or
4. Have been identified by the eligible agency as unserved or underserved within a center's project area.

## **22 VAC 30-30-20. Eligibility for independent living (IL) services.**

~~A. Eligibility requirements shall be applied without regard to sex, race, creed, color, national origin or religion. No group or individuals shall be excluded or found ineligible solely on the basis of the type of disability. No upper or lower age limit shall be applied which shall in and of itself result in a determination of ineligibility. No residence requirement shall be imposed which excludes from services any individual who is presently in the Commonwealth.~~

~~B. An evaluation by the Department of Rehabilitative Services (DRS) or its designee is required of each severely disabled person who applies for independent living services. The evaluation is limited to that information necessary to determine whether the individual is eligible to be provided independent living services, and to determine which independent living services are needed.~~

~~C. All applicants for independent living services shall be apprised of the services of the Client Assistance Program within the Department for the Rights of the Disabled.~~

~~A. An individual with a significant disability is eligible for IL services under the Independent Living Services program and Centers for Independent Living Program authorized under Chapter 1 (29 USC § 796 et seq.) of Title VII of the Act. Regarding information and referral services, anyone may seek information about IL services under these programs and may request referral to other services and programs for individuals with significant disabilities, as appropriate.~~

~~B. The service provider shall apply eligibility requirements without regard to age, color, creed, gender, national origin, race, religion, or type of significant disability of the individual applying for IL services. The service provider shall not impose any state or local residence requirement that excludes under the state plan any individual who is present in Virginia and who is otherwise eligible for IL services from receiving IL services.~~

~~C. Before or at the same time as an applicant for IL services may begin receiving IL services funded under this part, the service provider shall determine the applicant's eligibility and shall maintain documentation that the applicant has met the basic eligibility requirements. The documentation must be dated and signed by an appropriate staff member of the service provider.~~

~~D. If the state contracts with or awards a grant to a center for the general operation of the center, the state shall delegate to the center the determination of an individual's eligibility for services from that center. If the state contracts with or awards a grant to a third party to provide specific IL services, the state may choose to delegate to the IL service provider the determination of eligibility for these services and the development of an IL plan for individuals who receive these services.~~

#### **22 VAC 30-30-30. Basic eligibility criteria. (Repealed.)**

~~The following set forth criteria for basic eligibility:~~

- ~~1. The presence of a severe physical or mental disability;~~
- ~~2. The presence of a severe limitation in ability to function independently in family or community, or to engage or continue in employment; and~~
- ~~3. A reasonable expectation that independent living rehabilitation services will significantly assist the individual to improve his ability to function independently in family or community, or to engage or continue in employment.~~

#### **22 VAC 30-30-31. Consumer service record.**

~~A DSU may carry out the functions and responsibilities described in this section, except as otherwise provided, or may delegate them to the appropriate service provider with which the DSU subgrants or contracts to provide IL services. The service provider shall maintain a consumer service record for each applicant for, and each individual receiving, IL services other than information and referral services. A consumer service record may be maintained either electronically or in written form, except that the IL plan and~~

~~waiver must be in writing. The consumer service record shall include:~~

- ~~1. Documentation concerning eligibility or ineligibility for services;~~
- ~~2. The services requested by the consumer;~~
- ~~3. Either the IL plan developed with the consumer or a waiver signed by the consumer stating that an IL plan is unnecessary;~~
- ~~4. The services actually provided to the consumer;~~
- ~~5. The IL goals or objectives established with the consumer, whether or not in the consumer's IL plan, and the goals or objectives achieved by the consumer; and~~
- ~~6. The individual's participation in the cost of any IL services, including the individual's financial need.~~

#### **22 VAC 30-30-40. Certification of eligibility. (Repealed.)**

~~A. Before or at the same time as acceptance of an individual with a severe disability for independent living rehabilitation services, there shall be a certification that the individual has met the basic requirements specified in 22 VAC 30-30-20.~~

~~B. The certification is approved, dated and signed by an appropriate staff member of the department.~~

#### **22 VAC 30-30-50. Ineligibility.**

~~A. Certification of ineligibility. When it is determined that independent living services cannot be expected to assist an individual to engage or continue in employment, or to function more independently in family or community, a certification of ineligibility shall be signed and dated by an appropriate staff member of the department. A copy shall be promptly provided to the individual.~~

~~Such determination shall be made only after full consultation with the individual or as appropriate, his parents, guardian or other representative, or after giving a clear opportunity for this consultation. The department shall ensure notification in writing of the action taken and inform the individual of his rights and the means by which he may express and seek remedy for any dissatisfaction, with such notification including the procedures for administrative reviews and fair hearings. The individual shall be provided a detailed explanation of the availability of the resources within the Client Assistant Program, Department for the Rights of the Disabled; and when appropriate, referral shall be made to other agencies and facilities, including when appropriate, the vocational rehabilitation program.~~

~~A. A DSU may carry out the functions and responsibilities described in this section, except as otherwise provided, or may delegate them to the appropriate service provider with which the DSU subgrants or contracts to provide IL services. If a determination is made that an applicant for IL services is not an individual with a significant disability, the service provider shall provide documentation of the ineligibility determination that is dated and signed by an appropriate staff member.~~

1. The service provider may determine an applicant to be ineligible for IL services only after full consultation with the applicant or, if the applicant chooses, the applicant's parent, guardian, or other legally authorized advocate or representative, or after providing a clear opportunity for this consultation.

2. The service provider shall notify the applicant in writing of the action taken and inform the applicant or, if the applicant chooses, the applicant's parent, guardian, or other legally authorized advocate or representative, of the applicant's rights and the means by which the applicant may appeal the action taken.

3. The service provider shall provide a detailed explanation of the availability and purposes of the Client Assistance Program established within Virginia under § 112 of the Act, including information on how to contact the program.

4. If appropriate, the service provider shall refer the applicant to other agencies and facilities, including the state's vocational rehabilitation program under Title I (29 USC § 701 et seq.) of the Act.

**B. Review of ineligibility determination.** When the department has certified the ineligibility of an applicant for independent living services because of a determination that those services cannot be expected to assist the individual to engage in or continue employment or to function more independently in family or community, the individual's current status will be reviewed within 12 months. When the individual has received CIL services, the review may be conducted jointly by department and CIL staff. If an applicant for IL services has been found ineligible, the service provider shall review the applicant's ineligibility at least once within 12 months after the ineligibility determination has been made and whenever the service provider determines that the applicant's status has materially changed. The review need not be conducted in situations where the individual applicant has refused the review, the individual applicant is no longer present in the Commonwealth Virginia, or the individual's applicant's whereabouts are unknown.

#### **22 VAC 30-30-60. Order for of selection for services.**

In the event independent living rehabilitation (IL) services cannot be provided due to limited resources to all eligible persons who apply, the department may implement an order of selection is implemented. Under order of selection, applicants determined eligible will be assigned to a priority category and served in the following order:

**PRIORITY 1.** Persons eligible and presently receiving services under an HLP IL plan.

**PRIORITY II.** Persons whose impairments are so severe significant that they do not presently have the potential for employment, but whose ability to live and function independently within their family setting, communities or institutions or community may be improved by the services.

**PRIORITY III.** Persons who need independent living services in order to engage in or maintain employment.

#### **22 VAC 30-30-70. The individualized Independent living plan (ILP) (IL plan).**

##### **A. General requirements.**

~~1. The HLP shall be initiated and periodically updated for individually provided independent living rehabilitation services.~~

~~2. Independent living services shall be provided in accordance with the HLP, which shall be developed jointly with the individual or his parents, guardian, CIL or other representative, and approved by the department's designee.~~

A. A DSU may carry out the functions and responsibilities described in this section, except as otherwise provided, or may delegate them to the appropriate service provider with which the DSU subgrants or contracts to provide IL services. Unless the individual who is to be provided IL services under this part knowingly and voluntarily signs a waiver stating that an IL plan is unnecessary, an IL plan shall be developed and periodically reviewed. The service provider shall provide each IL service in accordance with the IL plan.

1. Development of an individual's IL plan must be initiated after documentation of eligibility. The IL plan must indicate the goals or objectives established, the services to be provided, and the anticipated duration of the service program and each component service.

2. The IL plan must be developed jointly and signed by an appropriate staff member of the service provider and the individual with a significant disability or, if consistent with state law and the individual chooses, the individual's guardian, parent, or other legally authorized advocate or representative.

3. A copy of the HLP IL plan and any amendments shall must be provided in an accessible format to the individual with a severe significant disability, or his parents, guardian or other representative, if consistent with state law and the individual chooses, the individual's guardian, parent, or other legally authorized advocate or representative.

~~4. The HLP shall be initiated after certification of eligibility for independent living services.~~

**B. HLP review.** The HLP shall IL plan must be reviewed as often as necessary, but at least on an annual basis, to determine whether services should be continued, modified, or discontinued, or whether the individual should be referred to a program of vocational rehabilitation services under 34 CFR Part 361 or to any other program of assistance. Each individual with a severe significant disability, or his parents, guardian, or other representative shall, if consistent with state law and the individual chooses, the individual's guardian, parent, or other legally authorized advocate or representative, must be given an opportunity to review the HLP IL plan and, if necessary, jointly modify the HLP redevelop and agree by signature to its terms.

**C. Determination on ineligibility under HLP.** If services are to be terminated under an HLP for any reason, the following conditions and procedures shall be met and carried out:

~~1. The decision shall be made only with the full participation of the individual with a severe disability, or his parents, guardian, or other representative, unless the individual has refused to participate, the individual is no longer residing in the Commonwealth, or his whereabouts are unknown. When the full participation of the individual or a representative of the individual has been secured in making the decision, the reviews of the individual shall be recorded in the ILP;~~

~~2. The rationale for the ineligibility decision shall be recorded as an amendment to the ILP certifying that the provision of independent living services has demonstrated that the individual is not capable of functioning more independently in family or community, or engaging or continuing in employment. A certification of ineligibility is then executed; and~~

~~3. There shall be a periodic review at least annually of the ineligibility decision in which the individual is given the opportunity for full consideration in the reconsideration of the decision, except in situations where a periodic review would be precluded because the individual has refused services, has refused a periodic review, the individual is no longer residing in the Commonwealth, or his whereabouts are unknown. The first review of the ineligibility decision shall be initiated by the department or its designee. Any subsequent reviews shall be undertaken at the request of the individual.~~

*C. If the service provider intends to terminate services to an individual receiving IL services under an IL plan, the service provider shall:*

*1. Notify the applicant in writing of the action taken and inform the applicant or, if the applicant chooses, the applicant's parent, guardian, or other legally authorized advocate or representative, of the applicant's rights and the means by which the applicant may appeal the action taken.*

*2. Provide a detailed explanation of the availability and purposes of the Client Assistance Program established within Virginia under § 112 of the Act, including information on how to contact the program.*

*3. Review the applicant's ineligibility at least once within 12 months after the ineligibility determination has been made and whenever the service provider determines that the applicant's status has materially changed. The review need not be conducted in situations where the applicant has refused the review, the applicant is no longer present in Virginia, or the applicant's whereabouts are unknown.*

*4. If appropriate, refer the individual to other agencies and facilities, including the state's vocational rehabilitation program under Title I (29 USC § 701 et seq.) of the Act.*

~~D. Coordination with vocational rehabilitation, development disabilities and education programs. The development of the ILP IL plan and the provision of these IL services will must be coordinated to the maximum extent possible with the individualized any written rehabilitation plan program for vocational rehabilitation services for that individual, if there is such a program. This will be coordinated also with any individualized written habilitation program for the individual~~

~~prepared under the federal Developmental Disabilities Assistance and Bill of Rights Act (42 USC § 6000 et seq.), or with any individualized and education program for the individual prepared under Part B of the federal Individuals with Disabilities Education Act. (20 USC § 1461 et seq.)~~

## **22 VAC 30-30-80. Scope of independent living rehabilitation (IL) services for individuals.**

~~The following independent living rehabilitation services shall be provided if deemed necessary to the independence of the individual:~~

~~1. Counseling services, including psychological counseling, psychotherapeutic counseling, advocacy services and related services;~~

~~2. Housing incidental to the provision of any independent living rehabilitation service, and including appropriate accommodations to, and modifications of, any space utilized to serve severely disabled individuals;~~

~~3. Physical and mental restoration services, including:~~

~~a. Physical and mental medical rehabilitation services;~~

~~b. Dentistry services;~~

~~c. Nursing services;~~

~~d. Therapeutic treatment, such as physical therapy, occupational therapy, speech language and hearing therapy, therapeutic recreation, drama therapy, music therapy, dance therapy and art therapy;~~

~~e. Health maintenance;~~

~~f. Eyeglasses and visual services; and~~

~~g. Prosthetic, orthotic and other assistive appliances and devices.~~

~~4. Attendant care;~~

~~5. Transportation;~~

~~6. Interpreter services for deaf individuals, including tactile interpretation for deaf blind individuals;~~

~~7. Reading services, rehabilitation teaching services, and orientation and mobility services for blind individuals;~~

~~8. Recreation activities;~~

~~9. Services to family members of an individual with a severe disability when necessary for improving the individual's ability to live and function more independently, or the individual's ability to engage or continue in employment;~~

~~10. Vocational and other training services, including personal and vocational adjustment when necessary for improving an individual's ability to live with a severe disability and function more independently, or his ability to engage or continue in employment;~~

~~11. Job placement services;~~

~~12. Referral services;~~

~~13. Telecommunications, sensory and other technological aids and devices;~~

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14. ~~Services for children of preschool age including physical therapy, development of language and communication skills, and child development services;~~

15. ~~Any other vocational rehabilitation services available under the State Plan for Vocational Rehabilitation Services are appropriate to the independent living rehabilitation needs of an individual with a severe disability; and~~

16. ~~Any appropriate preventive services necessary to decrease the future needs of an individual with a severe disability assisted under the program for similar services.~~

A. *In providing independent living (IL) services as required under § 704(e) of the Act and 34 CFR 364.43(b), a state may use Independent Living Services Program funds to provide directly, or through grants or contracts, the following IL core services:*

1. *Information and referral services. These services may be provided independently of the other IL core services and without regard to evaluation standards in 22 VAC 30-30-181.*

2. *IL skills training;*

3. *Peer counseling, including cross-disability peer counseling; and*

4. *Individual and systems advocacy.*

B. *In addition to the independent living (IL) core services, the state may also use Independent Living Services Program funds to provide other IL services. "Other IL services" means:*

1. *Counseling services, including psychological counseling, psychotherapeutic counseling, and related services;*

2. *Services related to securing housing or shelter, including services related to community group living, that are supportive of the purposes of the Act, and adaptive housing services, including appropriate accommodations to and modifications of any space used to serve, or to be occupied by, individuals with significant disabilities;*

3. *Rehabilitation technology;*

4. *Mobility training;*

5. *Services and training for individuals with cognitive and sensory disabilities, including life skills training and interpreter and reader services;*

6. *Personal assistance services, including attendant care and the training of personnel providing these services;*

7. *Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;*

8. *Consumer information programs on rehabilitation and IL services available under the Act, especially for minorities and other individuals with significant disabilities who have traditionally been unserved or underserved by programs under the Act;*

9. *Education and training necessary for living in a community and participating in community activities;*

10. *Supported living;*

11. *Transportation, including referral and assistance for transportation;*

12. *Physical rehabilitation;*

13. *Therapeutic treatment;*

14. *Provision of needed prostheses and other appliances and devices;*

15. *Individual and group social and recreational services;*

16. *Training to develop skills specifically designed for youths who are individuals with significant disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;*

17. *Services for children;*

18. *Services under other federal, state, or local programs designed to provide resources, training, counseling, or other assistance of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with significant disabilities;*

19. *Appropriate preventive services to decrease the need of individuals with significant disabilities assisted under the Act for similar services in the future;*

20. *Community awareness programs to enhance the understanding and integration into society of individuals with significant disabilities; and*

21. *Any other services that may be necessary to improve the ability of an individual with a significant disability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment and that are not inconsistent with any other provisions of the Act.*

C. *The service provider may not impose any uniform durational limitations on the provision of IL services, except as otherwise provided by federal law or regulation.*

**22 VAC 30-30-90. Participation by the individuals with a disability in the cost of independent living rehabilitation services.**

A. ~~An economic need test is established because of the limited resources of the department.~~

B. ~~An economic need test will be utilized to determine the extent of client participation in the cost of independent living rehabilitation services. Services exempt from consideration for financial participation will be diagnostic and evaluation, counseling, guidance and referral, job placement, on-the-job training and unpaid work experience. Also excluded from financial participation will be services necessary to assist in the diagnostic and evaluation process such as transportation, maintenance and interpreter service for the deaf.~~

C. ~~Groups exempt are:~~

A. *The service provider shall apply consideration of consumer financial participation uniformly so that all individuals who are eligible for IL services are treated equally. The service*

provider shall maintain written policies covering the specific types of IL services for which a financial needs test will be applied. The service provider shall document in the consumer service record the individual's participation in the cost of any IL services, including the individual's financial need.

B. Consumer financial participation shall apply only to the following services:

1. Rehabilitation technology goods and services but not the needs assessment;
2. Prostheses and other appliances and devices;
3. Accommodations to or modifications of vehicle or home or any space used to serve or be occupied by individuals with significant disabilities; and
4. Other tangible goods.

C. The consumer is exempt from financially participating in the cost of IL services in any year the consumer's income includes:

1. Recipients of General Relief.
2. Recipients of Aid to Families with Dependent Children by the client or family in which the client is dependent. Temporary Assistance for Needy Families (TANF).
3. Recipients of Supplemental Security Income (SSI).
4. Recipients of Social Security Disability Income (SSDI).
5. Workers' compensation benefits.
6. Veterans' disability benefits.

D. The Department of Rehabilitative Services will make an assessment of similar benefits available to pay for independent living rehabilitation services. The Department of Rehabilitative Services will not pay program costs which could otherwise be provided by similar benefits unless it is documented that the delay in securing such benefits would be detrimental to the rehabilitation program.

E. Income and resources of the family are to be used when the client is less than 18 years of age, has not been emancipated, and is a part of the family unit. The client is a part of the parent or legal guardian family unit upon occurrence of either:

1. Residence with the parent or legal guardian;
2. Dependency of support evidenced on the last federal income tax return of the parent or legal guardian regardless of residency; or
3. When temporarily absent from the home due to illness, school, vacation or military leave.

The family unit may include persons in residence with the parent or legal guardian, other than the client, who were declared as a dependent on the last federal income tax return of the parent or legal guardian.

F. The financial need test will consider the following income:

1. Annual taxable income (gross income).

2. Annual nontaxable income such as social security, retirement benefits, workmen's compensation, veteran's benefits, etc.

3. Total cash assets, including checking and savings accounts, certificates, stocks and bonds, etc.

The financial need test will provide for the following allowances and exclusions:

a. The gross income will be adjusted by the percentage indicated in the table below:

Gross Income	Allowance
Under \$10,000	15%
\$10,000 to \$14,999	20%
\$15,000 to \$24,999	25%
\$25,000 to \$34,999	30%
Over \$34,999	35%

b. Income will be excluded from consideration based upon family size using the table below:

Size of Family	Income Exclusion
4	\$10,608
2	13,143
3	15,678
4	18,213
5	20,748
6	23,283
7	25,818
8	28,353

For each additional dependent, add \$2,535.

The table above is based upon the federal low income for a family of four. It shall be updated annually by the department.

c. Excluded from income will be the estimated client costs specifically related to the client's disability and not covered by similar benefits.

d. Excluded from cash assets is \$5,000.

e. Individual retirement account shall be excluded from income considerations.

Determination of the annual client financial contribution results from an examination of (i) the number of persons in the family unit; (ii) annual taxable income minus allowances; (iii) annual nontaxable income; (iv) cash assets minus exclusions and; (v) exceptional exclusions based on client cost specifically related to client's disability.

The financial resources to be considered will be tabulated using the method noted herein. The positive balance (resources exceeding exclusions) will be determined to be available for participation in the rehabilitation program.

D. The consumer's annual financial participation amount is determined by the financial needs test. The financial needs test is the annual taxable income less income taxes paid, FICA withholdings, dependent allowance, cost of living allowance, tax-deferred retirement account contributions, health insurance premiums, alimony paid, and disability-related expenses.

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1. For consumers under age 18, income of the parents/legal guardian is to be considered only if the consumer was claimed as a dependent on the parent/legal guardian's most recent federal income tax return. For other consumers, only the income of the consumer, and not other family members, shall be considered.

2. A dependent allowance is allowed for each person (including the consumer) claimed on the tax return. The department must update the dependent allowance annually and notify the service providers. The allowance is the amount for each additional family member in the Table of Poverty Guidelines for the 48 Contiguous States and the District of Columbia, which is published annually by the U.S. Department of Health and Human Services.

3. The department will determine the cost of living allowance and notify the service providers.

4. Retirement contributions, insurance premiums, and disability-related expenses paid or reimbursed by the employer or another resource may not be deducted from income.

#### **22 VAC 30-30-100. Consideration of similar benefits.**

A. Consideration shall be given, in all cases, to any similar benefits available to an individual with a disability, or to family members of an individual with a disability, under any program to meet, in whole or in part, the cost of any independent living rehabilitation (IL) services, except the following IL core services.

- ~~1. Intake counseling to determine the client's need for specific rehabilitation services;~~
- ~~2. Referral and counseling services with respect to attendant care;~~
- ~~3. Counseling and advocacy services with respect to legal and economic rights and benefits;~~
- ~~4. Referral for housing and transportation;~~
- ~~5. Surveys, directories, and other activities to identify appropriate housing and accessible transportation and other support services;~~
- ~~6. Peer counseling;~~
- ~~7. Individual and group social and recreational activities; and~~
- ~~8. Services which will significantly delay achieving the Independent Living Rehabilitation objective of the individual.~~

B. An appropriate staff member of the department shall be responsible for making a determination as to how a program of services is to be financed. The department shall consider the availability of third party resources to cover part or all of the cost; the availability of the individual's resources or the individual's family resources to cover part or all of the cost; and the availability of department resources to cover part or all of the cost when other resources are insufficient.

#### **22 VAC 30-30-110. Consumer appeal procedures.**

~~Appeal procedures for independent living services adhere to the department's appeal procedures, as set forth in 22 VAC 30-20-180 of the department's Vocational Rehabilitation Regulations.~~

A. Each service provider shall establish policies and procedures that an individual may use to obtain review of decisions made by the service provider concerning the individual's request for IL services or the provision of IL services to the individual. The service provider shall use formats that are accessible to inform each individual who seeks or is receiving IL services from the service provider about the procedures required by this section.

B. All service providers shall use formats that are accessible to notify individuals seeking or receiving IL services under Chapter 1 (29 USC § 796 et seq.) of Title VII of the Act about the availability of the Client Assistance Program (CAP) authorized by § 112 of the Act, the purposes of the services provided under the CAP, and how to contact the CAP.

#### **22 VAC 30-30-120. Protection, use and release of personal information.**

~~Independent living services will adhere to the department's protection, use, and release of personal information, as set forth in 22 VAC 30-20-190 of the department's Vocational Rehabilitation Regulations.~~

A. A DSU may carry out the functions and responsibilities described in this section, except as otherwise provided, or may delegate them to the appropriate service provider with which the DSU subgrants or contracts to provide IL services. The service provider shall adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must ensure that:

1. Specific safeguards protect current and stored personal information;
2. All applicants for, or recipients of, IL services and, as appropriate, those individuals' legally authorized representatives, service providers, cooperating agencies, and interested persons are informed of the confidentiality of personal information and the conditions for gaining access to and releasing this information;
3. All applicants or their legally authorized representatives are informed about the service provider's need to collect personal information and the policies governing its use, including:
  - a. Identification of the authority under which information is collected;
  - b. Explanation of the principal purposes for which the service provider intends to use or release the information;
  - c. Explanation of whether providing requested information to the service provider is mandatory or voluntary and the effects to the individual of not providing requested information;

d. Identification of those situations in which the service provider requires or does not require informed written consent of the individual or his legally authorized representative before information may be released; and

e. Identification of other agencies to which information is routinely released;

4. Persons who are unable to communicate in English or who rely on alternative modes of communication must be provided an explanation of service provider policies and procedures affecting personal information through methods that can be adequately understood by them;

5. At least the same protections are provided to individuals with significant disabilities as provided by the state laws and regulations; and

6. Access to records is governed by rules established by the service provider and any fees charged for copies of records are reasonable and cover only extraordinary costs of duplication or making extensive searches.

B. All personal information in the possession of the service provider may be used only for the purposes directly connected with the provision of IL services and the administration of the IL program under which IL services are provided.

1. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for the provision of IL services or the administration of the IL program under which IL services are provided.

2. In the provision of IL services or the administration of the IL program under which IL services are provided, the service provider may obtain personal information from other service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under subsections C, D, and E of this section.

C. Except as provided in subdivisions 1 and 2 of this subsection, if requested in writing by a recipient of IL services, the service provider shall release all information in that individual's record of services to the individual or the individual's legally authorized representative in a timely manner.

1. Medical, psychological, or other information that the service provider determines may be harmful to the individual may not be released directly to the individual, but must be provided through a qualified medical or psychological professional or the individual's legally authorized representative.

2. If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

D. Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research activities only for purposes directly connected with the administration of an IL program, or for purposes that

would significantly improve the quality of life for individuals with significant disabilities and only if the organization, agency, or individual ensures that:

1. The information will be used only for the purposes for which it is being provided;

2. The information will be released only to persons officially connected with the audit, evaluation, or research;

3. The information will not be released to the involved individual;

4. The information will be managed in a manner to safeguard confidentiality; and

5. The final product will not reveal any personally identifying information without the informed written consent of the involved individual or the individual's legally authorized representative.

Human research to be conducted or authorized by a center for independent living may be subject to approval and continuing review from a review board established under state-mandated regulations to protect human research participants.

E. Upon receiving the informed written consent of the individual or, if appropriate, the individual's legally authorized representative, the service provider may release personal information to another agency or organization for the latter's program purposes only to the extent that the information may be released to the involved individual and only to the extent that the other agency or organization demonstrates that the information requested is necessary for the proper administration of its program.

1. Medical or psychological information may be released if the other agency or organization assures the service provider that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

2. The service provider shall release personal information if required by federal laws or regulations.

3. The service provider shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by federal or state laws or regulations, and in response to judicial order.

4. The service provider also may release personal information to protect the individual or others if the individual poses a threat to his safety or to the safety of others.

## PART II.

### CENTERS FOR INDEPENDENT LIVING (CIL) PROGRAM.

#### **22 VAC 30-30-130. Grants or contracts for independent living centers. (Repealed.)**

~~Grants or contracts may be awarded to any county, city or combination thereof, or any local public or private nonprofit agency, organization or facility. The criteria contained herein~~

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shall be followed in the establishment and operation of Centers for Independent Living (CILs).

**22 VAC 30-30-131. Agencies eligible for CIL program.**

A. Regarding both federally and state-funded centers for independent living (CILs), the state plan must include a design for the establishment of a statewide network of centers that comply with the standards and assurances in § 725(b) and (c) of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181. The design must identify unserved and underserved areas and must provide an order of priority for serving these areas.

B. This subsection is applicable to federally funded CILs. In any state in which the Secretary of the U.S. Department of Education has approved the state plan required by § 704 of the Act, an applicant may receive a grant under subsection C or D of this section, as applicable, if:

1. The applicant demonstrates in its application that it has the power and authority to:

a. Carry out the purpose of Part C of Chapter 1 (29 USC § 796 et seq.) of Title VII of the Act and perform the functions listed in § 725(b) and (c) of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181 within a community located within the state or in a bordering state, including Washington, D.C.;

b. Receive and administer funds under 34 CFR Part 366 Centers for Independent Living Program funds and contributions from private or public sources that may be used in support of a center, and funds from other public and private programs; and

c. Plan, conduct, administer, and evaluate a center consistent with the standards and assurances in § 725(b) and (c) of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181.

2. To apply for a grant as a new center, an eligible agency shall meet the requirements of this subdivision, except that the award of a grant to a new center is subject to the order of priorities in subsection B of 22 VAC 30-30-141. An applicant that meets the requirements of 34 CFR 366.2(a) is eligible to apply as a new center under subsection C or D of this section, as applicable, if it:

a. Is not receiving funds under Part C of Chapter 1 of Title VII of the Act; or

b. Proposes the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) at a different geographical location; and

c. Submits an application at the time, in the manner, and containing the information that is required; an assurance that the eligible agency meets the requirements of this section; the assurances required by § 725(c) of the Act and 22 VAC 30-30-171.

3. Subject to the order of priorities established in 34 CFR 366.22 and 22 VAC 30-30-141, a grant for a new center

may be awarded to the most qualified eligible agency that applies for funds if:

a. No center serves a geographic area of the state (or a geographic area of the state is underserved by centers serving other areas of the state);

b. The eligible agency proposes to serve the geographic area that is unserved or underserved in the state;

c. The increase in the allotment of the state under § 721 of the Act for a fiscal year, as compared with the immediately preceding fiscal year, is sufficient to support an additional center in the state; and

d. The establishment of a new center is consistent with the design included in the state plan for establishing a statewide network of centers. An applicant may satisfy this requirement by submitting appropriate documentation demonstrating that the establishment of a new center is consistent with the design in the state plan.

4. Except for the requirement that the center be a private nonprofit agency, a center that is operated by a state that receives assistance under this section shall comply with all of the requirements of Part C of Title VII of the Act and the requirements in subsection C or D, as applicable, of this section and 22 VAC 30-30-171. A state that received assistance in fiscal year 1993 to directly operate a center in accordance with § 724(a) of the Act is eligible to continue to receive assistance under this section to directly operate that center for fiscal year 1994 or a succeeding fiscal year if, for the fiscal year for which assistance is sought:

a. No nonprofit private agency submits and obtains approval of an acceptable application under § 722 or 723 of the Act or 34 CFR 366.21 or 366.24 to operate a center for that fiscal year before a date specified by the Secretary of the U.S. Department of Education; or

b. After funding all applications so submitted and approved, the secretary determines that funds remain available to provide that assistance.

5. In accordance with the order of priorities established in 22 VAC 30-30-141, an existing eligible agency may receive a grant under subsection C or D, as applicable, if the eligible agency demonstrates in its application that it:

a. Meets the requirements in subdivision 2 c of this subsection;

b. Is receiving funds under Part C of Title VII of the Act; and

c. Is in compliance with the program and fiscal standards and assurances in § 725(b) and (c) of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181. (The indicators of minimum compliance in 22 VAC 30-30-181 are used to determine compliance with the evaluation standards in § 725(b) of the Act.)

C. This subsection is applicable to federally funded CILs. The Secretary of the U.S. Department of Education awards grants to centers in a state in a fiscal year if (i) the amount of federal funds allotted to the state under § 721(c) and (d) of the Act to

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support the general operation of centers is greater than the amount of state funds earmarked for the same purpose, as determined in response to subdivisions D 1 and 3 of this section, or (ii) the director of a DSU does not submit to the secretary and obtain approval of an application to award grants under § 723 of the Act and subdivision D 4 of this section.

1. In selecting from among applicants for a grant for a new center, the Secretary of the U.S. Department of Education considers comments regarding the application, if any, by the Statewide Independent Living Council in the state in which the applicant is located.

2. The Secretary of the U.S. Department of Education may use funds from the allotment of one state to award a grant to a center located in a bordering state if the secretary determines that the proposal of the out-of-state center to serve individuals with significant disabilities who reside in the bordering state is consistent with the state plan of the state in which these individuals reside. An applicant shall submit documentation demonstrating that the arrangements described in the preceding sentence are consistent with the state plan of the state in which the individuals reside.

D. This subsection is applicable to federally funded CILs. The director of the DSU may award grants under § 723 of the Act and this subsection to centers located within the state or in a bordering state in a fiscal year if (i) the director submits to the Secretary of the U.S. Department of Education and obtains approval of an application to award grants for that fiscal year under § 723 of the Act and subdivision 1 of this subsection; and (ii) the secretary determines that the amount of state funds that were earmarked by the state to support the general operation of centers meeting the requirements of Part C of Chapter 1 (29 USC § 796 et. seq.) of Title VII of the Act in the second fiscal year preceding the fiscal year for which the application is submitted equaled or exceeded the amount of funds allotted to the state under § 721(c) and (d) of the Act for that preceding year. For purposes of this subsection, "director" means the director of the general DSU if the state has both a DSU responsible for providing IL services to the general population and a DSU responsible for providing IL services for individuals who are blind. These DSUs shall periodically consult with each other with respect to the provision of services for individuals who are blind.

1. To be eligible to award grants under this subsection and to carry out § 723 of the Act for a fiscal year, the director of the DSU must submit to the Secretary of the U.S. Department of Education for approval an application at the time and in the manner that the secretary may require and that includes, at a minimum (i) information demonstrating that the amount of funds earmarked by the state for the general operation of centers meets the requirements, and (ii) a summary of the annual performance reports submitted to the director from centers in accordance with 22 VAC 30-30-171.

a. If the amount of funds earmarked meets the requirements, the secretary approves the application and

designates the director to award the grants and carry out § 723 of the Act.

b. If a state submits an application to administer the Centers for Independent Living Program under § 723 of the Act and this subsection for a fiscal year, but did not earmark the amount of state funds required by this subsection in the preceding fiscal year, the state shall be ineligible to make grants under § 723 of the Act and this subsection after the end of the fiscal year succeeding the preceding fiscal year and for each succeeding fiscal year.

c. For purposes of this subsection, "earmarked" means funds appropriated by the state and expressly or clearly identified as state expenditures in the relevant fiscal year for the sole purpose of funding the general operation of centers. The amount of state funds that were earmarked by a state to support the general operation of centers does not include: (i) federal funds used for the general operation of centers; (ii) state funds used to purchase specific services from a center, including state funds used for grants or contracts to procure or purchase personal assistance services or particular types of skills training; (iii) state personal attendant care funds; or (iv) Social Security Administration reimbursement funds.

2. If the secretary designates the director to award grants and carry out § 723 of the Act, the director makes grants to eligible agencies in a state for a fiscal year from the amount of funds allotted to the state under § 721(c) and (d) of the Act.

a. The director may enter into assistance contracts with centers to carry out § 723 of the Act. For purposes of this subsection, an assistance contract is an instrument whose principal purpose is to transfer funds allocated to the state under § 721(c) and (d) of the Act and this subsection, to an eligible agency to carry out § 723 of the Act. Under an assistance contract, the DSU shall assume a role consistent with that of the Secretary of the U.S. Department of Education under § 722 of the Act. If the DSU uses an assistance contract to award funds under § 723 of the Act, the DSU may not add any requirements, terms, or conditions to the assistance contract other than those that would be permitted if the assistance contract were a grant rather than an assistance contract. Under an assistance contract, the role of the DSU is to ensure that the terms of the assistance contract, which are established by Chapter 1 of Title VII of the Act and the implementing regulations in 34 CFR Parts 364 and 366, are satisfied. In the enforcement of any breach of the terms and conditions of an assistance contract, the DSU shall follow the procedures established in 22 VAC 30-30-211 and 22 VAC 30-30-220.

b. The director may not enter into procurement contracts with centers to carry out § 723 of the Act. For purposes of this subsection, a procurement contract is an instrument whose principal purpose is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the DSU. Under a procurement contract, the DSU prescribes the specific services it intends to procure and the terms and conditions of the procurement.

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3. In selecting from among applicants for a grant for a new center, the director and the chairperson of the Statewide Independent Living Council, or other individual designated by the council to act on behalf of and at the direction of the council, shall jointly appoint a peer review committee that shall rank applications in accordance with the standards and assurances in § 725(b) and (c) of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181. The director shall award the grant on the basis of the recommendations of the peer review committee if the actions of the committee are consistent with federal and state law. The peer review committee shall consider the ability of each applicant to operate a center and shall recommend an applicant to receive a grant, based on either the selection criteria in 34 CFR 366.27 or the following:

- a. Evidence of the need for a center, consistent with the state plan.
- b. Any past performance of the applicant in providing services comparable to IL services.
- c. The plan for complying with, or demonstrated success in complying with, the standards and the assurances in § 725(b) and (c) of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181.
- d. The quality of key personnel of the applicant and the involvement of individuals with significant disabilities by the applicant.
- e. The budget and cost-effectiveness of the applicant.
- f. The evaluation plan of the applicant.
- g. The ability of the applicant to carry out the plan for complying with the standards and assurances and the evaluation plan.

4. In a state in which state funding for centers equals or exceeds the amount of funds allotted to the state under Part C of Title VII of the Act, as determined in response to subdivision 1 of this subsection, and in which the state elects to administer the Centers for Independent Living Program as provided in § 723 of the Act, the state plan must include policies, practices, and procedures, including the order of priorities that the state may establish, that are consistent with § 723 of the Act to govern the awarding of grants to centers and the oversight of these centers.

E. This subsection is applicable to federally funded CILs. Entities that have experience in the operation of centers are eligible to apply for grants to provide training and technical assistance under section 721(b) of the Act to eligible agencies, centers, and Statewide Independent Living Councils (councils).

1. From funds, if any, reserved under § 721(b)(1) of the Act, to carry out the purposes of under 34 CFR Part 366, Subpart B, Training and Technical Assistance, the Secretary of the U.S. Department of Education makes grants to, and enters into contracts, cooperative agreements, and other arrangements with, entities that have experience in the operation of centers. An entity receiving assistance in accordance with this subdivision shall provide training and technical assistance to eligible

agencies, centers, and councils to plan, develop, conduct, administer, and evaluate centers.

2. To be eligible to receive a grant or enter into a contract or other arrangement under § 721(b) of the Act and subdivision 1 of this subsection, an applicant shall submit an application to the Secretary of the U.S. Department of Education containing a proposal to provide training and technical assistance to eligible agencies, centers, and councils and any additional information at the time and in the manner that the secretary may require. The secretary provides for peer review of grant applications by panels that include persons who are not federal government employees and who have experience in the operation of centers.

3. In making awards, the secretary determines funding priorities in accordance with the training and technical assistance needs identified by the survey of councils and centers required by § 721(b)(3) of the Act.

F. This subsection is applicable to both federally and state-funded CILs. Any currently existing center in Virginia that meets the definition in 22 VAC 30-30-10 is eligible to apply for a grant from the department to operate the center.

1. The applicant demonstrates in its application that it has the power and authority to:

a. Carry out the purpose of Part C of Title VII of the Act and perform the functions listed in § 725(b) and (c) of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181 within a community located within Virginia;

b. Receive and administer funds and contributions from private or public sources that may be used in support of a center and funds from other public and private programs; and

c. Plan, conduct, administer, and evaluate a center consistent with the standards and assurances in § 725(b) and (c) of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181.

2. In accordance with the order of priorities established in 22 VAC 30-30-141, an existing eligible agency may receive a grant if the eligible agency demonstrates in its application that it:

a. Is receiving state general funds; and

b. Is in compliance with the program and fiscal standards and assurances in 22 VAC 30-30-171 and 22 VAC 30-30-181.

3. The director of the DSU awards the grants based on the demonstrated:

a. Compliance with the standards and assurances as defined by the Act and 22 VAC 30-30-171 and 22 VAC 30-30-181;

b. Cooperation with the department and Statewide Independent Living Council (council) in collection and exchange of information, including evaluation of its program, determination of the level of consumer satisfaction with its program; disclosure of necessary

records, reports, policies, and other documents for the purpose of evaluation; and the use of established data collection methods;

c. Ability to address local personal assistance services issues, including cooperation with DRS in the administration of the Personal Assistance Services (PAS) program;

d. Cooperation with the council and department in the administration of the Title VII, Part B program in accordance with the current State Plan for Independent Living, the DRS CIL Title VII, Part B Procedures Manual, department and state policies, and any other state and federal regulations.

G. This subsection is applicable to both federally and state-funded CILs. To apply for a grant from the department as a new center, an eligible agency shall meet the requirements of subsection F of this section, except that the award of a grant to a new center is subject to the order of priorities in the state plan and is subject to the availability of funds.

1. In selecting from among applicants for a grant for a new center, the department considers comments regarding the application, if any, by the Statewide Independent Living Council (council).

2. In selecting from among applicants for a grant for a new center, the director and the chairperson of the council, or other individual designated by the council to act on behalf of and at the direction of the council, shall jointly appoint a peer review committee that shall rank applications in accordance with the standards and assurances in § 725(b) and (c) of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181. The director shall award the grant on the basis of the recommendations of the peer review committee if the actions of the committee are consistent with federal and state law. The peer review committee shall consider the ability of each applicant to operate a center and shall recommend an applicant to receive a grant, based on the following:

a. Evidence of the need for a center, consistent with the state plan;

b. Any past performance of the applicant in providing services comparable to IL services;

c. The plan for complying with, or demonstrated success in complying with, the standards and the assurances in § 725(b) and (c) of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181;

d. The quality of key personnel of the applicant and the involvement of individuals with significant disabilities by the applicant;

e. The budget and cost-effectiveness of the applicant;

f. The evaluation plan of the applicant; and

g. The ability of the applicant to carry out the plan for complying with the standards and assurances and the evaluation plan.

**22 VAC 30-30-140. Approval of grants or contracts for independent living centers. (Repealed.)**

~~No applicant shall be eligible for a grant to establish independent living services or to develop independent living centers unless its plan and budget have been approved (i) by the governing body or bodies of each political subdivision of which it is an agency or by the governing board, if any, of the private nonprofit agency, organization or facility, making such application and (ii) by the Department of Rehabilitative Services.~~

**22 VAC 30-30-141. Order of priorities for centers for independent living.**

A. This subsection is applicable to federally funded CILs. For grants under subsection C of 22 VAC 30-30-131, in accordance with a state's allotment and to the extent funds are available, the order of priorities for allocating funds among centers within a state is as follows:

1. Existing centers as described in 34 CFR 366.23 that comply with the standards and assurances in § 725(b) and (c) of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181 first receive the level of funding each center received in the previous year. However, any funds received by an existing center to establish a new center at a different geographical location in response to subdivision B 2 b of 22 VAC 30-30-131 are not included in determining the level of funding to the existing center in any fiscal year that the new center applies for and receives funds as a separate center.

2. Existing centers that meet the requirements of subdivision 1 of this subsection then receive a cost-of-living increase in accordance with procedures consistent with § 721(c)(3) of the Act.

3. New centers that comply with the standards and assurances in § 725 (b) and (c) of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181 are considered next. If, after meeting the priorities in subdivisions 1 and 2 of this subsection, there are insufficient funds under the state's allotment under § 721(c) and (d) of the Act to fund a new center, the Secretary of the U.S. Department of Education may (i) use the excess funds in the state to assist existing centers consistent with the state plan or (ii) reallocate these funds in accordance with § 721(d) of the Act.

B. This subsection is applicable to federally funded CILs. For grants under subsection D of 22 VAC 30-30-131, unless the director of the DSU and the chairperson of the Statewide Independent Living Council (council), or other person designated by the council to act on behalf of and at the direction of the council, jointly agree on another order of priorities, the director shall follow the order of priorities in subsection A of this section for allocating funds among centers within a state, to the extent funds are available. If the order of priorities in subsection A is followed and, after meeting the priorities in subdivision A 1 of this section, there are insufficient funds under the state's allotment under § 721(c) and (d) of the Act to fund a new center under subdivision A 3 of this section, the director may (i) use the excess funds in the state to assist existing centers consistent with the state plan, or (ii) return these funds to the Secretary

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of the U.S. Department of Education for reallocation in accordance with § 721(d) of the Act.

C. This subsection is applicable to state-funded CILs. With guidance from the Statewide Independent Living Council and other entities as appropriate, the department will fund CILs based on documented need.

**22 VAC 30-30-150. Governing board of centers for independent living.**

~~A. Each center shall be governed by a board consisting of no less than seven persons, established for the sole purpose of operating a center for independent living. The board shall consist of no fewer than seven persons and shall contain a majority number of individuals with significant disabilities who shall provide a cross-disability representation. The center will be designed and operated within local communities by individuals with disabilities, including an assurance that the center will have a board that is the principle governing body of the center and a majority of which must be composed of individuals with significant disabilities. This governing board shall be established prior to the submission of a grant proposal to fund such a CIL. Only the board established for the purpose of operating a CIL is eligible to receive grants and contracts from the department.~~

~~B. The governing board shall contain a majority number of persons with disabilities who shall provide a cross-disability representation.~~

**22 VAC 30-30-160. Staff.**

~~A. CIL The majority of the center for independent living (CIL) staff shall include as large a proportion of persons with disabilities as is practicable and individuals with decision-making positions shall be individuals with disabilities.~~

~~B. CILs The staff of the service provider shall be staffed by persons skilled or trained to assist individuals with disabilities, achieve social and economic independence include personnel who are specialists in the development and provision of IL services and in the development and support of centers.~~

C. CILs shall meet all relevant licensure, certification, bonding, and insurance requirements of the Department of Rehabilitative Services.

D. To the maximum extent feasible, the service provider must make available personnel able to communicate (i) with individuals with significant disabilities who rely on alternative modes of communication, such as manual communication, nonverbal communication devices, Braille, or audio tapes, and who apply for or receive IL services under Title VII of the Act, and (ii) in the native languages of individuals with significant disabilities whose English proficiency is limited and who apply for or receive IL services under Title VII of the Act.

E. Staff at centers will receive training on how to serve unserved and underserved populations, including minority groups and urban and rural populations.

F. The service provider shall establish and maintain a program of staff development for all classes of positions involved in providing IL services and, if appropriate, in administering the CIL program. The staff development

program must emphasize improving the skills of staff directly responsible for the provision of IL services, including knowledge of and practice in the IL philosophy.

**22 VAC 30-30-170. Eligibility for those persons served by centers for independent living. (Repealed.)**

~~A. Eligibility requirements shall be applied without regard to gender, race, age, creed, types of disability, color, religion or national origin. No residence requirement, durational or other, shall be imposed which excludes from services any individual who is present in the Commonwealth.~~

~~B. Basic eligibility criteria. A person may be eligible to become a participant in an independent living center when there is the presence of a severe disability, there is a stated need or request for services, and receipt of services can reasonably be expected to benefit the person's independence in the family, community or work.~~

~~C. Certification of eligibility. For independent living services, before or at the time the person is accepted for services, the CIL center staff shall document eligibility.~~

**22 VAC 30-30-171. CIL assurances.**

To be eligible for assistance under the Centers for Independent Living Program, an eligible agency shall provide satisfactory assurances that:

1. The applicant is an eligible agency;
2. The center will be designed and operated within local communities by individuals with disabilities, including an assurance that the center will have a board that is the principal governing body of the center and a majority of which will be composed of individuals with significant disabilities;
3. The applicant will comply with the standards in 22 VAC 30-30-181;
4. The applicant will establish clear priorities through:
  - a. Annual and three-year program and financial planning objectives for the center, including overall goals or a mission for the center;
  - b. A work plan for achieving the goals or mission, specific objectives, service priorities, and types of services to be provided; and
  - c. A description that demonstrates how the proposed activities of the applicant are consistent with the most recent three-year State Plan under § 704 of the Act;
5. The applicant will use sound organizational and personnel assignment practices, including taking affirmative action to employ and advance in employment qualified individuals with significant disabilities on the same terms and conditions required with respect to the employment of individuals with disabilities under § 503 of the Act;
6. The applicant will ensure that the majority of the staff and individuals in decision-making positions of the applicant are individuals with disabilities;

7. The applicant will practice sound fiscal management, including making arrangements for an annual independent fiscal audit;

8. The applicant will conduct an annual self-evaluation, prepare an annual performance report, and maintain records adequate to measure performance with respect to the standards in 22 VAC 30-30-181.

9. The annual performance report and the records of the center's performance will each contain information regarding, at a minimum:

a. The extent to which the center is in compliance with the standards in § 725(b) of the Act and 22 VAC 30-30-181;

b. The number and types of individuals with significant disabilities receiving services through the center;

c. The types of services provided through the center and the number of individuals with significant disabilities receiving each type of services;

d. The sources and amounts of funding for the operation of the center;

e. The number of individuals with significant disabilities who are employed by, and the number who are in management and decision-making positions in, the center;

f. The number of individuals from minority populations who are employed by, and the number who are in management and decision-making positions in, the center; and

g. A comparison, if appropriate, of the activities of the center in prior years with the activities of the center in most recent years;

10. Individuals with significant disabilities who are seeking or receiving services at the center will be notified by the center of the existence of, the availability of, and how to contact the client assistance program;

11. Aggressive outreach regarding services provided through the center will be conducted in an effort to reach populations of individuals with significant disabilities that are unserved or underserved by programs under Title VII of the Act, especially minority groups and urban and rural populations;

12. Staff at centers will receive training on how to serve unserved and underserved populations, including minority groups and urban and rural populations;

13. The center will submit to the Statewide Independent Living Council a copy of its approved grant application and the annual performance report;

14. The center will prepare and submit to the DSU if the center received a grant from the DSU director, or to the secretary if the center received a grant from the Secretary of the U.S. Department of Education, within 90 days of the end of each fiscal year, the annual performance report; and

15. An IL plan as described in § 704(e) of the Act will be developed for each individual who will receive services under 34 CFR Part 366 and the Centers for Independent Living Program unless the individual signs a waiver stating that an IL plan is unnecessary.

#### **22 VAC 30-30-180. Ineligibility. (Repealed.)**

~~When it is determined by CIL staff that independent living services cannot be expected to assist an individual to function more independently in family or community, or to engage or continue in employment, and after consultation with the individual, a certification of ineligibility shall be developed by CIL staff, approved and dated by an appropriate department staff member and notification promptly provided to the applicant. The notification shall state the reason for the decision and offer opportunity for consultation by the applicant or his designee. The person shall be notified in writing of his rights and the means by which he may seek remedy, including administrative review and fair hearing. The applicant shall be provided a detailed explanation of the availability of the services of the Client Assistance Program, Department for the Rights of the Disabled.~~

#### **22 VAC 30-30-181. Evaluation standards.**

To be eligible to receive funds under the Centers for Independent Living Program an applicant must agree to comply with the following evaluation standards:

1. Evaluation standard 1, Philosophy. The center shall promote and practice the IL philosophy of:

a. Consumer control of the center regarding decisionmaking, service delivery, management, and establishment of the policy and direction of the center;

b. Self-help and self-advocacy;

c. Development of peer relationships and peer role models;

d. Equal access of individuals with significant disabilities to all of the center's services, programs, activities, resources, and facilities, whether publicly or privately funded, without regard to the type of significant disability of the individual; and

e. Promoting equal access of individuals with significant disabilities to all services, programs, activities, resources, and facilities in society, whether public or private, and regardless of funding source, on the same basis that access is provided to other individuals with disabilities and to individuals without disabilities.

2. Evaluation standard 2, Provision of services. The center shall provide IL services to individuals with a range of significant disabilities. The center shall provide IL services on a cross-disability basis (i.e., for individuals with all different types of significant disabilities, including individuals with significant disabilities who are members of populations that are unserved or underserved by programs under Title VII of the Act). The center shall determine eligibility for IL services. The center may not base eligibility on the presence of any one specific significant disability.

3. Evaluation standard 3, Independent living goals. The center shall facilitate the development and achievement of IL goals selected by individuals with significant disabilities who seek assistance in the development and achievement of IL goals from the center.

4. Evaluation standard 4, Community options. The center shall conduct activities to increase the availability and improve the quality of community options for IL to facilitate the development and achievement of IL goals by individuals with significant disabilities.

5. Evaluation standard 5, Independent living core services. The center shall provide IL core services and, as appropriate, a combination of any other IL services specified in § 7(30)(B) of the Act and 22 VAC 30-30-80.

6. Evaluation standard 6, Activities to increase community capacity. The center shall conduct activities to increase the capacity of communities within the service area of the center to meet the needs of individuals with significant disabilities.

7. Evaluation standard 7, Resource development activities. The center shall conduct resource development activities to obtain funding from sources other than Chapter 1 (29 USC § 796 et seq.) of Title VII of the Act.

**22 VAC 30-30-190. Order of selection for those served by centers for independent living. (Repealed.)**

~~If funding prohibits provision of services in centers for independent living to all eligible applicants, an order of selection will be implemented.~~

~~PRIORITY I. Persons eligible and presently receiving services under an ILP.~~

~~PRIORITY II. Persons whose impairments are so severe that they do not presently have the potential for employment, but whose ability to live and function independently within their family setting, communities or institutions may be improved by the services.~~

~~PRIORITY III. Persons who need independent living services in order to engage in or maintain employment.~~

**22 VAC 30-30-191. Compliance indicators.**

A. The compliance indicators establish the activities that a center for independent living shall carry out to demonstrate minimum compliance with the evaluation standards in 22 VAC 30-30-181. If a center fails to satisfy any one of the indicators, the center is out of compliance with the evaluation standards.

B. To be eligible to receive a continuation award for the third or any subsequent year of a grant, a center shall have complied fully during the previous project year with all of the terms and conditions of its grant; provide adequate evidence in its most recent annual performance report that the center is in minimum compliance with the evaluation standards in 22 VAC 30-30-181, and meets the requirements in 34 CFR Part 366. If a recipient receives funding for more than one center, each individual center shall meet these requirements.

C. Evidence a center must present to demonstrate that it is in minimum compliance with the evaluation standards is:

1. Compliance indicator 1, Philosophy. The center shall provide evidence in its most recent annual performance report that:

a. Individuals with significant disabilities constitute more than 50% of the center's governing board;

b. Individuals with disabilities constitute more than 50% of the center's employees in decision-making positions and employees in staff positions. A center may exclude personal assistants, readers, drivers, and interpreters employed by the center from this requirement. The determination that over 50% of a center's employees in decision-making and staff positions are individuals with disabilities must be based on the total number of hours (excluding any overtime) for which employees are actually paid during the last six-month period covered by the center's most recent annual performance report. However, a center must include in this determination its employees who are on unpaid family or maternity leave during this six-month period;

c. The center promotes self-help and self-advocacy among individuals with significant disabilities (e.g., by conducting activities to train individuals with significant disabilities in self-advocacy);

d. The center promotes the development of peer relationships and peer role models among individuals with significant disabilities (e.g., by using individuals with significant disabilities who have achieved IL goals (whether the goals were achieved independently or through assistance and services provided by a center) as instructors (volunteer or paid) in its training programs or as peer counselors);

e. The center ensures equal access of individuals with significant disabilities, including communication and physical access, to the center's services, programs, activities, resources, and facilities, whether publicly or privately funded. Equal access, for purposes of this subdivision, means that the same access is provided to any individual with a significant disability regardless of the individual's type of significant disability;

f. The center advocates for and conducts activities that promote the equal access to all services, programs, activities, resources, and facilities in society, whether public or private, and regardless of funding source, for individuals with significant disabilities; and

g. The center makes available in alternative formats, as appropriate, all of its written policies and materials and IL services.

2. Compliance indicator 2, Provision of services on a cross-disability basis. The center shall provide evidence in its most recent annual performance report that:

a. Provides IL services to eligible individuals or groups of individuals without restrictions based on the particular type or types of significant disability of an individual or group of individuals, unless the restricted IL services (other than the IL core services) are unique to the significant disability of the individuals to be served;

b. Provides IL services to individuals with a diversity of significant disabilities and individuals who are members of populations that are unserved or underserved by programs under Title VII of the Act; and

c. Provides IL core services to individuals with significant disabilities in a manner that is neither targeted nor limited to a particular type of significant disability.

3. Compliance indicator 3, Independent living goals. The center shall provide evidence in its most recent annual performance report that it:

a. Maintains a consumer service record that meets the requirements of 22 VAC 30-30-31 for each consumer;

b. Facilitates the development and achievement of IL goals selected by individuals with significant disabilities who request assistance from the center;

c. Provides opportunities for consumers to express satisfaction with the center's services and policies in facilitating their achievement of IL goals and provides any results to its governing board and the appropriate Statewide Independent Living Council;

d. Notifies all consumers of their right to develop or waive the development of an IL plan; and

e. Maintains records on the IL goals that consumers receiving services at the center believe they have achieved, the number of IL plans developed by consumers receiving services at the center, and the number of waivers signed by consumers receiving services at the center stating that an IL plan is unnecessary.

4. Compliance indicator 4, Community options and community capacity. The center shall provide evidence in its most recent annual performance report that, during the project year covered by the center's most recent annual performance report, the center promoted the increased availability and improved quality of community-based programs that serve individuals with significant disabilities and promoted the removal of any existing architectural, attitudinal, communication, environmental, or other type of barrier that prevents the full integration of these individuals into society. This evidence must demonstrate that the center performed at least one activity in each of the following categories:

a. Community advocacy;

b. Technical assistance to the community on making services programs, activities, resources, and facilities in society accessible to individuals with significant disabilities;

c. Public information and education;

d. Aggressive outreach to members of populations of individuals with significant disabilities that are unserved or underserved by programs under Title VII of the Act in the center's service area; and

e. Collaboration with service providers, other agencies, and organizations that could assist in improving the

options available for individuals with significant disabilities to avail themselves of the services, programs, activities, resources, and facilities in the center's service area.

5. Compliance indicator 5, IL core services and other IL services. The center shall provide evidence in its most recent annual performance report that it provides:

a. Information and referral services to all individuals who request this type of assistance or services from the center in formats accessible to the individual requesting these services; and

b. As appropriate in response to requests from individuals with significant disabilities who are eligible for IL services from the center, the following services:

(1) IL skills training;

(2) Peer counseling (including cross-disability peer counseling);

(3) Individual and systems advocacy; and

(4) A combination, as appropriate, of any two or more of the IL services defined in § 7(30)(B) of the Act and 22 VAC 30-30-80.

6. Compliance indicator 6, Resource development activities. The center shall provide evidence in its most recent annual performance report that it has conducted resource development activities within the period covered by the performance report to obtain funding from sources other than Chapter 1 (29 USC § 796 et seq.) of Titles VII of the Act.

**22 VAC 30-30-200. Scope of services for center for independent living. (Repealed.)**

~~Services provided through grants or contracts with independent living centers may include:~~

~~1. Intake counseling to determine the individual's need for specific independent living services;~~

~~2. Peer counseling;~~

~~3. Independent living skills counseling and training, including equipment maintenance, job seeking skills, counseling related to therapy needs and programs, and special programs for persons with hearing disabilities;~~

~~4. Advocacy for persons with disabilities;~~

~~5. Counseling and advocacy services regarding legal and economic rights and benefits for the individual and their families;~~

~~6. Education and training necessary for living in the community and participating in community activities;~~

~~7. Referral and counseling services regarding attendant care;~~

~~8. Attendant care and the training of such personnel to provide such care;~~

~~9. Housing and transportation referral;~~

~~10. Surveys, directories and other activities to identify appropriate housing, accessible transportation and other support services;~~

~~11. Individual and group social and recreational activities;~~

~~12. Health maintenance programs;~~

~~13. Job development;~~

~~14. Community group living arrangements;~~

~~15. Other programs designed to provide resources, training, counseling services, or other assistance of substantial benefit, including but not limited to systems advocacy, community education, and technical assistance which do not conflict with federal or state laws and which promote the independence, productivity and quality of life of person with disabilities.~~

#### **22 VAC 30-30-201. Funded activities under CIL program.**

*A. This subsection is applicable to federally funded CILs. An eligible agency may use funds awarded under Subpart B of 34 CFR Part 366 and subsection E of 22 VAC 30-30-131 to provide training and technical assistance to eligible agencies, centers, and the Statewide Independent Living Council to plan, develop, conduct, administer, and evaluate centers.*

*B. This subsection is applicable to federally funded CILs. An eligible agency may use funds awarded under subsections C and D of 22 VAC 30-30-131 to:*

*1. Plan, conduct, administer, and evaluate centers that comply with the standards and assurances in § 725(b) and (c) of the Act;*

*2. Promote and practice the independent living (IL) philosophy in accordance with Evaluation Standard 1 (Philosophy) in 22 VAC 30-30-181;*

*3. Provide IL services (including IL core services and, as appropriate, a combination of any other IL services specified in § 7(30)(B) of the Act) to individuals with a range of significant disabilities in accordance with Evaluation Standards 2 and 5 (Provision of services and Independent living core services, respectively) in 22 VAC 30-30-181;*

*4. Facilitate the development and achievement of IL goals selected by individuals with significant disabilities who seek assistance in the development and achievement of IL goals from the center in accordance with Evaluation Standard 3 (Independent living goals) in 22 VAC 30-30-181;*

*5. Increase the availability and improve the quality of community options for independent living in order to facilitate the development and achievement of IL goals by individuals with significant disabilities in accordance with Evaluation Standard 4 (Community options) in 22 VAC 30-30-181;*

*6. Increase the capacity of communities within the service area of the center to meet the needs of individuals with significant disabilities in accordance with Evaluation Standard 6 (Activities to increase community capacity) in 22 VAC 30-30-181;*

*7. Conduct resource development activities to obtain funding from sources other than Chapter 1 (29 USC § 796 et seq.) of Title VII of the Act in accordance with Evaluation Standard 7 (Resource development activities) in 22 VAC 30-30-181; and*

*8. Conduct activities necessary to comply with the assurances in § 725(c) of the Act, including, but not limited to, the following:*

*a. Aggressive outreach regarding services provided through the center in an effort to reach populations of individuals with significant disabilities that are unserved or underserved by programs under Title VII of the Act, especially minority groups and urban and rural populations; and*

*b. Training for center staff on how to serve unserved and underserved populations, including minority groups and urban and rural populations.*

#### **22 VAC 30-30-210. Participation by individuals in cost of services. (Repealed.)**

~~A. Each public or private agency awarded a grant or contract in accordance with § 51.5-23 of the Code of Virginia shall utilize the board's regulations to maximize the financial participation of persons receiving services.~~

~~B. Groups exempt are:~~

~~1. Recipients of General Relief.~~

~~2. Recipients of Aid to Families with Dependent Children by the client or family in which the client is dependent.~~

~~3. Recipients of Supplemental Security Income (SSI).~~

~~4. Recipients of Social Security Disability Income (SSDI).~~

~~C. The department's economic need test shall be used to determine the individual's participation in the cost of services received in the CILs. Services to individuals exempt from consideration for financial participation shall be evaluation, intake, peer counseling, advocacy, information and referral, independent living skills training, interpreter services for the deaf and job development.~~

~~Services which require an economic need test are: (i) equipment maintenance; (ii) education and training necessary for living in the community; (iii) attendant care and training of such personnel to provide such care; (iv) individual and group social and recreational activities; (v) health maintenance programs; and (vi) community group living arrangements.~~

#### **22 VAC 30-30-211. Periodic review of centers for independent living (CILs).**

*A. This subsection is applicable to state-funded CILs and CILs receiving funds under § 723 of the Act and subsection D of 22 VAC 30-30-131. The director of the DSU shall periodically review each center to determine whether the center is in compliance with the standards and assurances in § 725(b) and (c) of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181. For purposes of this section, in the case of a state in which there is both a DSU responsible for providing IL services to the general population and a DSU responsible for*

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providing IL services for individuals who are blind, the "director" shall be the director of the general DSU. These state units shall periodically consult with each other with respect to the provision of services for individuals who are blind.

1. For state-funded CILs, the periodic review shall include annual on-site compliance reviews of at least 15 percent of the centers.

2. For CILs receiving funds under § 723 of the Act and subsection D of 22 VAC 30-30-131, the periodic review shall include annual on-site compliance reviews of at least 15% of the centers.

3. Each team that conducts an on-site compliance review shall include at least one person who is not an employee of the designated state agency, who has experience in the operation of centers, and who is jointly selected by the director of the DSU and the chairperson of the Statewide Independent Living Council (council), or other individual designated by the council to act on behalf of and at the direction of the council.

4. A copy of each review shall be provided to the council. For centers receiving funds under § 723 of the Act and subsection D of 22 VAC 30-30-131, a copy shall also be provided to the Secretary of the U.S. Department of Education.

B. This subsection is applicable to federally and state-funded CILs. For state-funded CILs and CILs receiving funds under § 723 of the Act and subsection D of 22 VAC 30-30-131 if the director of the DSU determines that the center is not in compliance with the standards and assurances in § 725(b) and (c) of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181, the director shall immediately notify the center in writing that the center is out of compliance. For CILs receiving funds under § 721 of the Act and subsection C of 22 VAC 30-30-131, if the Secretary of the U.S. Department of Education determines that the center is not in compliance with the standards and assurances in § 725(b) and (c) of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181, the secretary shall immediately notify the center in writing that the center is out of compliance. The director or secretary, as appropriate, shall provide technical assistance to the center to develop a corrective action plan to comply with the standards and assurances. The director's or secretary's, as appropriate, initial written notice must:

1. Include, at a minimum, (i) the name of the center, (ii) the reason or reasons for proposing the termination of funds or other significant adverse action against the center, including any evidence that the center has failed to comply with any of the evaluation standards or assurances, and (iii) the effective date of the proposed termination of funds or other significant adverse action against the center;

2. Be given 90 days in advance of the date the director or secretary, as appropriate, intends to terminate a center's funds or take any other significant adverse action against the center;

3. Inform the center that it has 90 days from the date the center receives the notice to submit a corrective action plan;

4. For centers receiving federal funds under § 723 or 725 of the Act, inform the center that (i) it may seek mediation and conciliation in accordance with this subsection to resolve any dispute within the 90 days before the proposed action against the center and (ii) if mediation and conciliation are not successful and the director does not issue a final written decision under subdivision C 3 of this section, the center may appeal to the Secretary of the U.S. Department of Education the decision described in the director's initial written notice on or after the 90th day, but not later than the 120th day, after the center receives the director's initial decision; and

5. Be sent by certified mail, return receipt requested, or by other means that provide proof of receipt.

C. This subsection is applicable to state-funded CILs and CILs receiving funds under § 723 of the Act and subsection D of 22 VAC 30-30-131.

1. Unless the center receiving funds under § 723 of the Act and subsection D of 22 VAC 30-30-131 submits, within 90 days after receiving the initial written notice, a corrective action plan to achieve compliance that is approved by the director or, if appealed, is approved by the Secretary of the U.S. Department of Education, the director shall terminate all funds under § 723 of the Act and subsection D of 22 VAC 30-30-131 to the center. Funds shall be terminated 90 days after the later of: (i) the date that the center receives the initial written notice, or (ii) the date that the center receives the secretary's final decision, if the center appeals under 22 VAC 30-30-220 the director's decision described in the initial written notice, or the director's decision not to approve the corrective action plan.

2. For centers receiving state general funds, the director shall terminate all state general funds to the center 90 days after the date the center receives the director's initial written notice, unless the center submits, within 90 days after receiving the initial written notice, a corrective action plan to achieve compliance that is approved by the director.

3. If the center submits a corrective action plan within the 90-day period, the director shall provide to the center, not later than the 120th day after the center receives the director's initial written notice, a final written decision approving or disapproving the center's corrective action plan and informing the center, if appropriate, of the termination of the center's funds or any other proposed significant adverse action against the center.

a. The director's final written decision to disapprove a center's corrective action plan must (i) address any response from the center to the director's initial written notice, (ii) include a statement of the reasons why the director could not approve the corrective action plan, and (iii) inform a center receiving funds under § 723 of the Act of its right to appeal to the Secretary of the U.S. Department of Education, within 30 days from receipt, the

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director's final written decision to terminate funds or take other significant adverse action against the center.

b. A director's final written decision to terminate funds or take any other adverse action against a center may not take effect until 30 days after the date that the center receives it.

c. If a center receiving funds under § 723 of the Act and subsection D of 22 VAC 30-30-131 appeals under subsection A of 22 VAC 30-30-220, the director's final written decision to terminate funds or take any other adverse action against a center does not take effect until the Secretary of the U.S. Department of Education issues a final decision.

d. The director shall send the final written decision to the center by registered or certified mail, return receipt requested, or other means that provide a record that the center received the director's final written decision.

## **22 VAC 30-30-220. Appeal procedures for CILs.**

~~Appeal Procedures for Independent Living Rehabilitation Services provided by Independent Living Rehabilitation Centers shall adhere to a department approved appeal procedure.~~

A. This subsection is applicable to centers receiving funds under § 723 of the Act. To obtain the Secretary of the U.S. Department of Education review of a director's final written decision to disapprove a center's corrective action plan submitted under subdivision C 1 of 22 VAC 30-30-211, the center shall file, within 30 days from receipt of the director's final written decision, a formal written appeal with the secretary giving the reasons why the center believes that the director should have approved the center's corrective action plan. For purposes of this section, in the case of a state in which there is both a DSU responsible for providing IL services to the general population and a DSU responsible for providing IL services for individuals who are blind, the "director" shall be the director of the general DSU. These DSUs shall periodically consult with each other with respect to the provision of services for individuals who are blind.

B. This subsection is applicable to centers receiving funds under § 723 of the Act. To obtain the Secretary of the U.S. Department of Education's review of a decision described in a director's initial written notice, a center that does not submit a corrective action plan to a director shall file, in accordance with subdivision C 1 a (1) of this section, a formal written appeal with the secretary giving the reasons why the center believes that the director should have found the center in compliance with the standards and assurances in § 725(b) and (c) of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181.

C. This subsection is applicable to centers receiving funds under § 723 of the Act and subsection D of 22 VAC 30-30-131. To appeal to the Secretary of the U.S. Department of Education a decision described in a director's initial written notice or a director's final written decision to disapprove a center's corrective action plan and to terminate or take other significant adverse action:

1. A center shall file with the secretary:

a. A formal written appeal:

(1) On or after the 90th day but not later than the 120th day following a center's receipt of a director's initial written notice; or

(2) On or before the 30th day after a center's receipt of the director's final written decision to disapprove a center's corrective action plan and to terminate or take other significant adverse action;

b. A copy of the corrective action plan, if any, submitted to the director; and

c. One copy each of any other written submissions sent to the director in response to the director's initial written notice to terminate funds or take other significant adverse action against the center.

2. The date of filing a formal written appeal to the secretary is determined in a manner consistent with the requirements of 34 CFR 81.12.

3. If the center files a formal written appeal with the secretary, the center shall send a separate copy of the appeal to the director by registered or certified mail, return receipt requested, or other means that provide a record that the director received a separate copy of the center's written appeal.

4. The center's formal written appeal to the secretary must state why:

a. The director has not met the burden of showing that the center is not in compliance with the standards and assurances in § 725(b) and (c) of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181; and

b. The corrective action plan, if any, should have been approved; or

c. The director has not met the procedural requirements of subsection B of 22 VAC 30-30-211 and subsections A through E of this section.

5. As part of its submissions, the center may request an informal meeting with the secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

D. This subsection is applicable to centers receiving funds under § 723 of the Act and subsection D of 22 VAC 30-30-131. A director's decision to terminate funds that is described in an initial written notice or final written decision is stayed as of the date (determined under subdivision C 2 of this section) that the center files a formal written appeal with the secretary.

E. This subsection is applicable to centers receiving funds under § 723 of the Act and subsection D of 22 VAC 30-30-131. If the center files a formal written appeal in accordance with subsection C of this section, the director shall, within 15 days of receipt of the center's appeal, submit to the secretary one copy each of the following:

1. The director's initial written notice to terminate funds or take any other significant adverse action against the center sent to the center.

2. The director's final written decision, if any, to disapprove the center's corrective action plan and to terminate the center's funds or take any other significant adverse action against the center.

3. Any other written documentation or submissions the director wishes the secretary to consider.

4. Any other information requested by the secretary.

5. As part of its submissions, the director may request an informal meeting with the secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

F. This subsection is applicable to centers receiving funds under § 723 of the Act and subsection D of 22 VAC 30-30-131. If either party requests a meeting under subdivisions ~~C 4 and C 5~~ or E 5 of this section, the meeting is to be held within 30 days of the date of the secretary's receipt of the submissions from the director that are required by subsection E of this section. The secretary promptly notifies the parties of the date and place of the meeting.

1. Within 30 days of the informal meeting or, if neither party has requested an informal meeting, within 60 days of the date of receipt of the submissions required from the director by subsection E of this section, the secretary issues to the parties the secretary's decision.

2. The secretary reviews a decision included in a director's initial written notice or a director's final written decision to disapprove the center's corrective action plan and to terminate the center's funds or take any other significant adverse action against the center based on the record submitted under subsections C and E of this section and may affirm or, if the secretary finds that the decision included in a director's initial written notice or a director's final written decision is not supported by the evidence or is not in accordance with the law, may:

- a. Remand the appeal for further findings; or
- b. Reverse the decision described in the director's initial written notice or the director's final written decision.

3. The secretary sends copies of the decision to the parties by registered or certified mail, return receipt requested, or other means that provide a record of receipt by both parties.

4. If the secretary affirms the decision described in a director's initial written notice or the director's final written decision, the director's decision takes effect on the date of the secretary's final decision to affirm.

**22 VAC 30-30-230. ~~Protections, use and release of personal information. (Repealed.)~~**

~~The CILs will adhere to the department's regulations as set forth in 22 VAC 30-20-190 of the Virginia Rehabilitative Regulations.~~

**22 VAC 30-30-240. ~~Cooperative agreements. (Repealed.)~~**

~~No services funded by the department to the CILs shall be provided to:~~

~~1. Persons whose primary impairment is mental illness, mental retardation or substance abuse, except by cooperative agreement with the local community service board established pursuant to § 37.1-19.4 et seq. of the Code of Virginia, when the board is currently offering the same services; or~~

~~2. Public school aged persons, except by cooperative agreement with that person's school, unless the services are not otherwise available.~~

**PART III.**

**INDEPENDENT LIVING SERVICES (ILS) PROGRAM.**

**22 VAC 30-30-241. Agencies eligible for ILS program.**

A. Any DSU identified by the state under 34 CFR 364.22 is eligible to apply for assistance under 34 CFR Part 365 and this part.

B. To receive a grant under 34 CFR Part 365 and this part, a state shall submit to the Secretary of the U.S. Department of Education and obtain approval of a state plan that meets the requirements of Part A of Title VII of the Act and Subparts B and C of 34 CFR Part 264.

**22 VAC 30-30-250. Referrals.**

A. Department of Rehabilitative Services clients referred to ~~CIL~~ a center for independent living by department counselors for specific services related to the vocational objective under the ~~WRRP~~ Individualized Employment Plan (IEP) may have those services funded by the department based upon approved vendor arrangements between the department and the respective center.

B. The DSU shall develop, establish, and maintain written standards and procedures to be applied by service providers to assure expeditious and equitable handling of referrals and applications for IL services from individuals with significant disabilities.

C. The service provider shall apply the standards and procedures established by the DSU to assure expeditious and equitable handling of referrals and applications for IL services from individuals with significant disabilities.

D. A DSU may handle referrals and applications for IL services or, except as otherwise provided, may delegate these functions and responsibilities to the appropriate service provider with which the DSU subgrants or contracts to provide IL services.

**22 VAC 30-30-260. Authorized use of ILS funds.**

A. The Secretary of the U.S. Department of Education provides financial assistance to states under the Independent Living Services program authorized by Part B of Chapter 1 (29 USC § 796 et seq.) of Title VII of the Act to:

1. Provide the resources described in the resource plan required by § 705(e) of the Act and 34 CFR 364.21(d) relating to the Statewide Independent Living Council. A

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majority of the voting members of the Statewide Independent Living Council must be individuals with disabilities and not employed by any state agency or center for independent living;

2. Provide to individuals with significant disabilities the independent living services required by section 704(e) of the Act;

3. Demonstrate ways to expand and improve IL services;

4. Support the operation of centers for independent living that are in compliance with the standards and assurances in § 725(b) and (c) of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181;

5. Support activities to increase the capacities of public or nonprofit agencies and organizations and other entities to develop comprehensive approaches or systems for providing IL services;

6. Conduct studies and analyses, gather information, develop model policies and procedures, and present information, approaches, strategies, findings, conclusions, and recommendations to federal, state, and local policy makers in order to enhance IL services for individuals with significant disabilities;

7. Train individuals with significant disabilities, individuals with disabilities, individuals providing services to individuals with significant disabilities, and other persons regarding the IL philosophy; and

8. Provide outreach to populations that are unserved or underserved by programs under Title VII of the Act, including minority groups and urban and rural populations.

B. The state may use funds received under 34 CFR Part 365 to support the activities listed in subsection A of this section and to meet its obligation under § 704(e) of the Act and 34 CFR 364.43(b) and subsection A of 22 VAC 30-30-270.

**22 VAC 30-30-270. Grants or contracts for IL services.**

A. The state plan must provide that the state directly, or through grants or contracts, will provide IL services with federal, state, or other funds.

B. A state may not condition the award of a grant, subgrant, or contract under § 713 of the Act or a grant, subgrant, or assistance contract under § 723 of the Act and subsection D of 22 VAC 30-30-131 on the requirement that the applicant for the grant or subgrant make a cash or in-kind contribution of any particular amount or value to the state.

C. An individual, entity, or organization that is a grantee or subgrantee of the state, or has a contract with the state, may not condition the award of a subgrant or subcontract under § 713 of the Act or § 723 of the Act and subsection D of 22 VAC 30-30-131 on the requirement that the applicant for the subgrant or subcontract make a cash or in-kind contribution of any particular amount or value to the state or to the grantee or contractor of the state.

D. If a state makes a subgrant or enters into a contract to provide IL services to meet its obligation under § 704(e) of the Act:

1. The provisions of 34 CFR Part 365 apply to both the state and the entity or individual to whom it awards a subgrant or with whom it enters into a contract; and

2. The provisions concerning the administration of subgrants and contracts in 34 CFR Parts 76 and 80 apply to the state.

**22 VAC 30-30-280. Standards for service providers.**

A. In providing IL services to individuals with significant disabilities, service providers shall comply with:

1. The written standards for IL service providers established by the DSU required by subsections B and C of this section; and

2. All applicable state or federal license or certification requirements.

B. The DSU shall develop, establish, make available to the public, maintain, and implement written minimum standards for the provision of:

1. IL services to be met by service providers that are not centers; and

2. Specialized IL services to individuals with significant disabilities by centers under a contract with the DSU. These minimum standards may differ from the standards and assurances in § 725 of the Act, 22 VAC 30-30-171, and 22 VAC 30-30-181.

C. The DSU shall assure that participating service providers meet all applicable state licensure or certification requirements.

[VA.R. Dec. No. R03-36; Filed July 7, 2003, 4:03 p.m.]

[I certify that this regulation is full, true, and correctly dated

James A. Rothrock, M.S., L.P.C.

Commissioner, Department of Rehabilitative Services]

