

PROVISION OF VOCATIONAL REHABILITATION SERVICES

22VAC30-20-10. 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 Rehabilitation Act of 1973 (29 USC §701 et seq.), as amended.

"Applicant" means an individual who submits an application for vocational rehabilitation services.

"Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large-print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

"Assistive technology" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

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"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including:

1. The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and
6. Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the

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extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

"Audiological examination" means the testing of the sense of hearing.

"Board" means the Board of Rehabilitative Services.

"Clear and convincing evidence" means that the designated state unit shall have a high degree of certainty before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome. The clear and convincing standard constitutes the highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The term clear means unequivocal. Given these requirements, a review of existing information generally would not provide clear and convincing evidence. For example, the use of an intelligence test result alone would not constitute clear and convincing evidence. Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. The demonstration of clear and convincing evidence must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings. (S. Rep. No. 357, 102d Cong., 2d. Sess. 37-38 (1992))

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"Commissioner" means the Commissioner of the Department of Rehabilitative Services.

"Community rehabilitation program" means a program that directly provides or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

1. Medical, psychiatric, psychological, social, and vocational services that are provided under one management;
2. Testing, fitting, or training in the use of prosthetic and orthotic devices;
3. Recreational therapy;
4. Physical and occupational therapy;
5. Speech, language, and hearing therapy;
6. Psychiatric, psychological, and social services, including positive behavior management;
7. Assessment for determining eligibility and vocational rehabilitation needs;

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8. Rehabilitation technology;
9. Job development, placement, and retention services;
10. Evaluation or control of specific disabilities;
11. Orientation and mobility services for individuals who are blind;
12. Extended employment;
13. Psychosocial rehabilitation services;
14. Supported employment services and extended services;
15. Services to family members, if necessary, to enable the applicant or eligible individual to achieve an employment outcome;
16. Personal assistance services; or
17. Services similar to the services described in subdivisions 1 through 16 of this definition.

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For the purposes of this definition, the word "program" means an agency, organization, or institution, or unit of an agency, organization, or institution, that directly provides or facilitates the provision of vocational rehabilitation services as one of its major functions.

"Comparable services and benefits" means services and benefits that are provided or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance or by employee benefits; available to the individual at the time needed to ~~achieve the intermediate rehabilitation objectives in the individual's Individualized Written Rehabilitation Program (IWRP)~~ensure the individual's progress toward achieving the employment outcome in the individual's individualized plan for employment; and commensurate to the services that the individual would otherwise receive from the vocational rehabilitation agency. For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

"Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting, and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

"Department" means the Department of Rehabilitative Services.

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"Designated state agency" or "state agency" means the sole state agency designated in accordance with 34 CFR 361.13(a) to administer or supervise local administration of the state plan for vocational rehabilitation services.

"Designated state unit" or "state unit" means either the state agency, vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the state agency as required under 34 CFR 361.13(b), or the ~~independent state commission, board, or other~~ agency that ~~has is primarily concerned with~~ vocational rehabilitation, or vocational and other rehabilitation, ~~as its primary function.~~ of individuals with disabilities.

"Eligible individual" means an applicant for vocational rehabilitation services who meets the eligibility requirements of 22VAC30-20-30 and 22VAC30-20-40.

"Employment outcome" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market ~~to the greatest extent practicable~~; supported employment; or any other type of employment in an integrated setting; including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(34 CFR 361.5(b)(16))

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"Evaluation of vocational rehabilitation potential" means, as appropriate, in each case (i) a preliminary diagnostic study to determine that an individual is eligible for vocational rehabilitation services; (ii) a thorough diagnostic study consisting of a comprehensive evaluation of pertinent factors bearing on the individual's impediment to employment and vocational rehabilitation potential, in order to determine which vocational rehabilitation services may be of benefit to the individual in terms of employability; (iii) any other goods or services necessary to determine the nature of the disability and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services in terms of an employment outcome; (iv) referral to other agencies or organizations, when appropriate; and (v) the provision of vocational rehabilitation services to an individual during an extended evaluation of rehabilitation potential for the purpose of determining whether the individual with a disability is capable of achieving an employment outcome.

"Extended employment" means work in a nonintegrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act (29 USC §201 et seq.) ~~and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.~~

(34 CFR 361.5(b)(20))

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"Extended evaluation" means the provision of vocational rehabilitation services necessary for determination of rehabilitation potential.

"Extended services" as used in the definition of "supported employment" means ongoing support services and other appropriate services that are needed to support and maintain an individual with a most ~~severe~~significant disability in supported employment and that are provided by a state agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under this section, 34 CFR Part 363, ~~34 CFR Part 376, or 34 CFR Part 380~~ after an individual with a most ~~severe~~significant disability has made the transition from support provided by the designated state unit.

"Extreme medical risk" means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

"Family member" or "member of the family" means an individual who is either a relative or guardian of an applicant or eligible individual, or lives in the same household as an applicant or eligible individual who has a substantial interest in the well-being of that individual and whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

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"Higher education/institutions of higher education" means training or training services provided by universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing.

"Impartial hearing officer" means an individual who is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education); is not a member of the State Rehabilitation ~~Advisory~~ Council for the designated state unit; has not been involved ~~in~~ previously ~~decisions regarding~~ the vocational rehabilitation of the applicant or eligible individual; has knowledge of the delivery of vocational rehabilitation services, the state plan, and the federal and state regulations governing the provision of services; has received training with respect to the performance of official duties; and has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual. An individual may not be considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer.

(34 CFR 361.5(b)(25))

"Individual who is blind" means a person who is blind within the meaning of the applicable state law.

"Individual with a disability," except ~~as improvided in 34 CFR 361.5(b)(29) 17(a), (b), (c), and (j), 34 CFR 361.19, 34 CFR 361.20, and 34 CFR 361.51(b)(2)~~, means an individual (i) who has a

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physical or mental impairment; (ii) whose impairment constitutes or results in a substantial impediment to employment; and (iii) who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(34 CFR 361.5(b)(28))

"Individual with a disability," for purposes of ~~34 CFR 361.17(a), (b), (c), and (j), 34 CFR 361.19, 34 CFR 361.20, and 34 CFR 361.51(b)(2),~~ 34 CFR 361.5(b)(14), 34 CFR 361.13(a), 34 CFR 361.13(b)(1), 34 CFR 361.17(a), (b), (c), and (j), 34 CFR 361.18(b), 34 CFR 361.19, 34 CFR 361.20, 34 CFR 361.23(b)(2), 34 CFR 361.29(a) and (d)(5) and 34 CFR 361.51(b), means an individual (i) who has a physical or mental impairment that substantially limits one or more major life activities; (ii) who has a record of such an impairment; or (iii) who is regarded as having such an impairment.

(34 CFR 361.5(b)(29))

"Individual with a most ~~severe~~significant disability" means an individual who meets the designated state unit's criteria for an individual with a most ~~severe~~significant disability.

(34 CFR 361.5(b)(30))

"Individual with a ~~severe~~significant disability" means an individual with a disability (i) who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; (ii) whose vocational rehabilitation can be

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expected to require multiple vocational rehabilitation services over an extended period of time; and (iii) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(34 CFR 361.5(b)(31))

"Individual's representative" means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

(34 CFR 361.5(b)(32))

"Integrated setting," with respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals other than nondisabled individuals who are providing services to those applicants or eligible individuals. "Integrated setting," with respect to an employment outcome, means a setting

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typically found in the community in which applicants or eligible individuals interact with nondisabled individuals, other than nondisabled individuals who are providing services to those applicants or eligible individuals, to the same extent that nondisabled individuals in comparable positions interact with other persons.

~~"IWRP" means an individualized written rehabilitation program for each individual being provided services under an extended evaluation to determine rehabilitation potential or for a vocational rehabilitation program that describes all services to be provided and places primary emphasis on the determination and achievement of a vocational goal.~~

"Local workforce investment board" means a local workforce investment board established under section 117 of the Workforce Investment Act of 1998 (34 CFR 361.5(b)(34))

"Maintenance" means monetary support provided to an ~~eligible individual or an individual receiving extended evaluation services~~ for ~~those~~ expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and program of vocational rehabilitation services, needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment (34 CFR 361.5(b)(35))

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“Mediation” means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies. Mediation under the program must be conducted in accordance with the requirements in 34 CFR 361.57(d) by a qualified impartial mediator.

(34 CFR 361.5(b)(36))

"Mental disability" means (i) having a disability attributable to mental retardation, autism, or any other neurologically disabling condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions, including central nervous system disorders or significant discrepancies among mental functions of an individual.

"Nonprofit", with respect to a community rehabilitation program" means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under §501(c)(3) of the Internal Revenue Code of ~~1954-1986.~~

(34 CFR 361.5(b)(37))

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"Ongoing support services" as used in the definition of "supported employment" means services that are needed to support and maintain an individual with a most ~~severe~~significant disability in supported employment; identified based on a determination by the designated state unit of the individual's needs as specified in an individualized ~~written rehabilitation program~~ plan for employment; and furnished by the designated state unit from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment. These services must include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on, at a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or if under ~~special~~specific circumstances, especially at the request of the individual, the individualized ~~written rehabilitation program~~ plan for employment provides for off-site monitoring, twice-monthly meetings with the individual. These services must consist of any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in this section; the provision of skilled job trainers who accompany the individual for intensive job skill training at the work site; job development and placement; social skills training; regular observation or supervision of the individual; follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors in order to reinforce and stabilize the job placement; facilitation of natural

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supports at the worksite; any other service identified in the scope of vocational rehabilitation services for individuals described in 22VAC30-20-120; or any service similar to the foregoing services.

(34 CFR 361.5(b)(38))

"Otolological examination" means any examination conducted by a physician skilled in otology.

"Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

"Physical and mental restoration services" means corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment; diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with state licensure laws; dentistry; nursing services; necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

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drugs and supplies; prosthetic, orthotic, or other assistive devices, including hearing aids; eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with state licensure laws; podiatry; physical therapy; occupational therapy; speech or hearing therapy; mental health services; treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services or that are inherent in the condition under treatment; special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and other medical or medically related rehabilitation services.

"Physical or mental impairment" means ~~any injury, disease, or other condition that materially limits, or if not treated is expected to materially limit, mental or physical functioning.~~ physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic, and lymphatic, skin and endocrine; or any mental or psychological disorders such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(34 CFR 361.5(b)(41))

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"Post-employment services" means one or more of the services identified in 22VAC30-20-120 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests- and informed choice.

(34 CFR 361.5(b)(42))

"Prevocational training" means individual and group instruction or counseling, the controlled use of varied activities, and the application of special behavior modification techniques; individuals or patients are helped to: (i) develop physical and emotional tolerance for work demands and pressures, (ii) acquire personal-social behaviors which would make them acceptable employees and coworkers on the job, and (iii) develop the basic manual, academic, and communication skills needed to acquire basic job skills.

"Prosthetic and orthotic appliances" means any mechanical equipment that improves or substitutes for one or more of man's senses or for impaired mobility or motor coordination.

"Public safety officer" means an individual who performs duties directly related to the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities, and whose substantially limiting condition arose from a disability

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sustained in the line of duty while performing as a public safety officer and the immediate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition.

“Qualified and impartial mediator” means an individual who is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a state office of mediators, or employee of an institution of higher education); is not a member of the State Rehabilitation Council for the designated state unit; has not been involved previously in the vocational rehabilitation of the applicant or eligible individual; is knowledgeable of the vocational rehabilitation program and the applicable federal and state laws, regulations, and policies governing the provision of vocational rehabilitation services; has been trained in effective mediation techniques consistent with any state approved or recognized certification, licensing, registration, or other requirements; and has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings. An individual serving as a mediator is not considered to be an employee of the designated state agency or designated state unit for the purposes of this definition solely because the individual is paid by the designated state agency or designated state unit to serve as a mediator.

(34 CFR 361.5(b)(43))

"Rehabilitation facility" means a facility which is operated for the primary purpose of providing vocational rehabilitation services to individuals with disabilities, and which provides singly or in

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combination one or more of the following services for individuals with disabilities: (i) vocational rehabilitation services, including under one management, medical, psychiatric, psychological, social, and vocational services; (ii) testing, fitting, or training in the use of prosthetic and orthotic devices; (iii) prevocational conditioning or recreational therapy; (iv) physical and occupational therapy; (v) speech and hearing therapy; (vi) psychological and social services; (vii) evaluation of rehabilitation potential; (viii) personal and work adjustment; (ix) vocational training with a view toward career advancement (in combination with other rehabilitation services); (x) evaluation or control of specific disabilities; (xi) orientation and mobility services and other adjustment services to individuals who are blind; and (xii) transitional or extended employment for those individuals with disabilities who cannot be readily absorbed in the competitive labor market.

"Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

"Services to groups" means the provision of facilities and services which may be expected to contribute substantially to the vocational rehabilitation of a group of individuals, but which are not related directly to the individualized rehabilitation program of any one individual with a disability.

"State" means the Commonwealth of Virginia.

"State plan" means the state plan for vocational rehabilitation services or the vocational rehabilitation services part of a consolidated rehabilitation plan under 34 CFR 361.10(c).

(34 CFR 361.5(b)(51))

"State workforce investment board" means a state workforce investment board established under section 111 of the Workforce Investment Act of 1998.

(34 CFR 361.5(b)(49))

"Substantial impediment to employment" means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

"Supported employment" means (i) competitive employment in an integrated setting, ~~with ongoing support services for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and who, because of the nature and severity of their disabilities, need intensive supported employment services from the designated~~

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~~state unit and extended services after transition in order to perform this work; or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities for whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and who, because of the nature of their disabilities, need intensive supported employment services from the designated state unit and extended services after transition to perform this work~~ or (ii) transitional employment for individuals with the most ~~severe~~significant disabilities due to mental illness.

(34 CFR 361.5(b)(53))

"Supported employment services" means ongoing support services and other appropriate services needed to support and maintain an individual with a most ~~severe~~significant disability in supported employment that are provided by the designated state unit for a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time in order to achieve the ~~rehabilitation objectives~~employment outcome identified in the individualized ~~written rehabilitation program~~plan for employment; and following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

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(34 CFR 361.5(b)(54))

"Transition services" means a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the ~~accomplishment~~achievement of ~~long-term rehabilitation goals and intermediate rehabilitation objectives~~the employment outcome identified in the student's ~~IWRP~~individualized plan for employment.

(34 CFR 361.5(b)(55))

"Transitional employment," as used in the definition of "supported employment," means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most severe disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

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"Transportation" means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

-(34 CFR 361.5(b)(57)

"Vocational rehabilitation services" means those services listed in 22VAC30-20-120.

"Work adjustment training" means a treatment and training process utilizing individual and group work, or work related activities, to assist individuals in understanding the meaning, value and demands of work; to modify or develop attitudes, personal characteristics, work behavior, and to develop functional capacities, as required in order to assist individuals toward their optimum level of vocational development.

Statutory Authority

§51.5-14 of the Code of Virginia.

22VAC30-20-20. Processing referrals and applications.

A. Referrals.

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The ~~state plan~~designated state unit must ~~assure that the designated state unit has~~ established and implemented standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services, including referrals of individuals made through the One-Stop service delivery systems established under Section 121 the Workforce Investment Act of 1998.

The standards must include timelines for making good faith efforts to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.

(34 CFR 361.41(a))

B. Applications.

1. ~~The state plan must assure that o~~Once an individual has submitted an application for vocational rehabilitation services, an eligibility determination shall be made within 60 days, unless (i) exceptional and unforeseen circumstances beyond the control of the agency designated state unit preclude making a determination within 60 days and the designated state agency and the individual agree to a specific extension of time or (ii) an exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out in accordance with 22VAC30-20-50, or, if appropriate an extended evaluation is necessary.

(34 CFR 361.41(b)(1))

2. An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate (i) has completed and signed an agency application

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form, a common intake application form in a One-Stop center requesting vocational rehabilitation services, or has otherwise requested services from the designated state unit; (ii) has provided information to the designated state unit that is necessary to initiate an assessment to determine eligibility and priority for services; and (iii) is available to complete the assessment process.

(34 CFR 361.41(b)(2))

3. The designated state unit shall ensure that its application forms are widely available throughout the state, particularly in the One-Stop centers established under section 121 of the Workforce Investment Act of 1998.

(34 CFR 361.41(b)(3))

4. A face-to-face interview with the applicant is required.

Statutory Authority

§51.5-14 of the Code of Virginia.

22VAC30-20-30. Assessment for determining eligibility and priority for services.

~~The state plan must assure that, i~~In order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for

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services (if the state is operating under an order of selection), the designated state unit will conduct an assessment for determining eligibility and priority for services. The assessment must be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with the following provisions:

1. Eligibility requirements are applied without regard to race, age, gender, ~~creed~~, color, or national origin;
2. No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability;
3. The eligibility requirements are applied without regard to the particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family; ~~and~~, or the type of expected employment outcome, or the source of referral for vocational rehabilitation services; and
4. No duration of residence requirement is imposed that excludes from services any individual who is present in the state;

(34 CFR 361.42(c))

Statutory Authority

§51.5-14 of the Code of Virginia.

22VAC30-20-40. Eligibility requirements.

A. Basic requirements. The ~~state plan must assure that the~~ designated-state unit's determination of an applicant's eligibility for vocational rehabilitation services is based only on the following requirements: (i) a determination by qualified personnel that the applicant has a physical or mental impairment; (ii) a determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant; (iii) a presumption, in accordance with subsection B of this section, that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services; and (iv) a determination by a qualified vocational rehabilitation counselor employed by the designated state unit that the applicant requires vocational rehabilitation services to prepare for, ~~enter into, engage in secure, or retain, or regain gainful~~ employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

B. Presumption of benefit. The ~~state plan must assure that the~~ designated state unit will presume that an applicant who meets the basic eligibility requirements in clauses (i) and (ii) of subsection A of this section can benefit in terms of an employment outcome unless it demonstrates, based on clear and convincing evidence, that the applicant is incapable of benefiting in terms of an

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employment from vocational rehabilitation services due to the severity of the applicant's disability.

C. ~~Limited p~~Presumption of eligibility for Social Security beneficiaries. The designated state ~~plan~~unit must assure that, if an applicant has appropriate evidence, such as an award letter, that establishes the applicant's eligibility for Social Security benefits under Title II or Title XVI of the Social Security Act, the designated state unit will presume that the applicant (i) meets the eligibility requirements in clauses (i) and (ii) of subsection A of this section and (ii) ~~has a severe physical or mental impairment that seriously limits one or more functional capabilities in terms of an employment outcome~~is an individual with a significant disability as defined in 22VAC30-20-10.

D, Achievement of an employment outcome. Any eligible individual, including an individual whose eligibility for vocational rehabilitation services is based on the individual being eligible for Social Security benefits under Title II or Title XVI of the Social Security Act, must intend to achieve an employment outcome that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(i) The State unit is responsible for informing individuals, through its application process for vocational rehabilitation services, that individuals who receive services under the program must intend to achieve an employment outcome. (ii) The applicant's completion of the application process for vocational rehabilitation services is sufficient evidence of the individual's intent to

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achieve an employment outcome, and no additional demonstration on the part of the applicant is required for purposes of satisfying this section.

E. Interpretation of entitlement. Nothing in this section is to be construed to create an entitlement to any vocational rehabilitation service.

~~D~~F. Review and assessment of data for eligibility determination. Except as provided in 22VAC30-20-60, the designated state unit shall base its determination of each of the basic eligibility requirements in subsection A of this section on:

1. A review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual's family, information used by the Social Security Administration, and determinations made by officials of other agencies; and
2. To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including assistive technology devices and services and worksite assessments, that are necessary to determine whether an individual is eligible.

G. Trial work experience for individuals with significant disabilities. Prior to any determination that an individual with a disability is incapable of benefiting from vocational rehabilitation

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services in terms of an employment outcome because of the severity of that individual's disability, an exploration of the individual's abilities, capabilities, and capacity to perform in a realistic work situation is required in accordance with 34CFR361.42 to determine whether or not there is clear and convincing evidence to support such a determination.

Statutory Authority

§51.5-14 of the Code of Virginia.

22VAC30-20-50. Evaluation of vocational rehabilitation potential.

A. Required evaluations. The current general health of the individual shall be assessed, based, to the maximum extent possible, on available medical information. In all cases of mental or emotional disorders an examination shall be provided by a physician licensed to diagnose and treat such disorders or a psychologist licensed or certified in accordance with state laws and regulations. If eligibility cannot be determined from medical evidence of record, medical specialist examinations needed to determine eligibility shall be provided.

B. Hospitalization for diagnosis may be provided when all of the following conditions are met:

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1. This service is required in order to determine eligibility for services or type of services needed; and

2. This service is recommended by a licensed medical doctor.

The maximum period of diagnostic hospitalization shall be three days.

Statutory Authority

[§51.5-14](#) of the Code of Virginia.

22VAC30-20-60. Extended evaluation for individuals with ~~severe~~significant disabilities.

~~A. Prior to any determination that an individual with a severe disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome because of the severity of the individual's disability, the state unit shall conduct an extended evaluation to determine whether there is clear and convincing evidence to support such a determination. Under limited circumstances, if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before the state unit is able to make an eligibility determination for vocational rehabilitation services, the state unit must conduct an extended evaluation to make the determination that (i) that there is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome, or (ii) there is clear and convincing evidence that the~~

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individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability

B. During the extended evaluation period, which may not exceed 18 months, vocational rehabilitation services must be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

C. During the extended evaluation period, the designated state unit ~~shall~~must develop a written plan for ~~determining eligibility and for determining the nature and scope of services required to achieve an employment outcome.~~providing services that are necessary to make the determinations in paragraph A of this section. The state unit may provide during this period only those services that are necessary to make these two determinations:

(34 CFR 361.42)

D. The state unit shall assess the individual's progress as frequently as necessary, but at least once every 90 days, during the extended evaluation period.

E. The state unit shall terminate extended evaluation services at any point during the 18-month extended evaluation period if the state unit determines that (i) there is sufficient evidence to conclude that the individual can benefit from vocational rehabilitation services in terms of an employment outcome or (ii) there is clear and convincing evidence that the individual is

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incapable of benefiting from vocational rehabilitation services in terms of an employment outcome.

~~Clear and convincing evidence means that the designated state unit shall have a high degree of certainty before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome. The clear and convincing standard constitutes the highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The term clear means unequivocal. Given these requirements, a review of existing information generally would not provide clear and convincing evidence. For example, the use of an intelligence test result alone would not constitute clear and convincing evidence.~~

~~Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. The demonstration of clear and convincing evidence must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings. (S. Rep. No. 357, 102d Cong., 2d. Sess. 37-38 (1992))~~

Statutory Authority

§51.5-14 of the Code of Virginia.

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22VAC30-20-70. Certification of eligibility.

A. For vocational rehabilitation services; before or at the same time the applicant is accepted for services the department shall certify that the applicant has met the basic eligibility requirements as specified in 22VAC30-20-40.

B. For extended evaluation; as a basis for providing an extended evaluation to determine vocational rehabilitation potential, there shall be certification that the applicant has met the requirements as specified in 22VAC30-20-60.

Statutory Authority

[§51.5-14](#) of the Code of Virginia.

22VAC30-20-80. Procedures for ineligibility determination.

A. Certification of ineligibility. ~~The state plan must assure that if~~ If the state unit determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized ~~written rehabilitation program~~ plan for employment is no longer eligible for services, that state unit ~~shall~~ must:

1. Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative.

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2. Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including the reasons for that determination, the requirements under this section and the means by which ~~he~~the individual may express and seek remedy for any dissatisfaction, including the procedures for review of a state unit personnel determinations ~~by the rehabilitation counselor or coordinator~~ in accordance with 22VAC30-20-181.

3. Provide the individual with a description of services available under the Client Assistance Program, ~~Department for Rights of Virginians with Disabilities~~Virginia Office of Protection and Advocacy, and information on how to contact that program.

4. Refer the individual to other training or employment –related programs that are part of the One-Stop service delivery system under the Workforce Investment Act

45. Review within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. ~~This~~The review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the Commonwealth, the individual's whereabouts are unknown, or a the individual's medical condition is rapidly progressive or terminal.

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B. Case closure without eligibility determination. The ~~state plan must assure that the~~ state unit may not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete an assessment for determining eligibility and priority for services, and the state unit has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.

Statutory Authority

[§51.5-14](#) of the Code of Virginia.

22VAC30-20-90. Order of selection for services.

A. In the event vocational rehabilitation services cannot be provided because of unavailable resources to all persons determined to be eligible, upon recommendation by the commissioner, and order of selection system may be approved by the board which shall determine those persons ~~for whom to be provided~~ 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.

The following order of selection is implemented when services cannot be provided to all eligible persons:

1. Priority I. Person eligible and presently receiving services under an individualized ~~written rehabilitation program~~ plan for employment.

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2. Priority II. Those persons referred and needing diagnostic services to determine eligibility.
3. Priority III. Persons determined to be severely disabled.
4. Priority IV. Other persons determined to be disabled, in order of eligibility determination.

In all priorities preference shall be given to providing services to disabled public safety officers disabled in the line of duty.

B. An order of selection may not be based on any other factors, including (i) any duration of residency requirement, provided the individual is present in the state; (ii) type of disability; (iii) age, gender, race, color, or national origin; (iv) source of referral; (v) type of expected employment outcome; (vi) the need for specific services or anticipated cost of services required by the individual; or (vii) the income level of an individual or an individual's family.

C. In administering the order of selection, the designated state unit must (i) implement the order of selection on a statewide basis; (ii) notify all eligible individuals of the priority categories in a state's order of selection, their assignment to a particular category, and their right to appeal their category assignment; (iii) continue to provide all needed services to any eligible individual who has begun to receive services under an individualized plan for employment prior to the effective date of the order of selection, irrespective of the severity of the individual's disability; and (iv) ensure that its funding arrangements for providing services under the State Plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the

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designated state unit must renegotiate these funding arrangements so that they are consistent with the order of selection.

D. Consultation with the State Rehabilitation Council must include the (i) the need to establish an order of selection, including any reevaluation of the need; (ii) priority categories of the particular order of selection; (iii) criteria for determining individuals with the most significant disabilities; and (iv) administration of the order of selection.

Statutory Authority

§51.5-14 of the Code of Virginia.

22VAC30-20-95. Information and referral services.

A. General Provisions

1. The designated state unit will implement an information and referral system adequate to ensure that individuals with disabilities, including eligible individuals who do not meet the state unit's order of selection criteria for receiving vocational rehabilitation services if the agency is operating on a order of selection, are provided accurate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) using appropriate modes of communication to assist them in preparing for, securing, retaining, or regaining employment.

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2. The state unit will refer individuals with disabilities to other appropriate federal and state programs, including other components of the statewide workforce investment system. In making these referrals, the designated state unit must:

a. Refer the individuals to federal or state programs, including programs carried out by other components of the statewide workforce investment system, best suited to address the specific employment needs of and individual with a disability; and

b. Provide the individual who is being referred (i) a notice of the referral by the designated state unit to the agency carrying out the program; (ii) information identifying a specific point of contact within the agency to which the individual is being referred; and (iii) information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

22VAC30-20-100. The individualized ~~written rehabilitation program (IWRP)~~ plan for ~~procedures-employment procedures.~~

A. General requirements.

1. ~~The IWRP~~ An individualized plan for employment meeting the requirements of this section shall be initiated ~~developed and implemented in a timely manner after certification of eligibility~~

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for each individual determined to be eligible for vocational rehabilitation services or, if the designated state unit is operating under an order of selection in accordance with 22VAC30-20-90, for each eligible individual to whom the state unit is able to provide services. Services will be provided in accordance with the provisions of the individualized plan for employment.

2. The state unit must conduct an assessment for determining vocational rehabilitation needs, if appropriate, for each eligible individual or, if the state is operating under an order of selection, for each eligible individual to whom the state is able to provide services. The purpose of this assessment is to determine the employment outcome, and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment.

(a). To the extent possible, the employment outcome and the nature and scope of rehabilitation services to be included in the individualized plan for employment must be determined based on data from assessment of eligibility and priority of services under 22VAC30-20-30.

(b). If additional data are necessary to determine the employment outcome and the nature and scope of services, the state unit must conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment services, of the eligible individual, in the most integrated setting possible. In preparing the comprehensive assessment, the state unit must use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information that is current as of the date of the development of the

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individualized plan for employment. This includes information (i) available from other programs and providers, particular information used by the education system and the Social Security Administration; (ii) information provided by the individual and the individual's family; and (iii) information obtained under the assessment for determining the individual's eligibility and vocational needs.

3. The individualized plan for employment shall be a written document prepared on forms provided by the state unit.

~~2. The IWRP shall be initiated and periodically updated when information has been received that may necessitate a change, or at least annually. This shall be done for each client and for each applicant being provided services under an extended evaluation to determine rehabilitation potential.~~

~~34. Vocational rehabilitation services shall be provided in accordance with the provisions of IWRP~~the individualized plan for employment. An eligible individual or, as appropriate, the individual's representative may develop all or part of the individualized plan for employment with or without assistance from the state unit or other entity. The IWRP shall individualized plan for employment must be developed jointly, agreed to, approved and signed by the qualified vocational rehabilitation counselor employed by the designated state unit~~or coordinator~~ and the individual or, as appropriate, the individual's representative ~~within the framework of a counseling and guidance relationship (34 CFR 361.45(b)(1))~~. The state unit shall establish and

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implement standards for the prompt development of ~~IWRPs~~ individualized plans for employment for the individuals identified in subdivision 1 of this subsection, including timelines that take into consideration the needs of the individual ~~(34 CFR 361.45 (b)(2))~~.

~~45.~~ The state unit shall promptly provide each individual or, as appropriate, the individual's representative a written copy of the ~~IWRP~~ individualized plan for employment and its amendments in the native language or appropriate mode of communication of the individual or, as appropriate, of the individual's representative ~~(34 CFR 361.45(b)(7))~~.

~~56.~~ The state unit shall advise in writing each individual or, as appropriate, the individual's representative of all state unit procedures and requirements affecting the development and review of an ~~IWRP~~ individualized plan for employment, including the availability of appropriate modes of communication ~~(34 CFR 361.45 (b)(3))~~.

~~67. In developing an IWRP~~ The individualized plan for employment for a student with a disability who is receiving special education services, ~~the state unit must consider the student's individualized education program (34 CFR 361.45(b)(4)).~~ must be coordinated with the IEP for that individual in terms of goals, objectives, and services identified in the IEP.

B. Individualized ~~written rehabilitation program~~ plan for employment review. The state unit shall review the ~~IWRP~~ plan with the individual or, as appropriate, the individual's representative as often as necessary, but at least once each year to assess the individual's progress in meeting

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~~achieving the objectives identified employment outcome in the IWRP (34 CFR 361.45(b)(5)).~~

~~The state unit shall assess the individual's progress as frequently as necessary, but at least once every 90 days, during an extended evaluation period (34 CFR 361.42(d)(4)). The state unit shall incorporate into the IWRP any revisions that are necessary to reflect changes in the individual's vocational goal, intermediate objectives, or vocational rehabilitation services, and shall obtain the agreement and signature of the individual or, as appropriate, of the individual's representative to the revisions (34 CFR 361.45(b)(6)). The plan may be amended as necessary if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services. Amendments to the plan do not take effect until agreed to and signed by the individual or, as appropriate, the individual's representative and by a qualified vocational rehabilitation counselor employed by the designated state unit.~~

C. Review of ineligibility determination. If the state unit determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized ~~written rehabilitation program plan for employment~~ is no longer eligible for services, the state unit shall:

1. Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;

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2. Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including the reasons for that determination, the requirements under this section, and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of a determination by the rehabilitation counselor or coordinator. The state unit shall provide the individual with a description of services available from the Client Assistance Program, Department for Rights of Virginians with Disabilities, established under 34 CFR Part 370, and information on how to contact that program; ~~and~~

3. Refer the individual to other training or employment-related programs that are part of the One-Stop service delivery system under the Workforce Investment Act; and

34. Review within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. This review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the state, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal (34 CFR 361.43).

Statutory Authority

§51.5-14 of the Code of Virginia.

22VAC30-20-110. Individualized ~~(IWRP)~~plan for employment content.

A. Regardless of the option in 22VAC30-20-100 chosen by the eligible individual for developing the individualized plan for employment, Each IWRP plan for employment must include, as appropriate, statements concerning:

1. ~~The~~A description of the specific long-term vocational goal employment outcome, which must be based on the assessment for determining vocational rehabilitation needs, including the individual's career interest, as defined in 22VAC30-20-10, that is chosen by the eligible individual and must be, to the extent appropriate and is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and with the informed choice of the individual, and results in employment an integrated setting;

2. ~~The specific intermediate rehabilitation objectives related to the attainment of the long-term vocational goal, based on the assessment for determining vocational rehabilitation needs and consistent with the informed choice of the individual;~~

3. ~~A description of the specific vocational rehabilitation services to be provided under 22VAC30-20-120 that are needed to achieve the established intermediate rehabilitation objectives employment outcome, including, if as appropriate, the provision of rehabilitation assistive technology devices and services and on-the-job and related personal assistance~~

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services; including training in the management of those services; and providing in the most integrated setting that is appropriate for the services involved and is consistent with the informed choice of the eligible individual.

~~43. The projected dates for the initiation of each vocational rehabilitation service, the anticipated duration of each service, and the projected timeframe for the achievement of the individual's vocational goal;~~ Timelines for the achievement of the employment outcome and for the initiation of services;

~~4. A description of the entity or entities chose by the eligible individual or, as appropriate, the individual's representative that will provide the vocational rehabilitation services and the methods used to procure those services;~~

~~55. A procedure and schedule for periodic review and evaluation~~ description of the criteria that will be used to evaluate progress toward ~~achieving achievement -intermediate rehabilitation objectives of the employment outcome based upon objective criteria;~~

~~6. How, in the words of the individual or, as appropriate, in the words of the individual's representative, the individual was informed about and involved in choosing among alternative goals, objectives, services, providers, and methods used to procure or provide services;~~

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~~76.~~ The terms and conditions ~~for of~~ the ~~provision of vocational rehabilitation services~~ individualized plan for employment, including, as appropriate, information describing the responsibilities of the designated state unit, the responsibilities of the eligible individual will assume in implementing relation to achieving the IWRP employment outcome, the extent of the eligible individual's participation in paying for the cost of services,

~~the extent to which goods and services will be provided in the most integrated settings possible consistent with the informed choice of the individual, the responsibility of the individual extent with regard to which applying for and securing comparable services and benefits are available to the individual under any other programs described in 22VAC30-20-170, and the responsibilities of other entity or entities that will provide the services and the process used to provide or procure the services as the result of arrangements made pursuant to comparable services or benefits requirements in 22VAC30-20-170;~~

~~87.~~ The rights of the individual under this part and the means by which the individual may express and seek remedy for any dissatisfaction, including the opportunity for a review of ~~rehabilitation counselor or coordinator~~ determinations made by designated state unit personnel;

~~98.~~ The availability of the Client Assistance Program, ~~Department for Rights of Virginians with Disabilities, established under 34 CFR Part 370; and~~ with the Virginia Office of Protection and Advocacy.

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~~109.~~ The basis on which the individual has been determined to have achieved an employment outcome-;

10. A statement concerning the expected need for post-employment services prior to closing the record of services of an individual who has achieved an employment outcome;

11. A description of the terms and conditions for the provision of any post-employment services; and

12. If appropriate, a statement of how post-employment services will be provided or arranged through other entities as the result of arrangements made pursuant to the comparable benefits and services requirement.

B. Supported employment. In addition to the requirements in part A of this section, the individualized plan for employment for an individual with a most significant disability for whom supported employment has been determined appropriate must also:

1. Specify the supported employment services to be provided by the designated state unit;

2. Specify the expected extended services needed, which may include natural supports;

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3. Identify the source of extended services or, to the extent that is not possible to identify the source of extended services at the time the individualized plan for employment is developed, include a description of the basis for concluding that there is a reasonable expectation that those sources will become available;

4. Provided for the periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the individualized plan for employment by the time of transition to extended services;

5. Provide for the coordination of services provided under an individualized plan for employment with services provided under other individualized plans established under other federal or state programs.

6. To the extent that job skills training is provided, identify that the training will be provided on site; and

7. Include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities.

Statutory Authority

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§51.5-14 of the Code of Virginia.

22VAC30-20-120. Scope of vocational rehabilitation services for individuals.

~~The following vocational rehabilitation services are available a~~As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's informed choice, the designated state unit must ensure that the following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, informed choice:

1. Assessment for determining eligibility and priority for services, ~~and assessment for determining vocational rehabilitation needs~~ by qualified personnel, including, if appropriate, as assessment by personnel skilled in rehabilitation technology in accordance with 22VAC30-20-10; ~~and~~
2. Vocational rehabilitation counseling and guidance, ~~and referral and other services necessary to help applicants and eligible individuals secure needed services from other agencies, including information and support services to assist an individual in exercising informed choice, and to advise those individuals about the Client Assistance Program, Department for Rights of Virginians with Disabilities.~~

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3. Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide work force investment system and to advise those individuals about the Client Assistance Program under the Virginia Office of Protection and Advocacy .

34. Physical and mental restoration services, ~~in accordance with the definition of 22VAC30-20-10, necessary to remove or substantially reduce the disabling effects of a physical or mental condition.~~ to the extent that financial support is not readily available from a source other than the designated state unit (such as through health insurance or comparable service as defined in 22VAC30-20-10).

a. These services include but are not limited to:

(1) Convalescent care, nursing or rest home care when the services are directly related to the vocational rehabilitation objective for an individual who needs continued medical supervision after department-sponsored treatment for his condition. This service must be recommended by the proper medical practitioner before the service is authorized and is contingent upon the individual being able to reengage in the vocational rehabilitation program. This service may be provided for 30 days, and the commissioner or his designee may approve an additional 30 days of service.

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(2) Dentistry.

(3) Drugs and supplies. When medication is to be continuous (e.g., treatment of diabetes or epilepsy), and while the individual is receiving vocational training, the department may purchase medication during the training period and for a period not to exceed 90 days after achieving employment. When counseling, medication and placement are the only services provided, the department may pay for medication for a period not to exceed 90 days. Generic drugs shall be utilized when possible.

(4) Necessary hospitalization (either inpatient or outpatient care, in connection with surgery or treatment and clinic services). The department may pay for hospitalization for medical diagnosis, surgical or medical treatment when deemed necessary for the vocational rehabilitation of the individual and recommended by a licensed practitioner. Hospitalization shall be provided in hospitals, medically oriented treatment facilities, or continuing care facilities in Virginia or out of state, with which the department has a contract. Payment to hospitals, medically oriented treatment facilities, or continuing care facilities shall be made in accordance with the department fee schedules. The maximum period of hospitalization, excluding diagnostic, to be authorized based upon financial resources available to the department shall be 10 days. Extension of the maximum period of hospitalization shall be allowed when due to acute medical complications and emergencies associated with or arising out of the provision of physical or mental restoration services. Treatment of acute medical complications or emergencies which impact negatively on the individual's progress toward the individual's vocational goal shall be provided.

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(5) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with state licensure laws. These services may be provided to an individual when their visual disability, as established by an ophthalmological or an optometric examination, is of such severity that their employment opportunities are considerably limited. Visual services shall be provided by the department in accordance with the cooperative agreement established with the Department for the Blind and Vision Impaired. Visual aids may also be provided to individuals who are unable to satisfactorily pursue their vocational rehabilitation program due to impaired vision.

(6) Nursing services.

(7) Physical restoration in a rehabilitation facility.

(8) Physical and occupational therapy when prescribed by a doctor of medicine.

(9) Prosthetic, orthotic, or other assistive devices, including hearing aids. The department may purchase an original appliance only upon the recommendation of the medical specialist. When an individual has a history of satisfactory appliance use and the general medical examination report indicates no pathological change, this report may be sufficient medical basis for the replacement

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or repair of the appliance. The department shall purchase prosthetic or orthotic appliances from vendors approved in accordance with the department's vendor approval process.

(10) Mental health services or diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with state licensure laws shall be provided by a psychiatrist or psychologist. If the department purchases the services from either, they must be qualified in the area of psychotherapy and be licensed in accordance with the laws of the Commonwealth. The maximum number of sessions to be sponsored shall be 27. If the individual needs additional psychotherapy, the department will make an effort to assist the individual in securing it.

(11) Speech or hearing therapy. Speech therapy may be provided to individuals when treatment is recommended by a speech pathologist who is licensed in accordance with the laws of the Commonwealth. Hearing aid orientation and lip reading may be provided when recommended by a specialist in hearing disabilities.

(12) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or substantially modify a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment.

(13) Podiatry.

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(14) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services that are inherent in the condition under treatment.

(15) Special services for the treatment of individuals with end stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies.

(16) Chiropractic services, after consultation with a doctor of medicine.

(17) Cardiac exercise therapy for individuals who have had a myocardial infarction or a coronary bypass not more than six months prior to the recommended exercise therapy. A maximum of 24 sessions may be authorized.

(18) Other medical or medically related rehabilitation services.

b. Eligibility requirements.

(1) Stable or slowly progressive. The physical or mental condition must be stable or slowly progressive. The condition must not be acute or transitory, or of such recent origin that the resulting functional limitations and the extent to which the limitations affect occupational performance cannot be identified.

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(2) Refusal of service. When an individual has a physical or mental disability with resulting limitations that constitute a handicap to employment, and when in the opinion of licensed medical personnel these limitations can be removed by physical or mental restoration services without injury to the individual, they shall not be eligible for any rehabilitation services, except counseling, guidance and placement if they refuse to accept the appropriate physical or mental restoration services. A second opinion may be provided at the individual's request. In the event of conflicting medical opinions, the department shall secure a third opinion and the decision shall be made on the two concurring opinions.

c. Provision of physical and mental restoration services. These services are provided only when:

(1) Recommended by a licensed practitioner;

(2) Services are not available from another source; and

(3) They are provided in conjunction with counseling and guidance, and other services, as deemed appropriate.

The department shall not make case expenditures for acute or intermediate medical care except for medical complications and emergencies which are associated with or arise out of the provision of Vocational Rehabilitation (VR) services under an IWRP individualized plan for employment and which are inherent in the condition under treatment.

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d. Services not sponsored by the department. The board, in consultation with appropriate medical resources, shall determine those physical restoration services which shall not be provided by the department. The following circumstances or conditions shall be considered:

- (1) Experimental procedures shall not be sponsored;
- (2) High risk procedures;
- (3) Procedures with limited vocational outcomes; and
- (4) Procedures with uncertain outcomes.

45. Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in institutions of higher education (universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this sectionpart unless maximum efforts have been made by the state unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

All training services provided shall be related to attainment of the vocational objective or provide for the determination of eligibility for vocational rehabilitation services. Vocational training

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includes any organized form of instruction which provides the knowledge and skills essential for performing the tasks involved in an occupation. Vocational training may be obtained in institutions such as colleges, universities, business schools, nursing schools and trade and technical schools. It may also be obtained by on-the-job training, apprenticeship programs, tutorial training, or correspondence study.

a. Business schools and business colleges, trade and technical schools, and two-year college terminal courses. The training institution selected shall be approved in accordance with the department's vendor approval process.

b. College and university academic training.

(1) Academic requirements. The individual shall take sufficient academic credit hours based on the requirement of the college attended for classification as a full-time student, unless this is, in the opinion of the department, contraindicated by the individual's disability. Courses shall meet the institution's requirement towards the obtainment of the degree or certificate. Continuation of financial assistance by the department shall be dependent upon the individual maintaining a "C" average calculated on an academic year. When the individual fails to maintain a "C" average, assistance may be discontinued. The department's assistance may be reinstated when the individual completes one semester or quarter with a minimum of a "C" average.

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Each individual shall be advised that failure to provide grades to the department shall be grounds for termination of departmental financial assistance.

(2) Graduate degree program. The department shall assist only individuals with severe disabilities in securing a graduate degree and only when it is judged essential to achieving employment.

(3) Virginia colleges and universities. Vocational training, including college or university training, shall be provided by the department in any department approved institution located within the boundaries of the Commonwealth, unless such training is not available within the Commonwealth. Institutions in the areas of Washington, D.C.; Bristol-Johnson City-Kingsport, Tennessee; the city of Bluefield, West Virginia; and other cities where the services may be provided more effectively and economically and shall be treated as if located in Virginia.

(4) Tuition and mandatory fees. 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, published tuition costs may be paid.

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.

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(5) Scholarships and grants. Training services in institutions of higher education shall be paid for with departmental funds only after maximum efforts have been made by the individual to secure assistance in whole or in part from other sources; however, any individual eligible for vocational rehabilitation training services but not meeting the financial need test of the department may be provided an assistance grant annually in an amount not to exceed the equivalent of one quarter's tuition of a full time community college student.

c. Correspondence study. The correspondence study training may be authorized only when:

(1) The individual requires specific preliminary training in order to enter a training program or training cannot be arranged by any other method; and

(2) Satisfactory progress is maintained.

d. On-the-job training. The department may enter into agreements with employers in the private or public sector to provide on-the-job training services. The terms and conditions of each individual agreement shall be established by the department.

e. Part-time training. Part-time training may be utilized only when the severity of the individual's disability shall not allow the individual to pursue training on a full-time basis.

Part-time training shall be authorized only at department-approved facilities and schools.

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f. Work adjustment training. Work adjustment training may be provided if needed for the individual to engage in subsequent vocational rehabilitation services as indicated by the thorough diagnostic study assessment of medical, vocational, psychological, and other factors. This service may be provided only by the department or approved vendors.

g. Prevocational training. Prevocational training may be provided if needed for the individual to engage in subsequent vocational rehabilitation services as indicated by the thorough diagnostic study assessment of medical, vocational, psychological, and other factors. This service may be provided only by the department or approved vendors.

h. Tutorial training. Tutorial training may be provided if needed for the individual to achieve a vocational goal as indicated by the thorough diagnostic study assessment of medical, vocational, psychological and other factors. This service may be provided only by the department or approved vendors.

i. Other higher education training concerns.

(1) Required textbooks and supplies. The maximum amount of department financial assistance for required textbooks and supplies (pencils, paper, etc.) shall be \$400 annually for a normal school year or \$500 if summer school is attended.

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(2) Required training materials. Training materials may be provided when required by the instructor.

56. Maintenance in accordance with the definition of that term in 22VAC30-20-10.

a. Clothes. Clothes are provided when specifically required for participation in a training program or for placement in a specialized job area as determined by the department.

b. Room, board and utilities. The maximum rate paid for room, board and utilities shall be established annually by the board.

c. Training cases. The maximum amount of department financial assistance for room and board at a training institution (college, vocational school, rehabilitation center facility), when the institution is able to provide room and board, shall not exceed the published room and board rates charged by the institution, or the actual cost, whichever is less.

d. While living at home. Maintenance shall be provided for an individual living at home only when the individual's income supports the family unit of the individual, when it is more cost effective for the department, or when it is in the best interest of the individual's vocational rehabilitation program based on mutual agreement of the rehabilitation counselor and the individual.

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67. Transportation in connection with the rendering of any vocational rehabilitation service and in accordance with the definition of that term in 22VAC30-20-10. Transportation may include relocation and moving expenses necessary for achieving a vocational rehabilitation objective.

a. Transportation costs. The department shall pay the most economical rate for accessible public transportation.

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 \$.12 a mile.

b. For and during training services. When the individual must live at the training location, the department may only pay for a one-way trip from the residence to the training location at the beginning of the training, and a one-way trip from the training location to the residence or job site at the conclusion of the training program. Transportation may be paid to and from the residence in case of emergency (severe illness, or death in family; acute business emergency or prolonged school closing such as Christmas holidays). Local bus fare may be furnished also.

When the individual's physical condition is such that travel by public conveyance is impossible, taxi fare may be allowed from place of residence to training site and return. When the individual lives at home and the training site requires daily transportation, the cost of such transportation may be paid.

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~~78.~~ Vocational rehabilitation services to family members of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.

Services to family members of the individual may be provided when such services may be expected to contribute substantially to the determination of rehabilitation potential or to the rehabilitation of the individual. In order for the department to furnish these services, they shall not be available from any other source.

a. Family member is defined ~~22VAC 30-20-10.as any relative by blood or marriage living in the same household.~~

b. Day care services for dependent children. The department may pay up to the amount paid per child, per day, by the local social services department in the locality in which the child is located. When more than one child is involved, rates for the additional children should be lower. When satisfactory accommodations can be secured at a rate lower than that paid by the local social services department, the lower rate shall be paid by the department.

~~89.~~ Interpreter services, ~~and note-taking services including sign language and oral interpreter services,~~ for individuals who are deaf ~~or hard of hearing; and~~ tactile interpreting services for individuals who are deaf-blind; and reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind.

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a. Upon request of the individual or as needed, these services may be provided at any stage during the rehabilitation process. Interpreting may be primarily in the form of sign language (manual method) or oral interpretation (oral method).

b. The department shall pay for interpreting services when these services contribute to the individual's vocational rehabilitation program. ~~for those individuals who meet the department's financial need criteria.~~

c. The interpreter must be, 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.

d. When individuals with deafness are in a training program, the department shall arrange for note taking or reader services, unless the individual indicates such service is not needed or desired.

910. Rehabilitation technology in accordance with the definition of that term in 22VAC30-20-10, including vehicular modification, telecommunications, sensory, and other technological aids and devices.

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a. Telecommunications system. Services related to use of a telecommunications system shall meet established federal or state health and safety standards and be consistent with written state policies.

b. Sensory and other technological aids and devices. The department may provide electronic or mechanical pieces of equipment or hardware intended to improve or substitute for one or more of the human senses, or for impaired mobility, or motor coordination.

Services related to use of sensory and other technological aids and devices shall meet established federal or state health and safety standards and be consistent with state law and regulations.

(1) An otological evaluation may be, and an audiological examination is required before the department may purchase a hearing aid.

(2) The department shall purchase hearing aids only for those individuals identified as benefiting in terms of employability as a direct result of such aid.

(3) Cross and bicross aids may be purchased only when it is justifiable on the basis of the vocational objective.

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(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.

~~10. Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public service employment. These services shall be provided in accordance with the training criteria set forth in subdivision 12 b (4) of this section.~~

11. Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

~~112.~~ Job search and placement assistance and job retention services, follow-up services, and follow-along services. Placement shall be in accordance with the mutually agreed upon vocational objective and is the responsibility of the individual and the department, particularly the rehabilitation counselor.

~~1213. Supported employment services in accordance with the definition of that term in 22VAC30-20-10; personal assistance services in accordance with the definition of that term in~~

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~~22VAC30-20-10; and p~~Post-employment services in accordance with the definition of that term in 22VAC30-20-10.

a. Selection criteria. Any rehabilitated individuals may be considered for post-employment services. The department may evaluate with each individual the need for such services.

b. All of the following criteria shall be met for the selection of individuals to receive post-employment services:

(1) The individual has been determined to be rehabilitated;

(2) The disabling medical condition shall be stable or slowly progressive;

(3) Post-employment services are necessary to assist the individual in maintaining employment;
and

(4) Solution of the problem does not require a complex or comprehensive rehabilitation effort, i.e., a new and distinct handicapping condition has not occurred which should be handled as a new case.

If needed services exceed any of the aforementioned conditions, the department may take a new application.

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~~13~~14. Supported employment services, in accordance with the definition of that term in 22VAC30-20-10, to any individual with ~~the~~ most ~~severe~~significant ~~disabilities~~disability who:

- a. Has not worked, or has worked only intermittently, in competitive employment.
- b. Has been determined on the basis of any evaluation of rehabilitation and career needs, including a consideration of whether supported employment is a possible vocational outcome, to meet the eligibility criteria for the State Vocational Rehabilitation Services Program as established in federal regulations.
- c. Has a need for ongoing support services in order to perform competitive work.

The following activities are authorized under this program:

- a. Evaluation of rehabilitation and career needs of individuals with the most severe disabilities in terms of a supported employment outcome.
- b. Development of and placement in jobs for individuals with the most severe disabilities.
- c. Provision of time-limited services needed to support individuals with the most severe disabilities in employment including:

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(1) Intensive on-the-job skills training provided by skilled job trainers, coworkers, and other qualified individuals.

(2) Ongoing support services needed to support and maintain an individual's supported employment placement. These must include, at a minimum, twice monthly monitoring to assess the individual's employment stability. Monitoring activities generally take place at the work site unless the individualized ~~written rehabilitation~~ plan for employment provides for off-site monitoring. If off-site monitoring is determined to be appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month.

(3) Follow-up services designed to reinforce and stabilize the job placement.

(4) Discrete post-employment services unavailable from the extended services provider that are necessary to maintain the job placement, including but not limited to job station redesign, repair and maintenance of assistive technology, and replacement of prosthetic and orthotic devices.

d. Transitional employment services for individuals with chronic mental illness may be provided under the State Supported Employment Program. Transitional employment means a series of temporary job placements in competitive work in an integrated work setting with ongoing support services. Ongoing support services must include continuing sequential job placements until job permanency is achieved.

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e. The agency shall provide for the transition of an individual with the most severe disabilities to extended services no later than 18 months after placement in supported employment, unless a longer period to achieve job stabilization has been established in the individualized ~~written rehabilitation program~~ plan for employment, before an individual with ~~the~~ most ~~severe significant disabilities~~ disability makes the transition to extended services:

~~Supported employment services must be provided in an integrated work setting which means that (i) most employees at that work setting are not disabled; (ii) the supported employee interacts on a regular basis, in the performance of job duties, with employees who do not have disabilities; and (iii) if the supported employee is part of a distinct work group comprised only of individuals with disabilities, the work group consists of no more than eight individuals. as defined in 22VAC30-20-10.~~

~~If there are no other employees or the only other employees are individuals who are part of a work group as described in clause (iii) above, the supported employee must interact on a regular basis, in the performance of job duties, with individuals without disabilities, including members of the general public. The required interaction cannot be satisfied by contact between an individual with the most severe disabilities and individuals who provide ongoing support services at the job site.~~

1415. Occupational licenses, tools, equipment, initial stocks (including livestock), and supplies.

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a. Licenses. Licenses required for entrance into selected vocations may be provided. These may be occupational or business licenses as required by the local governing body, state board examinations required by the Department of Professional and Occupational Regulation, and motor vehicle operator's license.

b. Tools and equipment. Tools and equipment shall be provided for an individual when:

(1) They are required for a job or occupation that is best suited to the utilization of their abilities and skills;

(2) The employer does not ordinarily furnish these articles; and

(3) They are for the exclusive use of the individual.

Such articles shall be for the individual's own use in the performance of his work and must remain in his possession and under his control as long as he engages in the job or occupation for which they are provided.

If the individual alleges that tools and equipment are stolen, the individual shall file a stolen property report with the local police.

Computer equipment and software shall be provided either if required as indicated in subdivision 14 b (1), (2) and (3) of this subsection or if it is necessary for vocational training. The

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department's financial participation in the cost of such equipment and software shall not exceed \$3,500.

c. Title retention and release. The department shall comply with state law on the retention of title and release of title of equipment to individuals.

d. Repossession of tools and equipment. The department shall repossess all occupational tools and equipment to which the department retains title when they are no longer being used for the purposes intended by the individual for whom they were purchased.

~~15~~16. Transition services in accordance with the definition of that term in 22VAC30-20-10.

~~17~~. Personal assistance services in accordance with the definition of that term in 22VAC30-20-10.

~~16~~18. Other goods and services determined necessary for the individual with a disability to achieve an employment outcome. These include, but are not limited to, such services as: peer counseling, independent living skills training, attendant care and attendant training if they can reasonably be expected to benefit an individual in terms of employability.

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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. The department shall not purchase or participate in the purchase of automotive vehicles.

~~4719~~. Services to groups. The department may provide services to groups of individuals with disabilities when the services may contribute substantially to the needs of the group, although they are not related directly to the IWRP individualized employment plan of any one person with a disability.

Statutory Authority

§51.5-14 of the Code of Virginia.

22VAC30-20-130. Individuals determined to have achieved an employment outcome.

An individual is determined to have achieved an employment outcome only if the following requirements have been met:

1. The provisions of services under the individual's IWRP individualized plan for employment has contributed to the achievement of an employment outcome;
2. The employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

3. The employment outcome is in ~~an~~the most integrated setting. ~~possible, consistent with the individual's informed choice;~~

4. The individual has maintained the employment outcome for a period of at least 90 days; and

5. At the end of the appropriate period under this section, the individual and the rehabilitation counselor or coordinator consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.

(See 22VAC30-20-200.)

Statutory Authority

§51.5-14 of the Code of Virginia.

22VAC30-20-140. Authorization of services.

Written authorization shall be made, either before or at the same time as the purchase of services.

When an oral authorization is given in an emergency situation, there shall be prompt

documentation and the authorization shall be confirmed in writing and forwarded to the provider

of the services.

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Statutory Authority

[§51.5-14](#) of the Code of Virginia.

22VAC30-20-150. Written standards for facilities and providers of services.

The designated state unit shall establish, maintain, make available to the public, and implement written minimum standards for the various types of facilities and providers of services used by the state unit in providing vocational rehabilitation services, in accordance with the following requirements:

1. Accessibility of facilities. Any facility in which vocational rehabilitation services are provided must be accessible to individuals receiving services and must comply with the requirements of the Architectural Barriers Act of 1968, ~~the Uniform Accessibility Standards and their implementing regulations in 41 CFR Part 101, subpart 101-19.6,~~ the Americans with Disabilities Act of 1990, and §504 of the Rehabilitation Act of 1973, as amended- and regulations implementing these laws.

[34CFR361.51](#)

2. Personnel standards.

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a. Qualified personnel. Providers of vocational rehabilitation services shall use qualified personnel, in accordance with any applicable national or state approved or recognized certification, licensing, or registration requirements or, in the absence of these requirements, other comparable requirements (including state personnel requirements) that apply to the profession or discipline in which that category of personnel is providing vocational rehabilitation services.

b. Affirmative action. Providers of vocational rehabilitation services shall take affirmative action to employ and advance in employment qualified individuals with disabilities.

c. Special communication needs personnel. Providers of vocational rehabilitation services shall include among their personnel, or obtain the services of, individuals able to communicate in the native languages of applicants and eligible individuals who have limited English speaking ability; and ensure that appropriate modes of communication for all applicants and eligible individuals are used.

3. Fraud, waste, and abuse. Providers of vocational rehabilitation services shall have adequate and appropriate policies and procedures to prevent fraud, waste, and abuse.

Statutory Authority

[§51.5-14](#) of the Code of Virginia.

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22VAC30-20-160. Participation of individuals in the cost of services based on financial need.

A. A financial need test is established because of the limited resources of the department.

B. A financial need test shall be utilized to determine the extent of participation by eligible individuals or individuals receiving services during an extended evaluation in the cost of vocational rehabilitation services.

1. The state unit shall maintain written policies covering the determination of financial need;
2. The state plan must specify the types of vocational rehabilitation services for which the unit has established a financial needs test. No financial needs test shall be applied and no financial participation shall be required as a condition for furnishing the following vocational rehabilitation services: assessment for determining eligibility and priority for services, except those nonassessment services that are provided during an extended evaluation for an individual with a ~~severe~~significant disability; assessment for determining vocational rehabilitation needs; counseling, guidance and referral services; interpreter and reader services; personal assistance services; placement services; on-the-job training; and unpaid work experience. Also excluded from financial participation shall be services necessary to assist in the diagnostic and evaluation process, such as transportation, maintenance, and interpreter service for the deaf. Services which require an economic need test are: physical and mental restoration; training other than on-the-job

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training (OJT); maintenance; transportation; services to family members; ~~interpreter and reader services~~; telecommunications; recruitment and training services; post-employment; occupational licenses and other goods and services.

3. The policies must be applied uniformly to all individuals in similar circumstances; the policies may require different levels of need for different geographic regions in the state, but must be applied uniformly to all individuals within each geographic region; and the policies must ensure that the level of an individual's participation in the cost of vocational rehabilitation services is reasonable based on the individual's financial need, including consideration of any disability-related expenses paid by the individual, and not so high as to effectively deny the individual a necessary service.

C. Groups exempt are:

1. Recipients of General Relief.~~;~~

2. Recipients of Temporary Assistance for Needy Families (TANF) by the individual or family on which the individual is dependent~~;~~ and

3. Individuals determined eligible for Social Security benefits under Titles II or XVI of the Social Security Act.

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D. 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.

E. The financial need test shall consider the following income:

1. Annual taxable income (gross income).

2. Annual nontaxable income such as social security, retirement benefits, workers' compensation, and veterans' benefits.

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

F. The financial need test shall provide for the following allowances and exclusions:

1. The gross income shall be adjusted by the percentage indicated in the table below:

Gross Income

Allowance

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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%

2. Income shall be excluded from consideration based upon family size using the table below:

Size of Family	Income
Exclusion	
1	\$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 law income for a family of four. It shall be updated annually by the department.

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3. Excluded from income shall be estimated client cost specifically related to the client's disability and not covered by comparable services and benefits.

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

5. Individual retirement accounts shall be excluded from income considerations.

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

Statutory Authority

[§51.5-14](#) of the Code of Virginia.

22VAC30-20-170. Availability of comparable services and benefits.

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A. Prior to providing any vocational rehabilitation services to an eligible individual or to members of the individual's family, except those services listed in subsection D of this section, the state unit shall determine whether comparable services and benefits as defined in 22VAC 30-20-10 exist under any other program and whether those services and benefits are available to the individual.

B. If comparable services or benefits exist under any other program and are available to the eligible individual at the time needed to achieve the rehabilitation objectives in the individual's IWRP individualized plan for employment, the state unit shall use those comparable services or benefits to meet, in whole or in part, the cost of vocational rehabilitation services.

C. 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 in the individual's IWRP, individualized plan for employment, the state unit shall provide vocational rehabilitation services until those comparable services and benefits become available.

D. The following services are exempt from a determination of the availability of comparable services and benefits under subsection A of this section: assessment for determining eligibility and priority for services; assessment for determining vocational rehabilitation needs; vocational rehabilitation counseling, guidance, and referral services; ~~vocational and other training services, such as personal and vocational adjustment training, books (including alternative format books accessible by computer and taped books), tools, and other training materials in accordance with~~

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~~34 CFR 361.48(a)(6);~~ job-related services, including job search and placement services, job retention services, follow-up services; rehabilitation technology; and post-employment services consisting of those services listed in this subsection.

E. The requirements of subsection A of this section also do not apply if the determination of the availability of comparable services and benefits under any other program would delay the provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk based on medical evidence provided by an appropriate qualified medical professional; or an immediate job placement would be lost due to a delay in the provision of comparable services and benefits.

Statutory Authority

§51.5-14 of the Code of Virginia.

22VAC30-20-181. Review of rehabilitation counselor or coordinator determinations.

A. The designated state plan/unit must ~~contain~~ establish and implement procedures, including standards of review under subdivision D 7 of this section, established by the Commissioner of the Department of Rehabilitative Services 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. The procedures

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established by the Commissioner of the Department of Rehabilitative Services must be in accordance with this section.

B. Informal resolution. The Department of Rehabilitative Services may establish an informal process to resolve a request for review without conducting mediation or a formal hearing. However, the informal process must not be used to deny the right of an applicant or eligible individual to a hearing under subdivision D of this section or mediation under subdivision C. The informal resolution or the mediation process or both must be conducted and concluded within the time period established under subdivision D 1 of this section for holding a formal hearing. If neither the informal resolution nor mediation is ~~not~~ successful, a formal hearing must be conducted by the end of this same period, unless the parties agree to a specific extension of time.

C. The department shall establish mediation procedures that allow an applicant or eligible individual and the state unit to resolve disputes. The procedures shall provide that:

1. The mediation process is conducted by a qualified and impartial mediator as defined in 22VAC30-20-10 who must be selected from a list of qualified and impartial mediators maintained by the state;

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2. Mediation be available, at a minimum, whenever an applicant, eligible individual or, as appropriate, the individual's representative requests an impartial due process hearing under this section;

3. Participation in the mediation process is voluntary on the part of the applicant or eligible individual, as appropriate, and on the part of the state unit;

4. The mediation process not be used to deny or delay the applicant or eligible individual's right to pursue resolution of the dispute through a formal hearing process in the time specified in Section D or any other rights provided under this part;

5. Either party or the mediator may elect to terminate mediation at any time and pursue resolution through a formal hearing if desired;

6. Mediation sessions are scheduled and conducted in a timely manner and held in a location and manner convenient to the parties in dispute;

7. Discussions that occur during mediation remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding and parties may be required to sign a confidentiality pledge prior to mediation;

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8. Any agreement reached by the parties to the dispute be described in a written mediation agreement that is develop by the parties with the assistance of the mediator, signed by both parties, with a copy given to both parties; and

9. The cost of the mediation process will be paid by the state, but the state is not required to pay for any costs related to the representation of an applicant or eligible individual.

~~C. Formal hearing procedures:~~

~~1. Impartial hearing officer means an individual who:~~

~~a. Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);~~

~~b. Is not a member of the State Rehabilitation Advisory Council for the Department of Rehabilitative Services;~~

~~c. Has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual;~~

~~d. Has knowledge of the delivery of vocational rehabilitation services, the state plan, and the federal and state regulations governing the provision of services;~~

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~~e. Has received training with respect to the performance of official duties; and~~

~~f. Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.~~

~~2. An individual may not be considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer.~~

D. The department shall establish formal review procedures that provide that:

1. A hearing by an impartial hearing officer, selected in accordance with subsection E of this section, must be held within ~~45~~ 60 days of an individual's request for review, unless informal resolution is achieved prior to the ~~45~~60th day or the parties agree to a specific extension of time;

2. The department may not institute a suspension, reduction, or termination of services being provided under an ~~IWRP~~ individualized plan for employment pending a final determination of the formal hearing under this subdivision, ~~or~~ informal resolution under subsection B of this section, or mediation under subsection C of this section unless the individual or, in an appropriate case, the individual's representative so requests or the agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative;

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3. The individual or, if appropriate, the individual's representative must be afforded an opportunity to present additional evidence, information, and witnesses to the impartial hearing officer, to be represented by counsel or other appropriate advocate, and to examine all witnesses and other relevant sources of information and evidence;

4. The impartial hearing officer shall make a decision based on the provisions of 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 and shall provide to the individual or, if appropriate, the individual's representative and to the commissioner a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing;

~~5. If the commissioner decides to review the decision of the impartial hearing officer, the commissioner shall notify in writing the individual or, if appropriate, the individual's representative of that intent within 20 days of the mailing of the impartial hearing officer's decision; The hearing officer's decision is final, except that a party may request an impartial review under paragraph 6 if the state has established procedures for review, and a party involved in a hearing may bring a civil action under paragraph H of this section;~~

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~~6. If the commissioner fails to provide the notice required by subdivision 5 of this subsection, the impartial hearing officer's decision becomes a final decision; The state may establish procedures to enable a party who is dissatisfied with the decision of the impartial hearing officer to seek an impartial administrative review of the decision consistent with 34 CFR 361.57.~~

~~7. The decision of the commissioner to review any impartial hearing officer's decision must be based on the standards of review contained in written departmental policy.~~

~~8. If the commissioner decides to review the decision of the impartial hearing officer, the commissioner shall provide the individual or, if appropriate, the individual's representative an opportunity to submit additional evidence and information relevant to the final decision;~~

~~9. The commissioner may not overturn or modify a decision, or part of a decision, of an impartial hearing officer that supports the position of the individual unless the commissioner concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous because it is contrary to the approved state plan, the federal Rehabilitation Act, federal vocational rehabilitation regulations, or state regulations or policies that are consistent with federal requirements;~~

~~10. Within 30 days of providing notice of intent to review the impartial hearing officer's decision, the commissioner shall make a final decision and provide a full report in writing of the~~

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~~decision, including the findings and the statutory, regulatory, or policy grounds for the decision, to the individual or, if appropriate, the individual's representative;~~

~~11. The commissioner may not delegate responsibility to make any final decision to any other officer or employee of the Department of Rehabilitative Services; and~~

~~127.~~ Except for the time limitations established in subdivisions ~~1 and 5~~ of this subsection, each state's review procedures may provide for reasonable time extensions for good cause shown at the request of a party or at the request of both parties.

E. Selection of impartial hearing officers. The impartial hearing officer for a particular case must be selected (i) from among the pool of persons qualified to be an impartial hearing officer, as defined in 34 CFR 361.5(b)(22) and 29 USC §722(b) and (d), who are identified jointly by the Department of Rehabilitative Services and those members of the State Rehabilitation ~~Advisory~~ Council designated in §102(d)(2)(C) of the Act (29 USC §722(b) and (d)) and (ii) on a random basis.

F. Informing affected individuals. The department shall inform, through appropriate modes of communication, all applicants and eligible individuals of:

1. Their right to review under this section, including the names and addresses of individuals with whom appeals may be filed; and

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2. The manner in which an impartial hearing officer will be selected consistent with the requirements of subsection E of this section.

G.. Implementation of final decisions. If a party brings a civil action under paragraph H. of this section to challenge the final decision of a hearing officer under section D. or to challenge the final decision of a state reviewing official under section D., the final decision of the hearing officer or state reviewing official must be implemented pending review by the court

H. Civil action. Any party who disagrees with the findings or decisions of an impartial hearing officer under paragraph 4 of section D if the state that has not established administrative review procedures under paragraph 6 of section D, and any party who disagrees with the findings and decision under paragraph 6 of section D, if the state has established an administrative review procedure, has a right to bring civil action with respect to the matter in dispute. The action may be brought in any state court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy. In any action brought under this section, the court receives the records related to the impartial due process hearing and the records related to the administrative review, if applicable; hears additional evidence at the request of a party; and basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

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Statutory Authority

[§51.5-14](#) of the Code of Virginia.

22VAC30-20-190. Protection, use, and release of personal information.

A. Purpose. The purpose is to establish policies and procedures for the proper dissemination of information in accordance with the statutes of the Code of Virginia, Virginia Freedom of Information Act, and Virginia Privacy Protection Act. Hereafter clients shall be referred to as data subjects.

B. Application. This applies to all employees of the department, consultants, affiliates and volunteers.

C. Policies. The department shall:

1. Comply with state statutes when releasing any information regarding data subjects by:

a. Disclosing information or records to the data subject who is 18 years old, except:

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(1) If data subject has been legally declared as incompetent then the right to access information has been granted to the individual or committee which has been appointed as guardian, authorized agent or agents, or representative or representatives.

(2) When the treating physician has written on a mental or medical record: "In my opinion a review of such records by the data subject would be injurious to the data subject's physical or mental health or well being." This does not preclude access to that report by authorized agents or representatives. The treating physician is the only professional who, by statute, has the authority to label and deny access to a mental record by the data subject. Access to other information is not restricted.

b. Disclosing information or records only to the parent or guardian for the data subject who is under 18 years old.

2. Follow procedures which ensure that all records and other personal, identifying data are treated as confidential information, meaning that other than regular access authority and the exceptions which are permitted by code and statutes, no expressed personal or documented information shall be released to a third party without the written, informed consent of the data subject or his authorized agent or by court order;

3. Obtain and document only that information which is necessary to plan and deliver rehabilitation services;

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4. Maintain and post the department's access list which designates staff positions of those who have the privilege of reviewing and checking out records;

5. Assign to all individuals as defined in subsection B and acknowledge written requests for information which are identified and occur after a data subject's application for services;

6. Charge for copies of information unless the request is from those who need information to assist data subject in the rehabilitation program. The rate shall be \$.15 per page or the actual cost, whichever is less; and

7. Keep records in offices unless in accordance with a court order, statute, or by special authorization from the department representative.

D. Procedures for disclosing information.

1. Handling disclosures.

a. Each request to disclose information shall be handled during normal business hours.

b. Each written request shall be responded to within 14 working days.

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c. Before an employee releases information to a person or organization other than those identified on the access list, written, informed consent must be given by data subject or the authorized agent.

When there is need to release information regarding data subjects, informed consent forms should be initiated through the data subject's counselor. Forms are completed prior to releasing information and filed in data subject's record.

d. Any employee who releases information after informed consent is obtained must document data subject's record with employee's name, date, the purpose for giving specific information, and to whom information was given. These statements are also documented when the record has been reviewed by or copied for the data subject.

2. Accessing information for specific situations.

a. A data subject's request to review personal record.

(1) When a data subject requests a review of their case records, the individual should be referred to their counselor, or in his absence, the counselor's supervisor. This employee is responsible for confirming the data subject's age, and competency status to access information in his own behalf.

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(2) For those data subjects who are under age 18 or who have been declared incompetent, the department shall explain right to access and assist data subject by coordinating the desired review with parent or authorized agent.

(3) For data subjects who have the right to access information, the department should obtain the case record and review contents to learn if there are any mental records which a treating physician has identified as not to be reviewed. These are the only reports which can and must be removed before access.

(4) The department gives data subject their case record and is available throughout the review to interpret reports or to assist the data subject, who may wish to seek additional information regarding contents. The data subject may choose to review their case record without interpretation.

b. Access by parents, guardians, or authorized agents.

(1) When a data subject is a minor or has been legally declared as incompetent, the parent, guardian, or authorized agent, is expected to furnish personal identification and sign a statement regarding their relationship to data subject.

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(2) When a data subject is 18 years or older and there is a parent who wants to review information or accompany data subject to a data subject oriented meeting, the data subject shall sign an "Authorization for Release of Information," form prior to disclosure.

c. Access by "significant others" (other family members or friends).

(1) When a data subject is a minor or has been legally declared as incompetent, the parent, guardian, or authorized agent, shall give written, informed consent prior to disclosure.

(2) When a data subject is 18 years or older, he shall give written, informed consent prior to disclosure.

d. Access by third parties.

(1) Unless required by law, or this department, no disclosure shall be made to third parties without written, informed consent from the data subject or the legally authorized agent. Upon disclosure, third parties shall be advised to maintain confidentiality with no redisclosure of information.

(2) The following information is either required by law or permitted by mission of the agency and shall be disclosed without the data subject's authorization:

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(a) Within the department, employees shall be given information which is relevant to case management or research requirements.

(b) The department's medical consultants may release information to another physician for consultation or hospitalization purposes.

(c) For emergencies:

(1) Telephone and face-to-face disclosure may be made to any person for an emergency when it is reasonable to believe that a delay shall result in serious bodily injury, death or deterioration of the physical or mental condition of data subject. Examples: (i) an emergency admission or commitment to a hospital; (ii) an inquiry from an acute care hospital, data is limited to answers for specific information from the data subject's case record; and (iii) an inquiry by law-enforcement officials regarding an emergency situation. Information is limited to that which is necessary to deal with the emergency.

(2) When it becomes necessary to release information in these circumstances, the responsible department party shall enter the following in the data subject's case record: (i) the date the information was released; (ii) the person to whom information was released; (iii) the reason the information was released; (iv) the reason written, informed consent could not be obtained; and (v) the specific information which was released.

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(d) For court orders and subpoena, all requests for information by court orders shall be processed by the data subject's counselor unless there is some question about the need for legal advice. In those situations, the department representative shall decide if contact needs to be made with the department representative in the Attorney General's office prior to compliance. This contact shall be made by the commissioner's designee.

(e) The Virginia Department of Social Services shall be given, upon request, information about the location, income, and property of data subjects who have abandoned, deserted, or failed to support children and their caretakers who are receiving public assistance. No other information may be released.

(f) The Virginia Department of Health shall be given access to medical records in the course of an investigation, research, or studies of diseases or deaths which are of public health importance.

(g) The Virginia Department of Health may be provided with abstracts of records of data subjects having malignant tumors or cancers. Such abstracts may include the name, address, sex, race, and any other medical information required by law.

(h) Information may be released as requested for a formal investigation to the Virginia Department of Health, State Medical Examiner.

e. Access by special interest third parties.

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(1) Release of information shall include a written, informed consent.

(2) Except for public events, no data other than directory information shall be released to the news media without the written, informed consent of the data subject or the authorized agent.

(3) No information shall be released to law-enforcement officers without the written, informed consent of the data subject or the authorized agent, or without judicial order.

(4) Audio tapes, video tapes, computerized data or other media reproduction are considered as confidential records and shall be treated like written material.

E. Procedure for changing a record.

1. Revoking an authorization of consent.

a. If anyone, such as an attorney, has a data subject sign an authorization which rescinds all prior authorizations, this negates all previous authorizations. The department shall make this a part of the case record.

b. When the revocation clause appears in the record, the department no longer has the authority to disseminate additional information other than to those on the regulation department access list.

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c. If the data subject is currently a client, their counselor shall record any authorization which includes a revocation clause. This means that all routines for forwarding reports to those not on department's access list shall be stopped.

d. The rehabilitation counselor shall notify WWRC counselor or sponsor of the situation and inform the data subject of the restriction.

e. The department shall acknowledge and comply with the attorney's request for information. A separate letter shall also advise the attorney that this clause denies access of information to persons or organizations which are responsible for continuing rehabilitation services. The department shall advise attorney of the need to be provided with an additional statement which reinstates communication and correspondence.

2. Reinstating consent. When a satisfactory reinstatement statement and new consent is received from the attorney and the data subject, the department shall file the additional authorization and inform appropriate department counterparts about the new release.

3. Challenging and correcting a record by the data subject or agent.

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- a. The data subject or agent has a right to contest the accuracy or completeness of any personal record, except access to challenging or correcting a treating physician's mental record which has been identified as not to be reviewed by the data subject.

- b. Data subjects who are currently clients shall be instructed by their counselor that any request to correct, amend, or delete information is to be done in writing, giving specific reasons why information is being contested.

- c. The counselor shall submit this statement to their immediate supervisor.

- d. Supervisor shall interview staff, as necessary, examine pertinent records and submit a written recommendation to their regional or center director. This recommendation is to include a statement and rationale to either uphold or to change existing records.

- e. When the regional or center director determines that information which is being disputed is, in fact, incomplete, inaccurate, not pertinent, untimely, or unnecessary to be retained, that individual shall instruct the original writer to amend the report in question. If the originator is no longer an employee, the regional or center director or a designee shall prepare the amended report. A copy of the amended report shall be sent to the local office for the client's file.

- f. The department shall disseminate the amended version of the report to any previous recipients and as part of the record for all further requests for information.

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g. The department shall notify the data subject in writing of the decision. A copy of that notice is to be filed in data subject's local office file.

h. If the investigation does not change the record or resolve the dispute, the data subject may file a statement stating what he believes to be an accurate or complete version of that information.

This statement becomes a permanent part of the record. The department shall forward a copy to all previous recipients who have access to the information being disputed.

F. Procedures of safeguarding records.

1. Maintaining security of records.

a. Data subject records are the property of the department and are entrusted to personnel who safeguard records from loss, defacement, or use by unauthorized persons.

b. No record is to be defaced by marking, underlining, or entering notations by anyone other than the originator of any document.

c. When a record is requested, either by court or a directive from the commissioner, a certified copy of the record shall be provided by the counselor.

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d. Whoever removes records has the responsibility to assure confidentiality of content while it is out. It must never be left unattended in areas which are accessible to unauthorized individuals.

e. Confidentiality shall be maintained in work areas where casework documents are being prepared, filed, or distributed.

2. Violating confidentiality. Individuals who violate security standards or the confidentiality code by releasing information without obtaining or following procedures may be subject to their name being removed from the access list and to discipline under the standards of conduct.

G. Department's access list. The following have been approved to have access to the case records of clients served by the department:

1. Administrative and supervisory staff engaged in dutiful performance of their job which requires access to individual client files;

2. Service delivery personnel including, but not limited to, rehabilitation counselors, vocational evaluators, or psychiatrists; and

3. Clerical personnel as appropriate.

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Statutory Authority

[§51.5-14](#) of the Code of Virginia.

22VAC30-20-200. Review of extended employment and other employment under special certificate provisions of the Fair Labor Standards Act-

A. For 2 years after the individual's record of services is closed (and thereafter if requested by the individual or, if appropriate, the individual's representative), the state unit shall annually review and reevaluate at least annually the the status of each individual determined by the state unit to have achieved an employment outcome in an extended employment setting in a community rehabilitation program or other employment setting in which the individual is compensated in accordance with §14(c) of the Fair Labor Standards Act or whose record of services is closed while the individual is in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with 22VAC30-20-10 or that the individual made an informed choice to remain in extended employment. This review or reevaluation must include input from the individual or, in an appropriate case, the individual's representative to determine the interests, priorities, and needs of the individual for with respect to competitive employment in an integrated setting in the labor market.

B. The state unit shall make maximum effort, including the identification of vocational rehabilitation services, reasonable accommodations, and other support services to enable the

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eligible individual ~~to benefit from training in or to be placed in an integrated setting~~ engage in competitive employment.

C. The state unit shall ~~provide services designed to promote movement from extended employment to integrated employment, including supported employment, independent living, and community participation~~ obtain the individual's or, as appropriate, the individual's representative's signed acknowledgement that the review and reevaluations have been conducted.

Statutory Authority

§51.5-14 of the Code of Virginia.

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

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

Commissioner

Department of Rehabilitative Services

Date: _____