



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Department of Rehabilitative Services
VAC Chapter Number:	22VAC30-20-90
Regulation Title:	Provision of Vocational Rehabilitation Services
Action Title:	Amend Order of Selection for Vocational Rehabilitation Services
Date:	

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

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summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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

In the event that the full range of vocational rehabilitation services cannot be provided to all eligible individuals who apply for services because of insufficient resources, an order of selection system may be implemented by the commissioner following consultation with the State Rehabilitation Council and the board. The order of selection shall determine those persons for whom services may be purchased. It shall be the policy of the department to encourage referrals and applications of all persons with disabilities and, to the extent resources permit, provide services to all eligible persons.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Code of Virginia 51.5-14 <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+51.5-14>

Public Law 105-220 105th Congress The Rehabilitation Act of 1973 as amended in 1998
http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.21&filename=publ220.105&directory=/diskc/wais/data/105_cong_public_laws

Office of Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulations and it comports with applicable state and federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

In the event that the full range of vocational rehabilitation services cannot be provided to all persons determined to be eligible because of insufficient resources, this intended regulation will allow the Department of Rehabilitative Services to enter into an order of selection to provide services to eligible individuals in an efficient and economical manner.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

Eligible individuals will be placed into one of four separate priority categories based on the severity or significance of their disabilities. Eligible individuals with the most significant disabilities will be served first. As resources become available, the next priority category will be opened, and vocational rehabilitation services will be provided to all eligible individuals within that open priority category. This regulation is needed to provide vocational rehabilitation

services to the most significantly disabled when resources are limited to point of not being able to serve all eligible individuals.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

1. The primary disadvantage this proposed regulation may have to individual citizens is that it may require some eligible persons with disabilities to be placed on a waiting list for vocational rehabilitation services. 2. The advantage to the agency is that it will allow the agency to provide services to the most significantly disabled in the event resources are limited. The disadvantage to the agency is that it will not be able to provide services to all eligible individuals and may disrupt relationships with referral sources.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Projected cost to the state to implement and enforce:

- (i) Fund source: Any costs associated with the implementation and enforcement of the proposed regulation will be paid from the Vocational Rehabilitation federal grant (110 grant).
- (ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this amendment.
- (iii) One-time versus on-going expenditures:

The agency will incur a one-time cost (less than \$500) for mailings to individuals on the Public Participation Guidelines mailing list and to conduct a public hearing.

If order of selection became necessary, there will be one-time costs for implementation to include: staff time to program the Virginia Rehabilitation Information System (the vocational rehabilitation consumer database) to create and maintain waiting lists; conducting public hearings on the proposed amendment to the State Plan for Vocational Rehabilitation and Supported Employment; staff time to amend the State Plan and attend

public hearings; a mailing to affected vocational rehabilitation consumers to notify them that order of selection is being implemented and provide information about their priority category; meetings of the State Rehabilitation Council and the Department of Rehabilitative Services' Board to notify them of order of selection implementation; and staff training. The projected cost of these one-time expenditures is approximately \$10,000, paid from 110 grant funds.

In addition, during the enforcement phase (actual implementation), the agency could experience an increase in requests for administrative hearings because some consumers will likely challenge the decision about their priority category. Currently, the administrative hearing officers are paid at an hourly rate of \$53.41. At this juncture, there is no way of knowing how many, if any, additional administrative hearings would be generated by order of selection. Costs of fair hearings, however, would be paid from existing 110 grant funds.

All expenses relating to implementation and enforcement of these regulations can be absorbed in the existing budget of the department.

Projected cost on localities: Individuals who cannot be served during order of selection must be referred to other service providers for possible assistance. Accordingly, it is possible that there will be additional costs to localities to provide services to these individuals. The potential cost to localities is unknown, however, because there is no way to project how many consumers would choose to seek assistance from local agencies or how many local agencies could, in fact, provide assistance.

Description of entities that are likely to be affected by regulation: If order of selection is implemented, the regulation will affect individuals with disabilities who are applying for services and subsequently are placed on a waiting list for services because they do not meet the criteria for the open priority category(ies). In addition, consumers who have been determined eligible for services, but do not have a signed service plan at the time of implementation, will be placed on a waiting list for services if they do not meet the open priority category(ies). Order of selection also may affect service providers who could see a decrease in authorizations for services to their organization, business, etc., because of fewer consumers being served. These providers include Employment Services Organizations, Centers for Independent Living, physicians, mental health personnel, colleges and universities, and other public and private vendors.

Estimate of number of entities to be affected: In the event that order of selection is implemented, the estimate of the number individuals with disabilities who will be affected will be dependent on the number of open priority categories. However, individuals in Priority Category IV, who do not have a signed service plan at the time of implementation, will not be served (except to receive diagnostic and assessment services for eligibility determination) until such time that the agency has sufficient resources to once again serve all eligible individuals. In FY 2002, approximately 860 consumers with non-significant disabilities were determined eligible for vocational rehabilitation services. The six-year average (1997-2002) was approximately 1,030.

Individuals with significant disabilities also will be affected if there are not sufficient resources to open either of these priority categories (Category II and III). In this event, the affected individuals will receive diagnostic and assessment services to determine eligibility and priority category placement. However, if they do not have a signed service plan in place at the time of implementation or, if they are determined not to be in an open category (based on the number of serious functional limitations they have), development and implementation of a service plan will not occur. In FY 2002, approximately 5,500 consumers with significant disabilities were determined eligible for vocational rehabilitation services. The six-year average (1997-2002) was approximately 6,300.

Currently, there are approximately 13,000 active service providers for the vocational rehabilitation program. It is unknown how many of them will be affected by order of selection.

Projected costs to the affected entities: In the event an order is implemented, the costs to consumers who cannot be served and who choose to seek employment services elsewhere is unknown. It is known that in FY 2002, approximately \$1.5 million was spent for services provided to consumers with non-significant disabilities. This represents 8.6% of all FY 2002 case service expenditures. For consumers with significant disabilities, approximately \$10 million was spent on case services, representing 55.9% of all FY 2002 case service expenditures.

The potential fiscal impact on service providers also is unknown.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

The regulation provides that vocational rehabilitation services will be provided according to the following priorities in the event that an order of selection becomes necessary.

Persons determined to be eligible for services shall be served according to the following order of priorities:

Priority I. An individual with a most significant disability in accordance with the definition of most significant disability in 22VAC30-20-10

Priority II. An individual with a significant disability that results in serious functional limitations in two functional capacities.

Priority III. An individual with a significant disability that results in a serious functional limitation in one functional capacity.

Priority IV. Other persons determined to be disabled, in order of eligibility determination.

In addition, the proposed regulation requires the Department of Rehabilitative Services' Commissioner to consult with the State Rehabilitation Council and the DRS Board.

Alternatives

Please describe the specific 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.

The Department of Rehabilitative Services will implement an order of selection as a last resort to allot limited resources. A departmental task force has been convened to recommend other methods of conserving resources that may be considered by the department. These recommendations will be implemented as appropriate according to state and federal law. However, if resources continue to be limited after these recommendations have been implemented, an order of selection will be necessary.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

An announcement of the department's intent to amend its regulations was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the Publication Participation Guidelines mailing list. Public comment was received until September 12, 2002. During the 30-day comment period, there was 1 comment (signed by 2 individuals) received by letter.

Summary of comment: The commentator did not express opposition to the department's intent to amend the regulation. While recognizing that federal law requires state vocational rehabilitation agencies to implement an order of selection in the event that the full range of vocational rehabilitation services cannot be provided to all eligible individuals, the commentator expressed opposition to the implementation of order of selection because of its potential impact on certain populations of the disability community. In addition, the commentator expressed a desire for the DRS Board to have a more prominent role in the decision to implement an order of selection and provided other technical comments about wording in the proposed amendments.

By letter dated September 27, 2002, the Commissioner of the Department of Rehabilitative Services responded to the comments ensuring the commentator that the agency would take every step to avoid implementation of an order of selection and emphasizing the importance of the DRS Board as an important advisory body to the agency.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The agency had an internal work group editing these regulations for clarity. A draft of the proposed regulation was provided with the NOIRA and was sent to individuals and entities that requested information on agency regulations be provided under the Public Participation Guidelines. The Assistant Attorney General who provides counsel to the agency has been involved during the development and adoption of the proposed regulation to ensure clarity and compliance with law and regulation.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

In May, 2006 the agency will review regulation to determine if it is meeting the needs of the agency and constituency.

Family Impact Statement

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

The proposed regulation may result in eligible individuals experiencing a delay in receiving vocational rehabilitation services due to a lack of available resources. This may delay some eligible individuals from becoming economically self-sufficient and may decrease the disposable family incomes of these individuals. However, the proposed regulation will allow the Department of Rehabilitative Services to allot limited resources to provide vocational rehabilitation services to individuals with the most significant disabilities.