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Fast-Track Regulation Agency Background Document

Agency name	Virginia Department for Aging and Rehabilitative Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC30-20
VAC Chapter title(s)	Provision of Vocational Rehabilitation Services
Action title	Amend Regulations Following Periodic Review
Date this document prepared	May 1, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This action, which follows a Periodic Review, makes changes to 22VAC30-20 (Provision of Vocational Rehabilitation Services). The Vocational Rehabilitation (VR) program provides services to individuals with disabilities to help them prepare for, secure, regain or retain employment. Administration of the VR program is directed heavily by federal statutory and regulatory requirements. Federal funding primarily authorizes and funds VR services, accounting for 77% of DARS' total VR expenditures in FFY 2023. Because the VR program is not an entitlement (i.e., eligibility for VR services is not a guarantee of services), DARS must establish appropriate operating guidelines for serving individuals if the agency is unable to serve all eligible individuals, and these priorities are primarily derived from federal requirements.

Amendments to Sections 10, 90, and 120 clarify terminology related to categories of eligible individuals and, in accordance with relevant federal guidance, make clear service priorities as they relate to post-employment services and individuals who require specific services or equipment to maintain employment.

Amendments to Section 160 clarify and further establish specific VR services exempt from cost to the client, largely in response to federal requirements and in furtherance of operational and administrative efficiencies for the agency.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

- CAP = Client Assistance Program
- DARS or Department = Department for Aging and Rehabilitative Services
- DBVI = Department for the Blind and Vision Impaired
- dLCV = disAbility Law Center of Virginia
- OOS = Order of Selection
- Pre-ETS = Pre-employment transition services
- SRC = State Rehabilitation Council
- VR = Vocational Rehabilitation
- WIOA = Workforce Innovation and Opportunity Act

Statement of Final Agency Action

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

On May 1, 2024, the Commissioner of the Department approved the amendments to 22VAC30-20 (Provision of Vocational Rehabilitation Services).

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

This Fast Track regulatory action was initiated following a Periodic Review of the chapter.

Most revisions made through this regulatory action are: 1) designed to align with federal regulatory and subregulatory provisions and guidance that are already largely incorporated into agency operations; and 2) intended to clarify or update terminology.

On March 11, 2024, the department shared the potential revisions with the Virginia State Rehabilitation Council (SRC) (established pursuant to 29 U.S.C. § 701 et seq. and 29 U.S.C. § 795 et seq.; and § 51.5-129 of the Code of Virginia) and received support for these revisions.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

VR services are provided within each state pursuant to the federal Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq., as amended most recently in 2014 by the Workforce Innovation and Opportunity Act (WIOA)) and the corresponding federal regulations found at 34 CFR Part 361. In Virginia, DARS is the designated state agency for providing general vocational rehabilitation services through cooperation with the federal government. Specifically, DARS is statutorily “empowered and directed to cooperate with the federal government in the administration of [the Rehabilitation Act of 1973], to prescribe and provide services as may be necessary for the rehabilitation of persons with disabilities, to provide for the supervision of such services, and to disburse and administer federal funds provided for the rehabilitation of such persons.” (See: § 51.5-118.)

VR services for blind and vision impaired persons in Virginia are provided by the Department for the Blind and Vision Impaired (See: § 51.5-66.). Unless otherwise noted, VR services referenced herein are those provided by DARS.

At the state level, the provision of VR services is authorized and directed under Title 51.5 of the Code of Virginia, and Items 330 A and B of the 2023 Appropriation Act. Section 51.5-131 authorizes the Commissioner of DARS to promulgate regulations necessary to carry out the provisions of the laws of the Commonwealth administered by DARS.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

Following a Periodic Review of this chapter, DARS identified sections that could benefit from updates, revisions, and clarifications.

VR services assist individuals with disabilities to prepare for, secure, retain, or regain employment. DARS collaborates with individuals with disabilities and community partners to empower individuals to maximize their employment, working towards economic self-sufficiency and independence.

The regulation is designed to support clarity and ensure transparency in the delivery of VR services in the Commonwealth, while ensuring VR services are provided in accordance with federal laws and regulations and state laws. These amendments are intended to benefit VR clients, and provide improved clarity for DARS staff, the public, VR clients, and advocates.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

The following changes are being made to this chapter:

In 22VAC30-20-10, the definition of “Individual with a most significant disability” is changed from federal regulatory language to a corresponding definition specific to its application and use in Virginia as approved by the Rehabilitation Services Administration (RSA) in the VR portion of the Commonwealth’s WIOA Combined State Plan.

In 22VAC30-20-10, the definition of “Post-employment services” is amended to specify the appropriate scope of such services in response to guidance promulgated by the US Department of Education on March 11, 2022. (Rehabilitation Services Administration FAQ 22-03.) Language in 22VAC30-20-120 is also amended to reflect this federal guidance for the provision of post-employment services.

In 22VAC30-20-90, language is added that corresponds to 34 CFR 361.36(a)(3)(v) and clarifies the Department’s priority with regard to the provision of VR services to clients at risk of job loss/failing to maintain employment as federally approved in the VR portion of Virginia’s WIOA Combined State Plan.

In 22VAC30-20-160, outdated references to extended evaluations are changed to trial work, a terminology update comporting with WIOA.

In 22VAC30-20-160, changes are also made to the list of services exempt from client financial participation, with the addition of auxiliary aids or services and Pre-ETS, and clarification of exempt job-related services and work experience. Auxiliary aids or services and job-related services are exempt pursuant to 34 CFR 361.54(b)(3). Pre-ETS must be made available to all students with disabilities pursuant to 34 CFR 361.48(a)(1) whether they have been determined eligible for VR or they are potentially eligible. Additionally, the changes exempt work experiences regardless of compensation (i.e., paid or unpaid) status.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

Work experience and workforce participation continues to be of utmost importance to DARS, its clients, and its workforce partners. The primary advantages of the changes to Sections 10, 90, and 120 are to clarify language that is ambiguous and align the chapter with relevant federal provisions and guidance.

Revisions to Section 160 modify the list of VR services that are exempt from client financial participation.

Auxiliary aids services and job-related services are exempt pursuant to 34 CFR § 361.54(b)(3).

The inclusion of Pre-ETS and work experiences to the list of exempt services is intended to further operational and administrative efficiencies for the agency and position the agency to meet federal mandates with regard to the expenditure of funds.

WIOA requires DARS to set aside at least 15% of its federal funds to provide Pre-ETS to students with disabilities who are eligible or potentially eligible for VR services. Required services include job exploration counseling, work-based learning experiences, counseling on opportunities for enrollment in comprehensive transition or postsecondary education programs, workplace readiness training, and instruction in self-advocacy.

Pre-ETS must be provided to all students with disabilities, regardless of whether the student has applied/ been determined eligible for VR services. (34 CFR §361.48) Students with disabilities may or may not be

VR clients. For purposes of applying financial participation policies to Pre-ETS, it is not only not feasible to draw distinctions among these groups of students with a disability, but federal regulations also require financial participation policies to be applied uniformly to all individuals in similar circumstances. Additionally, DARS is required to reserve and expend spend 15% of VR funds on Pre-ETS for students with disabilities. In Federal Fiscal Year 2021, the most recent year for which the U.S. Department of Education reviewed DARS’ final financial reports, DARS was found to have not expended the required 15% and was required to submit a corrective action plan detailing efforts to ensure these funds are fully expended in compliance with federal requirements. This regulatory change will help support the agency’s efforts to expend federal VR funds as federally required as well as conform with the federal requirement that Pre-ETS be provided to all students with disabilities.

The changes to Section 160 would also clarify that all work experiences are exempt from financial participation without regard to compensation status. As currently drafted, only unpaid work experiences are exempt. When VR clients are placed into paid work experiences and are not themselves exempt from financial participation, their financial participation essentially offsets the wages paid to them by an employer. The change is designed to eliminate this potential barrier to providing work experiences in order to maximize workforce participation and development.

None of the proposed changes to Section 160 are anticipated to have a significant impact on VR clients or agency funds, and revising and refining the regulatory language corresponding to client financial participation generally does not result in cost increases to the agency or the Commonwealth. VR services are funded by a combination of federal and state funds (77% and 23%, respectively). Because VR services are not an entitlement (i.e., eligibility for VR services is not a guarantee of services), DARS provides VR services until all funds have been exhausted. If the agency is no longer able to serve all eligible individuals, DARS has previously established operating guidelines for serving individuals based on priorities, which are primarily directed by federal requirements. At time of the submission of this regulatory action, DARS is currently serving all clients who are eligible for VR services and is not operating under an order of selection (OOS) as established in 22VAC30-20-90 (Order of selection for services).

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

The regulation is designed to support clarity and ensure transparency in the delivery of VR services in the Commonwealth. The regulation ensures VR services are provided in accordance with federal laws and regulations and state laws. The regulation aligns and supports compliance with the federal Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq., as amended) and the ensuing federal VR regulations found at 34 CFR Part 361.

There is no federal requirement that clients are responsible for the cost of VR services provided or funded by the Department. This is left to the discretion of the states. However, § 51.5-176 of the Code of Virginia requires that the Department maximize financial participation of persons receiving services. Accordingly, 22VAC30-20-160 establishes a financial needs test to determine the extent of participation.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations.

“Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No state agency is disproportionately affected by the revisions.

Localities Particularly Affected

No locality is disproportionately affected by the revisions.

Other Entities Particularly Affected

No entity is disproportionately affected by the revisions. DARS works collaboratively with the SRC and the disAbility Law Center of Virginia (dLCV) to ensure the successful delivery of VR services. The dLCV administers the Client Assistance Program (CAP) and is an advocacy resource for people with disabilities who are seeking, receiving, or have been denied services from state vocational rehabilitation agencies.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources 	<p>DARS would experience minimal to no impact from these revisions to the regulation. There are no expected impacts or changes that require funding to execute. DARS remains in compliance with federal requirements, and any changes made to conform this regulatory provision to federal mandates has no impact on agency operations.</p> <p>Additionally, DARS anticipates implementing some changes with particularly negligible impact due to the low number of affected clients. For example, the number of clients placed into the type of paid work experiences that would be impacted by the proposed changes are 9, 2, and 3 in FFY 2022, 2023, and 2024 (to date), respectively.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There is no expected cost for any other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The revisions clarify language and provide transparency in agency operations and further</p>

	agency efficiencies intended to benefit clients, advocates, and the public.
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Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	There is no expected cost or impact for localities.
Benefits the regulatory change is designed to produce.	The revisions clarify language and provide transparency in agency operations and further agency efficiencies intended to benefit clients, advocates, and the public.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	There is no expected cost or impact for other entities. These amendments are intended to generally benefit VR clients, and provide improved clarity for clients, advocates, and the public.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	N/A
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	No projected costs for any individuals, businesses, or other entities will result from the regulatory change.
Benefits the regulatory change is designed to produce.	The revisions clarify language and provide transparency in agency operations and further agency efficiencies intended to benefit clients, advocates, and the public.

Alternatives to Regulation

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

No alternative action was considered because the Code of Virginia gives the DARS Commissioner oversight and responsibility for these regulations. Amending the existing regulation is the least burdensome method to accomplish this purpose while ensuring compliance with federal requirements for the VR program.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There is no anticipated impact on small businesses. The regulatory action does not change recordkeeping or reporting requirements for small businesses.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Department for Aging and Rehabilitative Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Charlotte Arbogast, Policy Analyst, Virginia Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Henrico, VA 23228, Phone: 804-662-7093, Fax: 804-662-7663. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
10		Definitions	<p>The definition of “Individual with a most significant disability” is changed from federal regulatory language to a corresponding definition specific to its application and use in Virginia as used in Virginia’s federally approved WIOA Combined State Plan.</p> <p>The definition of “Post-employment services” is amended to specify the appropriate scope of such services in response to guidance promulgated by the US Department of Education on March 11, 2022. (Rehabilitation Services Administration FAQ 22-03.) Language in 22VAC30-20-120 is also amended to reflect this federal guidance for the provision of post-employment services.</p>
90		Order of selection for services	Language is added that corresponds to 34 CFR § 361.36(a)(3)(v) and clarifies the Department’s priority with regard to the provision of VR services to clients at

			risk of job loss/failing to maintain employment as included in Virginia's federally approved WIOA Combines State Plan.
120		Scope of vocational rehabilitation services for individuals	Language is amended to reflect federal guidance for the provision of post-employment services.
160		Participation of individuals in the cost of services based on financial need	Changes are made to the list of services exempt from client financial participation, with the addition of auxiliary aids or services and Pre-ETS, and clarification of exempt job-related services and work experience. Auxiliary aids or services and job-related services are exempt pursuant to 34 CFR § 361.54(b)(3). Pre-ETS must be made available to all students with disabilities pursuant to 34 CFR § 361.48(a)(1). The changes exempt work experiences regardless of compensation status.