



Proposed Regulation Agency Background Document

Agency name	Department for Aging and Rehabilitative Services
Virginia Administrative Code (VAC) citation	___22_ VAC_30__ -_20__
Regulation title	PROVISION OF VOCATIONAL REHABILITATION SERVICES
Action title	Regulatory Review to update regulations and reduce regulatory burden
Date this document prepared	November 25, 2013

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

Brief summary

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

Changes to the existing regulation include the deletion of the section entitled *The evaluation of vocational rehabilitation potential*. This section is redundant and unnecessary. The proposed changes also delete or change the maximum amounts the department can pay for certain services. Added is the change that individuals seeking assistance with 4 year academic programs must attend first 2 years at a community college unless program or disability related needs cannot be met at the community college. The academic grade requirement for continued sponsorship in post secondary schools has been amended to state the minimum grade requirement established by the academic program. The section on consumer financial participation has been clarified and updated to reflect that the department follows the federal poverty guidelines in establishing the amount individuals will be required to contribute toward their vocational rehabilitation program. The section entitled *Review of rehabilitation counselor or coordinator determination* has been renamed as *Review of determinations made by the department* and has been changed to add specific procedures to be followed along with specific deadlines.

Acronyms and Definitions

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

DARS- Department for Aging and Rehabilitative Services

Legal basis

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

The Commissioner of DARS has authority to promulgate regulations pursuant to Code of Virginia § 51.5-131.

Purpose

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

The Commissioner of the Department for Aging and Rehabilitative Services (DARS), in response to the Governor's Regulatory Reform Initiative, seeks to review and amend current regulations regarding the Provision of Vocational Rehabilitation Services to repeal unnecessary or no longer used regulations, remove unnecessary requirements in the regulations, and, in some instances, make the regulations consistent with federal vocational rehabilitation regulations. This amendment will protect the safety and welfare of citizens by clarifying the regulatory requirements for the public.

Substance

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

The proposed regulation repeals section 50 on the evaluation of vocational rehabilitation potential because this section is redundant and unnecessary. Substantive changes made to this existing regulation include the elimination of maximum dollar limits the department can spend on specific services. The requirement that the department can only assist individuals with severe disabilities in obtaining a graduate degree has been removed. In order for the department to sponsor an academic program, the individual must maintain a "C" average or the academic grade required of the academic program. The proposed regulation changes the maximum amount the department can pay for books and supplies from \$400 to the amount determine by the educational institution. The amount that can be paid for private transportation has been changed from a fixed .12 per mile to an amount that can be established by the department. The maximum dollar amount the department can provide for home and vehicle modifications has been deleted. The proposed regulation stresses that income and resources of the family are to be considered in the financial participation test if the client is counted as a dependent on the last federal income tax. A table with a family income exclusion amount based on family size has been deleted. Instead a statement has been added explaining that the financial exclusion amount is based upon the federal poverty guidelines that are updated annually. The section entitled *Review of rehabilitation counselor or coordinator determination* has been renamed as *Review of determinations made by the*

department and has been changed to add specific procedures to be followed along with specific deadlines.

Issues

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

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

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

The proposed regulatory action will make the regulation easier for the public to understand and simpler for the department to implement. The proposal brings the regulation up to date with current practices in the state-federal vocational rehabilitation program. There are no disadvantages to the public, the department, or the Commonwealth.

Requirements more restrictive than federal

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

The proposed regulation is not more restrictive than the federal counterpart 34 CFR Part 361. However, 34 CFR Part 361 Subpart B: 54 allows states to decide whether or not to implement a financial needs test to determine the amount an individual will participate in the cost of vocational rehabilitation services. DARS has elected to implement a financial needs test and 22VAC30-20-160 delineates the method for determining the amount an individual will contribute to his vocational rehabilitation program.

Localities particularly affected

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

No locality is particularly affected

Public participation

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

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

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to Vanessa S. Rakestraw, Ph.D., CRC, 8004 Franklin Farms Drive, Henrico, VA 23229, Vanessa.Rakestraw@dars.virginia.gov, fax: (804) 662-7663. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

Economic impact

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

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.	\$0. This action will not result in any additional cost to implement.
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	\$0. This action does not affect localities.
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	This action will affect consumers with disabilities who apply for vocational rehabilitation services from DARS.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	DARS served 28,889 consumers during the Fiscal Year 2012. As of April 2013, DARS was in the process of serving 19,515 consumers. No established small businesses will be affected by these regulatory amendments.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	This action will not increase existing costs on consumers. No substantive changes are being proposed.
Beneficial impact the regulation is designed to produce.	This action is designed to eliminate duplicative or unnecessary regulations.

Alternatives

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

The department considered repealing the regulation and relying on federal regulations to administer the state-federal vocational rehabilitation program in Virginia. However, certain state options are allowed in implementing the federal regulations. Therefore, the department decided to amend the existing regulation in order to have the force of law behind the options it chose. Having written state regulations helps to reduce ambiguity and may reduce the expense involved in appealing nonspecific federal regulations.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

This regulation was reviewed in its entirety as part of Governor McDonnell's Regulatory Reform Initiative. One proposed section was identified as a candidate for repeal because it is unnecessary or duplicative. Other sections were amended to make them conform to federal requirements or to clarify procedures. Small businesses are not impacted by these regulatory amendments.

Public comment

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

No public comments were received.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and

one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed changes to this regulation will have no negative family impact. The positive impact of this regulation is to remove outdated and unnecessary rules, have less restrictive rules in some instances, and ensure that the rules conform to current practices and policies that help individuals with disabilities achieve or retain gainful employment. The goal of obtaining or retaining employment will continue to encourage economic self-sufficiency and increase disposable family income.

Detail of changes

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

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

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10		Contains definitions no longer used or obsolete as well as definitions that have changed.	<p>Proposed amendments to remove definitions that are obsolete or no longer used in the regulation, and to change definitions to ensure that they consistent with current laws and existing practices.</p> <p>Deletes definitions of designated state agency and state unit and combines information in these definitions in the definition of department. All use of the term designated state unit and state agency are to be changed to department.</p> <p>Definitions to the following terms have been added: Client Assistance Program, One-Stop centers, and Vocational rehabilitation potential.</p> <p>Minor grammatical changes to text have been proposed.</p>
20		Face to face meeting between vocational rehabilitation counselor and applicant is required when applying for services.	Deletes requirement for this face to face meeting. This allows the department to process applications more efficiently to provide services to consumers.
30			Designated state unit has been changed to department.

40			Designated state unit has been changed to department. The verb will has been changed to shall. Grammatical changes made.
50		Discussed evaluation of vocational rehabilitation potential.	This section is repealed because it is redundant with other sections and does not add any information to the regulation.
60			The term designated state unit has been changed to department. The verb will has been changed to shall. Grammatical changes made.
70			No text changes.
80			Designated state unit has been changed to department. May has been changed to shall Name of Virginia Office of Protection and Advocacy has been deleted because the name of this office has been changed. New name is discussed in definitions section.
90			Designated state unit has been changed to department. The verb may has been changed to shall.
95			Designated state unit and agency have been changed to department
100		Term IEP is used without explanation or definition. Subsection C on Review of ineligibility determination has been deleted because it is redundant to Subsection A in Section 22VAC30-20-80	To reduce confusion, Individualized Education Plan is now spelled out in this section. The term designated state unit has been changed to department. The verbs will and must have been changed to shall.
110			The term designated state unit has been changed to department. The verbs will and must have been changed to shall. The term part has been change to chapter. Name of Virginia Office of Protection and Advocacy has been deleted because the name of this office has been changed.
120		Includes definitions of physical and mental restoration services along with exact time periods some of these services can be	<i>All physical restoration services are listed in the definitions section; therefore, they are deleted from this section. In addition specific time limits determining how long a service can be provided have been</i>

	<p>provided.</p> <p>Procedures with limited vocational outcomes will not be provided.</p> <p>Provides a listing of the types of training institutions that may be used.</p> <p>Requires that all consumers maintain a “C” average over the academic year to receive financial sponsorship from the department.</p> <p>The department shall assist only individuals with severe disabilities in securing a graduate degree and only when it is judged essential to achieving an employment goal.</p> <p>The department may pay tuition for college and university training in an amount not in excess of the highest amount charged for tuition by a state-supported institution or the rate published in the catalog, whichever is less, except where out-of-state college is necessary</p> <p>Any individual enrolling into any college/university course or courses for the primary purpose of course or program certification and not for the purpose of obtaining a degree shall be exempt from the application of the annual</p>	<p><i>deleted. This change allows the department to better follow the recommendations from the physical and mental health care provider in assisting consumers to receive services to become employed.</i></p> <p><i>Adds statement that physical and mental restoration procedures that are not related to a vocational outcome shall not be provided.</i></p> <p><i>Only training institutions approved in accordance with the department’s vendor approval process will be used. Deletes listing of specific types of institutions because list may not be conclusive.</i></p> <p><i>Adds that the grade required for departmental sponsorship in a particular course of study is the average grade required by the training institution for the particular course of study. A “C” average is required when the program does not have a grade average requirement to remain in the course of study.</i></p> <p><i>Removes the requirement that the department will only assist those with severe disabilities in securing a graduate degree. Adds that graduate school will only be sponsored when it leads to an employment goal agreed to by both the department and the individual.</i></p> <p><i>Adds that department may also pay for private college if necessary. Defines the conditions that must exist in order to be necessary for the department to sponsor out of state or private college programs.</i></p> <p><i>Deletes this section.</i></p>
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		<p>maximum tuition rate.</p> <p>The maximum amount of department financial assistance for required textbooks and supplies (pencils, paper, etc.) shall be \$400 for normal school year or \$500 if summer school is attended</p> <p>When public transportation is not available, or the individual, because of disability, cannot travel by public transportation, transportation may be provided at a rate not to exceed \$0.12 a mile.</p>	<p><i>The maximum amount for books and supplies shall not exceed the amount determined by the education institution for books and supplies in the student's school budget.</i></p> <p><i>This has been changed to state at a rate established by the department. The rate that is paid for transportation needs to fluctuate with the economy and the cost of gasoline.</i></p>
		<p>The interpreter must, whenever possible, certified by the National Registry of the Deaf, Virginia Registry of the Deaf, or approved by the Virginia Department for the Deaf and Hard-of-Hearing.</p>	<p>The interpreter shall hold at least one of the credentials approved by the Virginia Department for the Deaf and Hard of Hearing in §51.5-113 of the Code of Virginia.</p>
		<p>(3) Cross and bicross aids may be purchased only when it is justifiable on the basis of the vocational objective.</p> <p>(4) Eyeglasses and hearing aids may be purchased only when they are equal in performance in terms of volume and speech discrimination and if the cost is not higher than that of a comparable body aid or a behind the ear aid</p>	<p>Both statements are deleted. The purchase of all services shall be justifiable on the basis of the vocational objective.</p>
		<p>Severe disabilities</p>	<p>Changed to significant disabilities to be consistent with the federal regulations.</p>
		<p>Follow-up services designed to reinforce and stabilize the job placement.</p>	<p>Changed to extended services to be consistent with the federal regulations.</p>
		<p>The department's financial participation in the cost of such equipment and software shall not exceed \$3,500.</p> <p>The department's financial participation in the cost of certain goods and services</p>	<p>Deletes the maximum dollar amounts for these specific services.</p>

		shall be limited as follows: home modifications, \$7,500; and vehicle modifications, \$7,500.	
130			Grammatical changes. Appropriate is changed to applicable.
140		Written authorization shall be made	Statement changed to "Written authorization for services shall be made".
150		Designated state unit	Department Rehabilitation Act of 1973 changed to the Act. The Act is defined in definitions. Federal regulation citation stricken.
160		Income and resources of the family are to be used when the client 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. Dependency of support evidenced on the last federal income tax return of the parent or legal guardian regardless of residency; or 2. When temporarily absent from the home due to illness, school, vacation, or military leave.	Removes the second provision concerning temporary absence from home. The income and resources of the family are to be considered in the financial participation test. The family unit is every one listed on the client's most recent federal income tax return.
		Includes a table with the amount that income is excluded based on family size.	Deletes that table adds statement that income shall be excluded from consideration based upon family size using the federal poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2). The department will use the federal poverty level for a family of four to determine the income exclusion for a family of one. The family income exclusion will be increased by the amount established in the annual federal poverty guidelines for each dependent. This change is necessary because the amount in the table is updated annually.
		Excluded from income shall	Excluded from income shall be estimated

		be estimated client cost specifically related to the client's disability and not covered by comparable services and benefits.	cost specifically related to the-family unit members' disabilities not covered by comparable services and benefits.
170		<p>If comparable services or benefits exist under any other program but are not available to the individual at the time needed to achieve the rehabilitation objectives the individual's individualized plan for employment, the state unit shall provide vocational rehabilitation services until those comparable services and benefits become available.</p> <p>Are State unit</p>	<p>Phrasing changed to state that benefits exist at the time needed to ensure the progress of the individual toward achieving the employment outcome.</p> <p>The goal of vocational rehabilitation services is to achieve an employment outcome. This rephrasing emphasizes this point.</p> <p>Shall department</p>
181		<p>Review of rehabilitation counselor or coordinator determinations.</p> <p>State unit</p>	<p>Review of determinations made by the department.</p> <p>Department</p>
		<p>The state unit must establish and implement procedures, including standards of review under subsection D of this section, to ensure that any applicant or eligible individual who is dissatisfied with any determinations made by a rehabilitation counselor or coordinator concerning the furnishing or denial of services may request, or, if appropriate, may request through the individual's representative, a timely review of those determinations.</p>	<p><u>Any applicant or eligible individual or designated representative who is dissatisfied with any determination made by a department personnel that affect the provision of vocational rehabilitation services may request a timely review of the determination.</u></p> <p>Removes language stating the unit must establish procedures. The actual procedures are included in the regulation.</p>
		<p>Specific time periods are not included in this subsection.</p>	<p><u>The request for review must be made within 60 calendar days after the determination. The applicant, eligible individual, or representative may request a meeting with the supervisor of the staff</u></p>

			<u>member who made the determination and request an Informal Administrative Review (IAR) conducted by the supervisor. Within ten working days of the IAR request, the supervisor must send a written decision and grounds to the applicant or eligible individual, with a copy to the representative, and it shall become part of the case record.</u>
		Specific time periods are not included in this subsection.	<u>Mediation must be requested within 60 calendar days after the determination or IAR decision. An applicant or eligible individual who has been judged incompetent must include the guardian in the mediation process.</u>
			<u>The mediator shall afford both parties an opportunity to be represented by counsel or other advocate and to submit evidence or other information. An individual who has been judged incompetent must include the guardian in the mediation process.</u>
			<u>Either party or the mediator may terminate mediation at any time, and the applicant, eligible individual or the department may seek resolution through a hearing</u>
			<u>Both parties to the dispute shall have an opportunity to review the agreement with their representative, supervisor, or legal advisor before signing it. An agreement signed by both parties shall become part of the case record,</u>
		The department shall establish formal review procedures	<p><u>Due process hearing. Department personnel may request a hearing within 60 calendar days after termination of the mediation process under subsection C of this section. The applicant, eligible individual, or representative may request a hearing within 60 calendar days after the determination to be reviewed, meeting or IAR decision under subsection B of this section, or mediation refusal or termination date.</u></p> <p>Removes language stating the unit must establish procedures. The actual procedures are included in the regulation. Clarifies that the request for hearing must be made within 60 calendar days.</p> <p><u>All testimony shall be given under oath. Hearsay testimony and redundant evidence may be admitted at the discretion of the hearing officer. Because the hearing officer cannot issue subpoenas, the department shall be responsible for the appearance of current department</u></p>

			<p><u>personnel on the witness list of either party. Within 30 calendar days after the hearing the hearing officer shall issue a report.</u></p> <p>Removes language stating the unit must establish procedures. The actual procedures are included in the regulation. Clarifies that the hearing report from hearing officer is due within 30 calendar days of the hearing.</p> <p>Adds that a hearing officer must be selected randomly by the department.</p> <p><u>The reviewing official may not overturn or modify the hearing decision, or any part of that decision, that supports the position of the applicant or eligible individual, unless the reviewing official concludes based on clear and convincing evidence that the hearing officer decision is clearly erroneous on the of being contrary to the approved state plan, the federal Rehabilitation Act of 1973 as amended (the Act), federal vocational rehabilitation regulations, and state regulations and policies that are consistent with federal requirements. Within 30 calendar days after the request, the reviewing official must issue an independent decision and full report of the findings and the statutory, regulatory, or policy grounds for the decision to the applicant, eligible individual, representative, and department commissioner.</u></p> <p>Adds subsection describing how an administrative review of the hearing officers decision is to be conducted if the department has established procedures for this type of review. Adds specific time period for the review to be conducted after a request is made.</p>
200		<p>State unit</p> <p>This review or reevaluation must include input from the individual or, in an appropriate case, the individual's representative</p>	<p>Department</p> <p>Annual review and reevaluation shall include input from the individual or, if appropriate, the individual's representative.</p>

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