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Final Regulation Agency Background Document

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| Agency name | Department for Aging and Rehabilitative Services |
| Virginia Administrative Code (VAC) citation(s) | __22__ VAC_30__20-__ |
| Regulation title(s) | PROVISION OF VOCATIONAL REHABILITATION SERVICES |
| Action title | Regulatory Review to update regulations and reduce regulatory burden |
| Date this document prepared | Oct. 20, 2016 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

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. 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

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On October 12, 2016, the Commissioner of the Department for Aging and Rehabilitative Services adopted the amendments to 22VAC30-20 Provision of Vocational Rehabilitation 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. The State Vocational Rehabilitation Services Program is regulated by 34 CFR Part 361.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The Commissioner of the Department for Aging and Rehabilitative Services (DARS), in response to former Governor McDonnell’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 the new substantive provisions, the substantive changes to existing sections, or both.

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 there are 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 requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need 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 that 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.

Family impact

Please assess the impact of this 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.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

No changes have been made since the publication of the proposed regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

No public comments were received regarding the amendments to this regulation.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale |
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| 10 | | Contains definitions no longer used or obsolete as well as definitions that have changed. | 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. 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. Definitions to the following terms have been added: Client Assistance Program, One-Stop centers, and Vocational rehabilitation potential. Minor grammatical changes to text have been proposed. |
| 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 |

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| 100 | | Term IEP is used without explanation or definition. | <p>To reduce confusion, Individualized Education Program is now spelled out in this section.</p> <p>The term designated state unit has been changed to department.</p> <p>The verbs will and must have been changed to shall.</p> <p>Subsection C on Review of ineligibility determination has been deleted because it is redundant to Subsection A in Section 22VAC30-20-80</p> |
| 110 | | | <p>The term designated state unit has been changed to department.</p> <p>The verbs will and must have been changed to shall.</p> <p>The term part has been change to chapter.</p> <p>Name of Virginia Office of Protection and Advocacy has been deleted because the name of this office has been changed.</p> |
| 120 | | <p>Includes definitions of physical and mental restoration services along with exact time periods some of these services can be 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>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 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.</p> <p>Adds statement that physical and mental restoration procedures that are not related to a vocational outcome shall not be provided.</p> <p>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.</p> <p>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.</p> |

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| | | <p>The department shall assist only individuals with severe disabilities in securing a graduate degree and only when it is judged only when it is judged essential to achieving an employment 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 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>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.</p> <p>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.</p> <p>Deletes this section.</p> <p>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.</p> <p>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.</p> |
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| | | <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>(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>Severe disabilities</p> <p>Follow-up services designed to reinforce and stabilize the job placement</p> <p>The department's financial participation in the cost of such equipment and software shall not exceed \$3,500. The department's financial participation in the cost of certain goods and services shall be limited as follows: home modifications, \$7,500; and vehicle modifications, \$7,500.</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>Both statements are deleted. The purchase of all services shall be justifiable on the basis of the vocational objective.</p> <p>Changed to significant disabilities to be consistent with the federal regulations.</p> <p>Changed to extended services to be consistent with the federal regulations.</p> <p>Deletes the maximum dollar amounts for these specific services.</p> |
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| 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 | <p>Department</p> <p>Rehabilitation Act of 1973 changed to the Act. The Act is defined in definitions.</p> <p>Federal regulation citation stricken.</p> |
| 160 | | <p>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.</p> <p>Includes a table with the amount that income is excluded based on family size.</p> <p>Excluded from income shall be estimated client cost specifically related to the client's disability and not covered by comparable services and benefits.</p> | <p>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.</p> <p>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.</p> <p>Excluded from income shall be estimated cost specifically related to the family unit members' disabilities not covered by comparable services and benefits.</p> |

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| <p>170</p> | | <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</p> <p>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. The goal of vocational rehabilitation services is to achieve an employment outcome. This rephrasing emphasizes this point</p> <p>. Shall</p> <p>department</p> |
| <p>181</p> | | <p>Review of rehabilitation counselor or coordinator determinations.</p> <p>State unit</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>Review of determinations made by the department.</p> <p>Department</p> <p>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.</p> <p>Removes language stating the unit must establish procedures. The actual procedures are included in the regulation.</p> |

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| | | <p>Specific time periods are not included in this subsection.</p> | <p>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 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. Specific time periods are not included in this subsection.</p> |
| | | <p>Specific time periods are not included in this subsection.</p> | <p>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.</p> <p>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.</p> <p>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</p> <p>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,</p> |
| | | <p>The department shall establish formal review procedures</p> | <p>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</p> |

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| | | | <p>section, or mediation refusal or termination date.</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>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 personnel on the witness list of either party. Within 30 calendar days after the hearing the hearing officer shall issue a report.</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>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.</p> |
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| | | | 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. |
| 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> |