

**State of Colorado**  
**Department of Labor and Employment**  
**Division of Vocational Rehabilitation**



**COLORADO**  
**Department of**  
**Labor and Employment**

**SERVICE DELIVERY POLICY**

**Vocational Rehabilitation Program**

**Specialized Programs for Individuals Who are Blind or Visually Impaired**

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## **USING THE DVR POLICY MANUAL**

The Division of Vocational Rehabilitation (DVR) Service Delivery Policy Manual is divided into chapters that address the working rules of the DVR program. Each chapter begins with the law and the regulations upon which the DVR policies of the chapter are based. In many situations, the policies follow the exact requirements of the law and the regulations and in other situations Colorado DVR determines the policy itself. Text indicated in italics is meant as guidance.

Definitions are listed in **Appendix A**. These can be very helpful as there are many times that the definition itself can assist in understanding a specific policy.

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## *Introduction – Implementation of VR Programs and Principles*

### **The Act**

#### **(a) Findings.**

**Congress finds that --**

- (1) millions of Americans have one or more physical or mental disabilities and the number of Americans with such disabilities is increasing;**
- (2) individuals with disabilities constitute one of the most disadvantaged groups in society;**
- (3) disability is a natural part of the human experience and in no way diminishes the right of individuals to:**
  - (A) live independently;**
  - (B) enjoy self-determination;**
  - (C) make choices;**
  - (D) contribute to society;**
  - (E) pursue meaningful careers; and**
  - (F) enjoy full inclusion and integration in the economic, political, social, cultural and educational mainstream of American society.**
- (4) increased employment of individuals with disabilities can be achieved through implementation of statewide workforce development systems defined in section 3 of the Workforce Innovation and Opportunity Act that provide meaningful and effective participation for individuals with disabilities in workforce investment activities and activities carried out under the Vocational Rehabilitation program established under Title I, and through the provision of independent living services, support services and meaningful opportunities for employment in integrated work settings through the provision of reasonable accommodations.**
- (5) individuals with disabilities continually encounter various forms of discrimination in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting and public services.**
- (6) the goals of the Nation properly include the goal of providing individuals with disabilities with the tools necessary to**
  - (A) make informed choices and decisions; and**
  - (B) achieve equality of opportunity, full inclusion and integration in society, employment, independent living and economic and social self-sufficiency, for such individuals.**
- (7) (A) a high proportion of students with disabilities is leaving secondary education without being employed in competitive integrated employment, or being enrolled in postsecondary education; and**

**(B) there is a substantial need to support such students as they transition from school to postsecondary life.**

**Section 101(a)(15)(E) Annual State Goals and Reports of Progress-  
The State plan shall-**

**(i) include results of an evaluation of the effectiveness of the vocational rehabilitation program . . .**

**Section 101(a)(11) Cooperation, Collaboration and Coordination**

**(A) Cooperative Agreements with other components of statewide workforce development systems-- The State plan shall provide that the designated State unit or designated State agency shall enter into a cooperative agreement with other entities that are components of the statewide workforce development system of the State . . .**

**(C) Interagency cooperation with other agencies-- The State Plan shall include descriptions of interagency cooperation with, and utilization of the services and facilities of, Federal, State and local agencies and programs . . .**

**Section 105 State Rehabilitation Council**

**(a) Establishment**

**(1) In general-- . . . to receive financial assistance under this title a State shall establish a State Rehabilitation Council. . .**

**The Regulations:**

**Section 361.47 Record of Services**

**(a) The designated State unit must maintain for each applicant and eligible individual a record of services that includes, to the extent pertinent, the following documentation:**

**(1) If an applicant has been determined to be an eligible individual, documentation supporting that determination in accordance with the requirements under § 361.42.**

**(2) If an applicant or eligible individual receiving services under an IPE has been determined to be ineligible, documentation supporting that determination in accordance with the requirements under § 361.43.**

**(3) Documentation that describes the justification for closing an applicant's or eligible individual's record of services if that closure is based on reasons other than ineligibility, including, as appropriate, documentation indicating that the State unit has satisfied the requirements in § 361.44.**

**(4) If an individual has been determined to be an individual with a significant disability or an individual with a most significant disability, documentation supporting that determination.**

**(5) If an individual with a significant disability requires an exploration of abilities, capabilities, and capacity to perform in realistic work situations through the use of trial work to determine whether the individual is an eligible individual, documentation supporting the need for, and the plan relating to, that exploration and documentation regarding the periodic assessments carried out during the trial work experiences in accordance with the requirements under § 361.42(e).**

**(6) The individualized plan for employment, and any amendments to the individualized plan for employment, consistent with the requirements under § 361.46.**

**(7) Documentation describing the extent to which the applicant or eligible individual exercised informed choice regarding the provision of assessment services and the extent to which the eligible individual exercised informed choice in the development of the individualized plan for employment with respect to the selection of the specific employment outcome, the specific vocational rehabilitation services needed to achieve the employment outcome, the entity to provide the services, the employment setting, the settings in which the services will be provided, and the methods to procure the services.**

**(8) In the event that an individual's IPE provides for vocational rehabilitation services in a non-integrated setting, a justification to support the need for the non-integrated setting.**

**(9) In the event that an individual obtains competitive employment, verification that the individual is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals in accordance with § 361.5(c)(9)(i).**

**(10) In the event an individual achieves an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act or the designated State unit closes the record of services of an individual in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with § 361.5(c)(15) or that an eligible individual through informed choice chooses to remain in extended employment, documentation of the results of the semi-annual reviews required under § 361.55, of the individual's input into those reviews, and of the individual's or, if appropriate, the individual's representative's acknowledgment that those reviews were conducted.**

**(11) Documentation concerning any action or decision resulting from a request by an individual under § 361.57 for a review of determinations made by designated State unit personnel.**

**(12) In the event that an applicant or eligible individual requests under § 361.38(c)(4) that documentation in the record of services be amended and the documentation is not amended, documentation of the request.**

**(13) In the event an individual is referred to another program through the State unit's information and referral system under § 361.37, including other components of the statewide workforce development system, documentation on the nature and scope of services provided by the designated State unit to the individual and on the referral itself, consistent with the requirements of § 361.37.**

**(14) In the event an individual's record of service is closed under § 361.56, documentation that demonstrates the services provided under the individual's IPE contributed to the achievement of the employment outcome.**

**(15) In the event an individual's record of service is closed under § 361.56, documentation verifying that the provisions of § 361.56 have been satisfied.**

**361.57 Review of determinations made by designated State unit personnel.**

**(b) General Requirements.**

**(4) Impact on Provision of Services. The State unit may not institute a suspension, reduction, or termination of vocational rehabilitation services being provided to an applicant or eligible individual, including evaluation and assessment services and IPE development, pending a resolution through mediation, pending a decision by a hearing officer or reviewing official, or pending informal resolution under this section unless**

**(i) The individual or, in appropriate cases, the individual's representative requests a suspension, reduction, or termination of services; or**

**(ii) The State 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.**

## **COLORADO DIVISION OF VOCATIONAL REHABILITATION**

**“Persons with Disabilities are Essential to the Success of Colorado’s Workforce”**

### **MISSION**

The Division of Vocational Rehabilitation assists persons with disabilities to succeed at work and live independently.

### **VALUES**

The Colorado Department of Labor and Employment values:

- Integrity
- Collaboration

- Respect
- Excellence
- Accountability
- Adaptability
- Teamwork

The Division of Vocational Rehabilitation (DVR) values the provision of excellent customer service by adhering to the following concepts and principles as they apply to everyone involved in the rehabilitation experience, including clients and DVR staff:

- Respect for individual dignity and differences
- Pursuit of meaningful careers
- Equal access for people with disabilities
- Full participation of clients in the rehabilitation experience
- Promotion of a diverse community and workforce

DVR believes that the quality of our staff is essential to the success of our clients and any action taken by our employees has a direct impact on the successful accomplishment of our mission.

### **ETHICAL CONSIDERATIONS**

The Division of Vocational Rehabilitation is committed to maintaining employees who demonstrate the highest ethical standards at all times and perform their job duties in an independent and impartial manner with integrity and honesty. DVR adheres to the guiding principles of the Colorado Executive Department Code of Ethics (Executive Order D-001-99), the Commission on Rehabilitation Counselor Certification (CRCC) Code of Professional Ethics and the State Personnel System Employee Handbook. As well, the Division of Vocational Rehabilitation complies with and follows all policies and procedures put forth by the Colorado Department of Labor and Employment.

### **CONSIDERATIONS FOR AND EXPECTATIONS OF DVR STAFF AND CLIENTS**

All DVR staff shall be mindful of, respectful of, and sensitive to individual differences (e.g. ethnicity, religion, disability, sexual orientation, gender, age) among other staff, recipients of services, and individuals associated with outside agencies with which DVR interacts.

DVR staff shall help recipients of services develop self-advocacy skills and will advocate for needed services and supports from outside agencies when challenges impede self-advocacy skills.

## **TRAINING**

DVR shall provide and encourage opportunities for staff to participate in training to gain knowledge, skills and awareness for professional growth and development.

## **CRITICAL RELATIONSHIPS AND COLLABORATION**

**Engagement with Clients** – The development of a strong working alliance and supporting the engagement of each client is critical in the rehabilitation process and to the provision of high quality vocational rehabilitation services, including vocational counseling and guidance. While all DVR staff actions contribute to client engagement, the autonomy and informed choice of each applicant and client is of equal importance in this relationship. An effective vocational rehabilitation program requires the active participation of each applicant and client.

To support the working alliance and engagement of clients, DVR staff shall engage in regular and meaningful contact with each eligible individual. DVR staff will assure contact, defined as efforts by DVR staff to give or get information via phone, text, e-mail, letter, or in person, with each eligible client, authorized representative(s), and/or individual(s) designated by the client (e.g. host home provider, resource coordinator, etc.) at least once every two months. When DVR staff is able to directly engage through appropriate means, this interaction will be documented in the client record. In situations when DVR staff is unable to reach the individual, or an authorized representative as appropriate, the effort to engage the individual will be documented in the client record.

**Engagement with Community Partners** – DVR staff shall engage in cooperative relationships with public and private agencies and programs, including local school districts, Boards of Cooperative Educational Services (BOCES), mental health programs, community colleges, universities, human services agencies, programs serving persons with developmental disabilities, workforce development system partners, and other agencies at the state and local levels. The goal shall be to facilitate the provision of services to DVR's primary customers, reduce the duplication of services and maximize client opportunities to obtain chosen employment outcomes.

**Agreements with Other Agencies and Organizations** - DVR staff shall comply with the provisions of agreements between DVR and other agencies and community-based organizations, including other statewide workforce development system partners.

**Engagement with Employers** – DVR staff shall engage in cooperative relationships with federal, state and local employers for the purposes of:

- creating competitive integrated employment opportunities for clients;
- creating assessment and vocational services for clients;

- informing employers of the existence of DVR and the availability of DVR services;
- providing employers with information regarding the Americans with Disabilities Act and related amendments; and
- providing employers with information about awareness of disability and the employment of individuals with disabilities.

**Engagement with the State Rehabilitation Council** - DVR shall collaborate with and support the State Rehabilitation Council as the Council performs its duties.

### **MEANINGFUL CONTACT**

The relationship between clients and the DVR Counselor (and other DVR staff with whom the client works closely) should be dynamic, creative, and individualized. All contacts and communications with the client shall be purposeful and useful to both the client and DVR. Communications and meetings with clients shall support the goal of attaining a desirable outcome as well as avoiding an undesirable outcome.

DVR staff shall make reasonable effort to contact every client at least once every two months. To the extent feasible, communication and contact will take place in the manner agreed to by the client and DVR staff member, including through an authorized representative or another individual designated by the client (e.g. host home provider, resource coordinator, etc.). The purpose of client contact is to promote engagement, an interactive process and ongoing case progress. When a direct interaction is not essential to effectively communicate the relevant information, taking the individual needs of the client into consideration, meaningful contact may still occur through other means (e.g. a voicemail providing a status update, etc.). A summary of each contact shall be documented in the client record.

### **CASE PROGRESS/CASE MANAGEMENT**

The DVR Counselor's primary case management responsibility is to be actively engaged and working with every client on his or her caseload. The Counselor shall consistently engage clients and monitor for ongoing and satisfactory case progress. The Counselor shall be knowledgeable as to if each individual client is performing and participating in activities to the extent that those activities are advancing the client toward his or her goals.

Through documentation maintained in the DVR case record, the DVR Counselor shall demonstrate that he or she is keeping all of the cases for which he or she is responsible in continuous forward movement.

Prior to development and implementation of the Individualized Plan for Employment (IPE), the Counselor shall assure that the applicant or eligible individual's participation in assessment and other necessary activities is adequate to lead toward eligibility and the determination of priority for services, as well as toward the determination of rehabilitation needs and services and the development of an employment outcome that is consistent with the client's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice.

After the development of the IPE, the DVR Counselor shall continually monitor to assure client progress. On at least an annual basis, and more frequently if necessary, the client's activities and the rehabilitation plan shall be reviewed to assure that:

- a) the employment outcome remains consistent with the client's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice;
- b) activities will result, to the extent appropriate, in the achievement of competitive integrated employment;
- c) all goods and services are still necessary and are leading toward the chosen employment outcome;
- d) the proposed timelines (date of initiation of services and duration of services) are still on track;
- e) selected objective criteria are accurately measuring forward progress;
- f) procedures used to measure the objective criteria are doing so;
- g) the schedule of periodic evaluation and monitoring toward achievement of the employment outcome is working as identified in the IPE;
- h) the client has pursued and acquired comparable benefits as described in the case record;
- i) the client has paid his or her cost of necessary goods and services as described in the case record;
- j) the client is meeting his or her responsibilities as outlined in the case record;
- k) the client and DVR staff engage in regular and meaningful communication regarding case progress;
- l) DVR is meeting its responsibilities as outlined in the case record;
- m) DVR has provided goods and services as described in the IPE; and/or
- n) the client has no new or additional rehabilitation needs that should be addressed.

When the client's activities are not sufficient to move him or her forward toward a successful competitive integrated employment outcome, or when the client is not making forward case progress, the DVR Counselor shall document this in the case record and initiate steps to assist the client with identifying and resolving the issues which are

impeding forward case progress. These activities, their results, and the steps identified to move the case forward shall be documented within the individual case record. If the DVR client is unable to resume forward progress within a reasonable period of time, the DVR Counselor shall close the case and document the rationale in the client record. A reasonable period of time to resume forward progress is determined by the DVR Counselor given the unique circumstances of each client's situation, but is typically defined as sixty (60) to ninety (90) days. Case notes within AWARE will document the rationale for a case that will remain open beyond this typical time period.

## **DOCUMENTATION**

The purpose of client record documentation is to explain, describe, document, justify, and chronicle the DVR Counselor/client relationship throughout the vocational rehabilitation process. The case record has the important role of representing the client and the DVR Counselor in the absence of either or both.

Readers of documentation may include: auditors, judges, attorneys, other DVR staff, clients and client representatives, the Client Assistance Program, fair hearing officers, and others.

Each reader will view client record documentation with different perceptions, different knowledge bases, different understandings, and different agendas. Documentation efforts should consider each possible reader and should consider under what circumstances readers may be reviewing a case record. Documentation should clearly explain, justify, and inform any reader as to decisions, interventions and resource expenditures made in the individual DVR case record.

Much of the documentation used in the rehabilitation process is contained in DVR forms and in records and reports from sources outside DVR. Essentially, there are two types of documentation which DVR staff are responsible to create:

**Bridge rationale documentation** links the Rehabilitation Act's legal and ethical authority to the DVR Counselor's decisions and determinations. It answers the question "why" and is the logical argument which explains decisions that impact services to applicants and clients. Bridge rationale must be written by the DVR Counselor and evident in the case record at critical decision points, including:

- Eligibility
- Identification of and commitment by DVR to an employment outcome
- Initial IPE
- Annual and other IPE reviews
- Case closure

**Journal documentation** is a narrative summary and can include observations, facts, descriptions and interventions. Journal documentation is the flow of the case record and is used to tell the story of the client's VR program. Journal documentation should depict the progress of the client's rehabilitation program through the rehabilitation process, always describing the present status and a clear history of the process. Journal documentation can be written by any DVR staff working with the DVR case record and can include:

- The identification and addressing of disability and related issues;
- The documentation of rehabilitation counseling issues;
- The documentation of discussions between the client and the DVR staff;
- Documentation of interventions
- Description of facts that contribute to future decision points
- Updates about service provision
- Updates about overall and specific case progress
- Updates about progress toward establishing or achieving vocational goals and objectives; and
- Evaluation of next steps

### **EXPECTATION OF TIMELY DOCUMENTATION**

DVR Counselors and staff shall document events, activities and the rationale for their decisions promptly, so it is clear what was decided and when it was decided. Case narratives shall be kept up to date to accurately reflect the current status of the case and entered into DVR's electronic case management system (AWARE) as soon as possible following the actual date of the event, activity or decision.

### **DATA COLLECTION**

DVR staff shall ensure the collection and entry of accurate and timely data into DVR's electronic case management system (AWARE) to facilitate the provision of vocational rehabilitation services to applicants and clients and to assure accurate Federal and State reporting. Additionally, DVR client records shall reflect documented practices that are consistent with federal regulations and agency policy.

DVR has created, and instituted for agency use, a set of data entry screens and forms that support implementation of the rehabilitation experience for all applicants and clients. These provide the means for DVR to document key determinations during the rehabilitation experience including eligibility and severity of disability for all applicants and employment outcome and service needs for all clients. Rehabilitation Counselors

shall use case notes to document counseling and guidance and all relevant rehabilitation activities.

### **SUPERVISORY REVIEW**

DVR Supervisors shall use DVR's agency-defined procedure to regularly review various activities and decisions made during the rehabilitation process. Supervisory review shall take place in the manner and frequency identified by agency administration. DVR Supervisors shall review case records for the purpose of making timely corrections and adjustments that facilitate satisfactory case progress and that improve the performance of staff providing services to DVR applicants and clients.

As determined by the DVR agency, certain plans and services require consultation between the DVR Counselors and DVR Supervisor before verbal or written commitments shall be made to a client or applicant. In these cases, the Counselor and the Supervisor shall document the approval using the agency defined process for this purpose.

### **QUALITY ASSURANCE SYSTEM**

DVR is committed to providing quality services and supports. DVR uses a quality assurance (QA) system and related review tools which are fully consistent with Federal regulation. The purpose of QA is to accurately evaluate the quality of DVR services. DVR does this using a variety of monitoring activities that are designed to provide an objective quality assurance process. Through the evaluation of client records, QA tools measure performance and long term continuous improvement in the delivery of vocational rehabilitation services.

Objectives of QA are to: ensure efficient DVR program operations and delivery of quality services; ensure that public funds are expended appropriately; and ensure that applicable federal and state laws, regulations, policies, procedures and guidelines are met. Quality assurance analyzes trends in excellence statewide. Using these trends, quality assurance guides DVR staff to make improvements through the provision of staff training and guides the need for technical assistance that promotes a continued level of excellence in the delivery of DVR services and supports.

### **FRAUD**

**Responsibilities of DVR Staff** - DVR Regional Managers, in consultation with the Deputy for Field Services, shall be responsible for overall fraud issues. This includes the need to address prevention, detection and deterrence, as well as take action when fraud occurs. Fraud matters shall be handled consistently across the state. Regardless of title or position, awareness and reporting of fraud shall be the responsibility of all DVR staff. All

DVR staff members should be familiar with various improprieties that might occur within their area of responsibility and should be alert for indications of fraudulent activity.

**Fraud on the Part of a DVR Client** - Fraud exists when an individual knowingly and deliberately withholds, conceals, or misrepresents information to obtain, or attempt to obtain, DVR services or funding. Fraud includes intentionally reporting inaccurate income and/or source(s) of income, inappropriately purchasing goods and services and/or misusing or theft of items purchased by DVR.

Examples of fraud on the part of a client may include (but are not limited to):

- misrepresenting personal identifiable information
- misreporting mileage
- providing authorizations that have been falsified or changed
- pawning items that have been purchased with DVR program funds
- using DVR funds for purposes not intended or agreed upon by the client and the counselor
- purchasing unauthorized items
- providing a falsified receipt or other documentation.

**Fraud on the Part of DVR Staff, Vendors, or Partners** - DVR staff are governed by the CDLE Code of Conduct, Ethics and Values (SPP-1053-15) DVR Vendors are governed by the DVR Vendor Code of Ethics found in DVR's Fee Schedule. Regardless of title or position, awareness and reporting of fraud shall be the responsibility of all DVR staff. DVR will work closely with CDLE leadership and organizational structure to investigate and resolve all instances of suspected fraud in a timely manner.

## ***Chapter One - Legal and Operational Basis***

### **The Act**

#### **Title I, Section 101 State Plans**

**(a)(1)(A) To be eligible to receive funds under this subchapter for a fiscal year, a State shall submit, and have approved by the Secretary and the Secretary of Labor, a unified State plan . . . The unified or combined State plan shall include. . . the provisions of a State plan for vocational rehabilitation services, described in this subsection.**

**(a)(2)(A) The State plan for vocational rehabilitation services shall designate a State agency as the sole State agency to administer the plan . . .**

**(a)(2)(B) The State agency designated under subparagraph (A) shall be-**

**(i) A State agency primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities . . .**

### **The Regulations:**

#### **34 CFR 104 Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance**

##### **104.4 Discrimination Prohibited**

**(a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity which received Federal financial assistance.**

#### **34 CFR 361 State Vocational Rehabilitation Services Program**

**The State Vocational Rehabilitation Services Program (VR program) is authorized by Title I of the Rehabilitation Act of 1973, as amended (Act) (29 U.S.C. 701-733, 794g). The VR program provides support to each State to assist it in operating a statewide comprehensive, coordinated, effective, efficient and accountable State program, as an integral part of a statewide workforce development system, to assess, plan, develop and provide vocational rehabilitation (VR) services for individuals with disabilities so that those individuals may prepare for and engage in gainful employment consistent with their strengths, priorities, concerns, abilities, capabilities, interests and informed choice.**

#### **29 CFR 38 Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act**

**(5) No individual in the United States may, on the basis of race, color, religion, sex, national origin, age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship or participation in any**

**WIOA Title I-financially assisted program or activity, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIOA Title I-financially assisted program or activity.**

## **1.1 LEGAL BASIS**

The Colorado Division of Vocational Rehabilitation (DVR) program is based on and is primarily funded through the US Department of Education, Rehabilitation Services Administration. The policies adopted by DVR and reflected in the Policy Manual are based on the law, The Rehabilitation Act of 1973, as amended and the subsequent regulations published on August 19, 2016, in the Federal Register as 34 CFR 361. Federal laws, rules and regulations take precedent over less restrictive State statutes and the application of State policies.

### **1.1.1 State Agency Designation**

In Colorado, the Department of Labor and Employment is the sole State agency.

### **1.1.2 Designated State Unit**

The Colorado Division of Vocational Rehabilitation (DVR) is the designated State unit responsible for administering the Vocational Rehabilitation Services Portion of the Combined State Plan. Determinations of eligibility, approval of the nature and scope of planned vocational rehabilitation services and authorizing expenditures of vocational rehabilitation funds for the provision of available goods and services, including supported employment services, are made by DVR, and are not delegated to any other agency or person.

## **1.2 OPERATIONAL BASIS**

### **1.2.1 Equal Opportunity and Non-Discrimination**

All vocational rehabilitation services shall be provided without regard to race, color, religion, sex (including pregnancy, childbirth and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief; or on the basis of the individual's citizenship status. No individual will be denied vocational rehabilitation services by DVR based on a residence requirement, durational or otherwise.

Information about what individuals can do if they believe they have experienced discrimination can be found in 4.9 of this Service Delivery Policy manual.

Complete information about equal opportunity and non-discrimination requirements can be found in Appendix E.

### **1.2.1(a) Accessibility Standards**

All offices and programs within DVR shall substantially comply with the Architectural Barriers Act of 1968, with Sections 504 and 508 of the Rehabilitation Act of 1973, as amended, and with the Americans with Disabilities Act of 1990, as amended. DVR must take reasonable steps to ensure that communications with individuals with disabilities are as effective as communications with others. This means that, upon request, and at no cost to the individual, DVR shall provide appropriate auxiliary aids and services to qualified individuals with disabilities. Appropriate auxiliary aids and services may include: the use of interpreters, specialized telecommunications services, audio recordings, Braille and large print materials, graphic presentations, simple language materials, augmentative communication devices, open and closed captioned videos, materials in electronic format and other modes that may be identified. In providing auxiliary aids and services, DVR will give primary consideration to the expressed choice of the individual or, as appropriate, his/her authorized representative.

### **1.2.3 Safety**

DVR is governed by CDLE's Standard Policy and Procedure addressing Workplace Violence Prevention (SPP-1067, revised March 31, 2017). The Standard Policy and Procedures are located on the CDLE intranet and are available upon request.

#### **1.2.3(a) Weapons**

Weapons of any kind, including firearms, shall not be permitted in any DVR office or location (Executive Order DO-010-96).

#### **1.2.3(b) Threatening, Violent or Harassing Behavior by a Recipient of Services**

If a recipient of services poses a direct threat to another individual with a disability, a DVR staff member, a DVR office or any other individual(s) involved in the provision of vocational rehabilitation services, there shall be an interruption of the vocational rehabilitation service relationship, including closure of the client record, when applicable and warranted, and filing of criminal charges, when warranted. A direct threat means the individual poses a significant risk to the health or safety of others, based on reasonable judgment and relying on objective evidence, and which cannot be eliminated by modifying policies or procedures, or through the provision of auxiliary aids or services. The vocational rehabilitation service relationship shall resume only after the assurance of future safety has been restored.

### **1.2.3(c) Threatening, Violent or Harassing Behavior by an Advocate or Other Authorized Representative**

If an advocate or other authorized representative of a recipient of services, poses a direct threat (as defined in 1.2.3(b)), the individual shall be asked to discontinue the authorized representative's interaction with the DVR Counselor or office for the remainder of the vocational rehabilitation service relationship. Failure to do so shall result in an interruption of the vocational rehabilitation service relationship, including closure of the client record, when warranted, and filing of criminal charges against the authorized representative, when warranted.

### **1.2.3(d) Restraining Orders**

Managers, supervisors and employees have the option of using restraining orders as a tool to reduce the potential for violence in certain situations. In such cases, the appointing authority shall consult with CDLE leadership.

## ***Chapter Two - Use and Release of Personal Information***

### **The Regulations:**

#### **34 CFR Section 361.38 Protection, use and release of personal information.**

##### **(a) General provisions**

**(1) The State agency and the State unit must adopt and implement written policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names.**

**(iii) All applicants and recipients of services or their representatives are informed about the State unit's need to collect personal information and the policies governing its use, including-**

**(a) Identification of the authority under which such information is collected;**

**(b) Explanation of the principal purposes for which DVR intends to use or release the information;**

**(c) Explanation of whether providing requested information to DVR is mandatory or voluntary and the effects of not providing requested information.**

**(d) Identification of those situations in which DVR requires or does not require informed written consent of the individual before information may be released: and,**

**(e) Identification of other agencies to which information is routinely released.**

### **2.1 CONFIDENTIALITY OF CLIENT RECORDS**

DVR staff shall ensure protection of all sensitive and confidential information, whether it is in hard copy or electronic form.

### **2.2 NOTIFICATION OF CONFIDENTIALITY**

All applicants and recipients of services, including their authorized representatives when applicable, shall be informed in the individual's native language or through appropriate modes of communication of DVR's need to collect personal information, the confidentiality of personal information and the conditions for accessing and releasing this information.

All information about confidentiality is contained in the agency approved notification of rights form, which shall be provided and explained to all applicants for and recipients of vocational rehabilitation services and, when appropriate, their authorized representatives. For applicants and eligible individuals, documentation of the notification of confidentiality and the provision of this information, in an appropriate mode of communication, shall be maintained in the client record.

## **2.3 RELEASE OF INFORMATION TO APPLICANTS AND RECIPIENTS OF SERVICES**

Most information acquired or maintained by DVR shall be available upon request, in writing, for inspecting and copying by applicants and recipients of services, or by their authorized agents or representatives. Upon receiving the individual's informed written consent or, if appropriate, that of the individual's authorized representative, DVR may release personal information to another agency or organization. Release of such information shall not be available in the following instances:

1. Medical, psychological, or other information that the DVR Counselor determines may be harmful to the individual may not be released directly to the individual, but shall be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member or a qualified medical or mental health professional. If there is a court-appointed representative, the information shall be released to him or her.
2. If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.
3. Social Security Administration (SSA) information shall not be disclosed by any employee of DVR except through the Client Assistance Program (CAP) when requested by an applicant or recipient of services, or his or her authorized representative.

An individual who believes that information in his or her client record is inaccurate may request, in writing, that it be amended. If the information is not amended, the client record shall document the request for the amendment and identify the information that the individual considers to be incorrect.

DVR staff are expected to apply professional judgment in decision making about the appropriateness of releasing records to the individual. Examples of information that can be released directly to clients include, but are not limited to:

- DVR determinations and case notes
- Evaluations and progress reports initiated and purchased by DVR unless otherwise indicated to not re-release
  - Other case correspondence and documentation that is deemed to be beneficial to the client's progress toward competitive integrated employment

In considering whether medical, psychological, or other information may be harmful to the individual, the DVR Counselor shall consider the unique circumstances of the individual and the content of the records in question. For example, it may not be

appropriate to release records detailing traumatic events in the individual's history if he or she is experiencing severe Post-Traumatic Stress Disorder in connection with those events, while other aspects of the record such as general diagnostic and treatment information may pose little risk of harm to the individual.

## **2.4 RELEASE OF INFORMATION TO OTHER PROGRAMS OR AUTHORITIES**

DVR shall not release or disclose any personal information to other programs or authorities without the written consent of the recipient of services, or if appropriate, the individual's authorized representative. Information released shall be limited to that which the program receiving the information has demonstrated is needed for the program's purposes and only to the extent that information may be released to the individual involved or his or his authorized representative.

Medical or psychological information the DVR Counselor has determined may be harmful to the individual may be released to the other program or authority when necessary for the program's purposes, but shall be marked by DVR "Not for Re-Release" to ensure no further disclosure of the information. In considering whether medical, psychological, or other information may be harmful to the individual, the DVR Counselor shall consider the unique circumstances of the individual and the content of the records in question. For example, it may not be appropriate to release records detailing traumatic events in the individual's history if he or she is experiencing severe Post-Traumatic Stress Disorder in connection with those events, while other aspects of the record such as general diagnostic and treatment information may pose little risk of harm to the individual.

Under no condition shall an individual or his or her authorized representative be asked to sign an incomplete form authorizing the release of personal information.

### **2.4.1 Release of Information without the Individual's Written Authorization**

DVR shall always attempt to obtain a signed authorization for disclosure prior to releasing personal information; however, information may be released to other programs or authorities without the individual's written authorization when:

1. The information is directly connected with the administration of the vocational rehabilitation program used only by persons officially connected with an audit or evaluation, and the final report contains no identifying information;
2. The information is necessary in order to protect the individual or others when the individual poses a threat to his or her own safety or to the safety of others;

3. The DVR Director approves release to an organization or individual engaged in research in accordance with criteria established in Federal regulation;
4. The information is required by Federal law;
5. The information is necessary to respond to a request regarding law enforcement, fraud, or abuse (except where expressly prohibited by Federal or State statute or regulation);
6. In response to an order issued by a judge, magistrate or other authorized judicial officer; or
7. The information is requested by the Social Security Administration.

Inquiries about DVR program participation (by phone, e-mail, etc.) without a signed Authorization for Disclosure of Information form, unless permitted by previously stated policies, shall be declined.

#### **2.4.2 Disclosure of Information to Employers**

Informed written consent shall be obtained prior to discussing skills, functional limitations or the need for reasonable accommodations with an employer. The nature of a disability, or its severity, shall not be discussed with employers.

Section 504 of the Rehabilitation Act and the Americans with Disabilities Act have implications regarding placement services and pre-employment inquiries by employers. Employers cannot ask whether a job applicant is a person with a disability and cannot ask about the nature or severity of the disability. They may inquire into an applicant's ability to perform job-related tasks or functions or, if there is a known disability, ask the applicant to demonstrate or explain how, with or without reasonable accommodations; he or she will perform job-related functions.

In placement efforts, DVR staff shall emphasize the individual's skills to do the job. As the employer needs to know whether the individual has any functional limitations that will impact job tasks, DVR staff shall limit any discussion of disability to potential functional limitations that will impact the individual's ability to perform the job tasks or functions identified. DVR staff will also identify reasonable accommodations that have been or could be provided, as appropriate.

#### **2.4.3 Subpoenas, Court Orders and Testimony**

When a DVR Counselor or other staff person receives a subpoena for records and/or testimony, a court order, or other directive of the court, the Deputy Director for Field Services and the DVR Director shall be notified.

The Deputy Director for Field Services shall contact the Office of the Attorney General (AG) for additional guidance and shall provide, in writing, direction to the DVR Counselor or other staff about how to proceed.

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## *Chapter Three - Informed Choice*

### The Act

#### **Title I, Section 100(a)(2) Purpose**

**The purpose of this title is to assist states in operating statewide comprehensive, coordinated, effective, efficient and accountable programs of vocational rehabilitation, each of which is—**

**(B) designed to assess, plan, develop and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, informed choice, and economic self-sufficiency, so that such individuals may prepare for and engage in gainful employment.**

#### **Title I, Section 101(a)(19) Choice**

**The State Plan shall include an assurance that applicants and eligible individuals or as appropriate, the applicant's representatives or individual's representatives, will be provided information and support services to assist the applicants and individuals in exercising informed choice throughout the rehabilitation process . . .**

#### **Title I, section 102(b)(3)(B) Informed Choice**

**An individualized plan for employment shall be developed and implemented in a manner that affords eligible individuals the opportunity to exercise informed choice in selecting an employment outcome, the specific vocational rehabilitation services to be provided under the plan, the entity that will provide the vocational rehabilitation services and the methods used to procure the services . . .**

#### **Title I, section 103(a)(2) Vocational Rehabilitation Services**

**Counseling and guidance, including information and support services to assist an individual in exercising informed choice . . .**

### The Regulations

#### **Section 361.52 Informed choice**

**(a) General provision. The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that applicants and recipients of services . . . are provided information and support services to assist applicants and recipients of services in exercising informed choice throughout the rehabilitation process . . .**

**(b) Written policies and procedures. The designated State unit, in consultation with its State Rehabilitation Council . . . must develop and implement written policies and procedures that enable an applicant or recipient of services to exercise informed choice throughout the vocational rehabilitation process. These policies and procedures must provide for—**

- (1) Informing each applicant and recipient of services (including students with disabilities who are making the transition from programs under responsibility of an educational agency to programs under the responsibility of the designated state unit and including youth with disabilities), through appropriate modes of communication about the availability of and opportunities to exercise informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice . . .**
- (2) Assisting applicants and recipients of services in exercising informed choice in decisions related to provision of assessment services;**
- (3) Developing and implementing flexible procurement policies and methods that facilitate the provision of vocational rehabilitation services and that afford recipients of services meaningful choices among the methods used to procure vocational rehabilitation services;**
- (4) Assisting eligible individuals . . . in acquiring information that enables them to exercise informed choice in the development of their IPEs with respect to the selection of the---**
  - (i) Employment outcome;**
  - (ii) Specific vocational rehabilitation services needed to achieve the employment outcome;**
  - (iii) Entity that will provide the services;**
  - (iv) Employment setting and the settings in which the services will be provided;**
  - and**
  - (v) Methods available for procuring the services; and**
- (5) Ensuring that the availability and the scope of informed choice is consistent with the obligations of the designated State unit under this part.**

### **3.1 CHOICE IN AUTHORIZED REPRESENTATION**

An individual applying for and/or receiving vocational rehabilitation services from DVR may authorize the involvement of other person(s) of his or her choice to advocate for, assist and/or represent him/her at any time during vocational rehabilitation activities. Authorized representatives shall be involved in pertinent issues in the same manner as the applicant or recipient of services. All written documentation and notification which is provided to applicants and recipients of services shall also be provided to their authorized representatives. Legal guardians and court-appointed representatives are considered authorized representatives; in these situations, DVR's client record shall contain current proof of guardianship.

### **3.11 Signature of the Individual**

DVR does not have a minimum age requirement regarding the signature of an individual at any time during the rehabilitation experience. When the nature of an individual's impairment precludes him or her from signing applications, plans, releases, requests for records and other documents requiring a signature, acceptable evidence of a signature shall include a witnessed mark, an audio tape, or the signature of a parent, legal guardian or other authorized representative.

### **3.2 CLIENT/COUNSELOR RELATIONSHIP**

DVR values an active and meaningful relationship with each individual to support and develop the exercise of informed choice. DVR Counselors have four broad tasks:

1. To provide vocational guidance and counseling;
2. To ensure the individual has opportunities for appropriate experiences when necessary to develop preferences;
3. To provide necessary support services to assist individuals in identifying and understanding preferences in light of their strengths, resources, concerns, priorities, abilities, capabilities and interests; and,
4. To ensure that the individual has opportunities to choose among various options.

Informed choice activities shall be structured to assist the individual in making decisions that consider available community resources, employment opportunities, impact of work on benefits and work incentives, and applicable Federal/State legal and policy requirements that may impact choices about employment.

### **3.3 APPROPRIATE MODES OF COMMUNICATION**

Informed choice and the provision of vocational rehabilitation services require that communications with persons with disabilities are effective. DVR staff shall inform each applicant and recipient of services through appropriate modes of communication about the availability of and opportunities to exercise informed choice. Individuals with cognitive or other disabilities who require assistance in exercising informed choice shall be notified that support services are available. Documentation of the process of providing this information and use of appropriate modes of communication shall be included in the client record.

### **3.4 ASSESSMENT AND PLAN DEVELOPMENT**

The DVR Counselor shall provide information and assist the individual or, as appropriate his or her authorized representative, to make informed choices during assessment

activities, the development of the Individualized Plan for Employment (IPE), and all amended IPEs with respect to the selection of the:

1. Employment outcome and setting;
2. Specific vocational rehabilitation services needed to achieve the employment outcome;
3. Providers of services;
4. Settings in which the services will be provided; and,
5. Methods available for procuring the services.

*Helping individuals assess their skills, talents and capacities as well as their limitations and needs and set meaningful goals may be one of the most valuable services that the DVR Counselor provides persons with disabilities who have little or no previous experience and/or current skills in independent decision-making.*

The DVR Counselor shall assure and document each individual's involvement in the choices and decisions related to: the provision of assessment services to determine eligibility and identify vocational rehabilitation needs; vocational planning to determine an employment outcome; and selection of the services necessary to reach the individual's employment outcome.

### **3.5 SELECTION OF SERVICES AND SERVICE PROVIDERS**

The DVR Counselor shall provide information or help the individual find information necessary to be an informed decision maker about specific vocational rehabilitation services and the providers of those services. To the extent possible, information shall be provided regarding:

1. Cost, accessibility and duration of potential services;
2. Participant satisfaction with those services;
3. Qualifications of potential service providers;
4. Types of services offered by the potential providers;
5. Degree to which services are provided in integrated settings; and,
6. Outcomes achieved by individuals working with service providers.

### **3.6 NECESSARY AND APPROPRIATE SERVICES AT LEAST POSSIBLE COST**

The DVR Counselor shall assure that the individual and, as appropriate his or her authorized representative, understand that the informed choice process shall occur within the parameters of the DVR policy requirements that all vocational rehabilitation goods and services be necessary and appropriate. Once the necessity and appropriateness of a service or good is determined, the DVR Counselor shall procure the service/good at the least possible cost to DVR.

Whenever the DVR Counselor cannot support an individual's choice, the client record shall reflect the assistance and support offered to develop alternative goals and/or plans and clearly document the reasons for the Counselor's decisions. The Counselor shall provide information about appeal rights and the Client Assistance Program.

### **3.6.1 Necessary Services and Goods**

A necessary service/good is one that is essential to: assess an individual's eligibility and severity of disability; establish his or her vocational rehabilitation needs; overcome or circumvent an impediment(s) to competitive integrated employment; or attain/retain the chosen employment outcome. If the individual's requested service or goal is not expected to result in a suitable employment outcome or is not necessary to reach the employment outcome, the DVR Counselor shall not support the individual's choice. The DVR Counselor is unable to support a chosen employment outcome that is incompatible with the individual's skills, abilities or limitations, when there are no accommodations, rehabilitation technology or other services that can be provided to overcome the difficulty.

### **3.6.2 Appropriate Services and Goods**

An appropriate service/good is one that is of suitable and sufficient quality to fully meet the individual's needs and circumstances without sacrifices or adjustments which would not be reasonably expected of an individual who does not have a disability. The service/good shall first be determined to be necessary and then the exploration and choice of the most appropriate service/good shall occur.

### **3.6.3 Least Possible Cost for Necessary and Appropriate Services and Goods**

Cost is not a consideration prior to the determination that a service/good is necessary and appropriate. If there is more than one necessary and equally appropriate, comparable service or good available from which to choose, DVR is required to provide the service/good that can be obtained at the least possible cost to DVR. In the event an individual chooses not to apply for or accept an available comparable benefit or service that would appropriately address the individual's identified rehabilitation needs, the DVR Counselor shall inform the individual of his or her responsibility for the cost of the benefit or service.

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## *Chapter Four – Reviews, Appeals and Mediation*

### The Act

#### **Title I, Section 102(c) Procedures**

##### **(1) In general**

**Each State shall establish procedures for mediation of, and procedures for review through an impartial due process hearing of, determinations made by personnel of the designated State unit that affect the provision of vocational rehabilitation services to applicants or eligible individuals. The procedures shall allow an applicant or an eligible individual the opportunity to request mediation, an impartial due process hearing, or both procedures.**

### The Regulations:

#### **Section 361.57 Review of determinations made by designated State unit personnel**

**(a) Procedures. The designated State unit must develop and implement procedures to ensure that an applicant or recipient of services who is dissatisfied with any determination made by personnel of the designated State unit that affects the provision of vocational rehabilitation services may request . . . a timely review of that determination.**

##### **(b) General requirements.**

**(1) Notification. Procedures established by the State unit . . . must provide an applicant or recipient . . . notice of—**

**(i) The right to obtain review of State unit determinations that affect the provision of vocational rehabilitation services through an impartial due process hearing**

**(ii) The right to pursue mediation**

**(iii) The names and addresses of individuals with whom requests for mediation or due process hearings may be filed**

**(iv) The manner in which a mediator or due process hearing officer may be selected**

**(v) The availability of the client assistance program**

**(2) Timing. Notice must be provided in writing—**

**(i) At the time the individual applies for vocational rehabilitation services**

**(ii) At the time the individual is assigned to a category in the State's order of selection**

**(iii) At the time the IPE is developed**

**(iv) Whenever vocational rehabilitation services are reduced, suspended or terminated.**

##### **(3) Evidence and Representation**

- (i) Provide an applicant or recipient . . . an opportunity to submit during mediation sessions or due process hearings evidence and other information that supports the applicant’s or recipient’s position; and
  - (ii) Allow an applicant or recipient to be represented ...by counsel or other advocate selected by the applicant or recipient.
- (4) **Impact on provision of services.** The State unit may not institute a suspension, reduction or termination of vocational rehabilitation services to an applicant or recipient, including evaluation and assessment services and IPE development, pending a resolution through mediation, pending a decision by a hearing officer or reviewing official, or pending informal resolution . . . unless—
- (i) The individual . . . requests a suspension, reduction, or termination of services; or
  - (ii) The State agency has evidence that the services have been obtained through misrepresentation, fraud, collusion or criminal conduct on the part of the individual . . .

**29 CFR 38 Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act**

**Section 38.5 General prohibitions on discrimination**

No individual in the United States may, on the basis of race, color, religion, sex, national origin, age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship or participation in any WIOA Title I-financially assisted program or activity, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIOA Title I-financially assisted program or activity.

**4.1 RIGHT TO REVIEW DVR DETERMINATIONS**

An applicant or recipient of services who is dissatisfied with any determination made by DVR that affects the provision of vocational rehabilitation services may request a timely review of that decision through either an informal or formal process. The individual may also request mediation. If appropriate, the request may be made through the individual’s authorized representative.

**4.2 NOTIFICATION OF RIGHTS TO REVIEW AND REQUEST MEDIATION**

Throughout the rehabilitation process, the DVR Counselor shall advise the individual of his or her appeal rights. Information regarding informal review, formal appeal and mediation shall be provided in writing and through appropriate modes of communication

to the individual and, if appropriate, his or her authorized representative at the following times:

1. Start of pre-employment transition services for individuals who have not yet applied for vocational rehabilitation services;
2. Application for vocational rehabilitation services;
3. Placement into an order of selection priority category;
4. At the time the Individualized Plan for Employment (IPE) is developed;
5. Any time that DVR makes a decision to reduce, suspend or terminate planned services and goods being provided;
6. Closure for reason of ineligibility; and
7. Closure from a deferred service wait list.

The written notification shall include names, addresses, and telephone numbers, as appropriate, of individuals with whom requests for informal review, formal appeal, and mediation may be filed; the resources available from the Client Assistance Program (CAP) and how it can be contacted; and the manner in which an administrative law judge and/or mediator shall be selected. The DVR Counselor shall facilitate and assist the individual, when necessary, in requesting an informal review, formal appeal, and/or mediation.

### **4.3 PROVISION OF VOCATIONAL REHABILITATION SERVICE(S) DURING REVIEWS AND MEDIATION**

When a review or mediation request is made, all vocational rehabilitation services being provided under a current plan shall continue as specified until the review and/or appeal is completed unless an applicant or recipient or, as appropriate, the individual's representative requests a suspension, reduction, or termination of services. If the disputed service(s) and/or good(s) was obtained through proven misrepresentation, fraud, collusion, or criminal conduct by the individual or the individual's representative, the good or service shall be terminated immediately.

#### **4.3.1 Additional Services during Appeals and Mediation**

When an informal review, formal appeal, or mediation request concerns a service(s) or good(s) set forth in the Trial Work Experience Plan, Business Exploration Agreement, or the Individualized Plan for Employment, these plans may be amended to include new or additional vocational rehabilitation services that are necessary and appropriate to the

individual's vocational rehabilitation needs unless the new or additional good(s) or service(s) relates directly to the issue under review.

If the issue under review concerns a determination of ineligibility for vocational rehabilitation services and/or closure, new or additional service(s) or good(s) shall not be provided.

#### **4.4 FINANCIAL PARTICIPATION BY DVR IN REVIEWS AND/OR MEDIATION**

DVR shall pay for the conduct of an informal review, a formal appeal, and/or mediation following the processes described in this Chapter. An applicant or recipient of services shall be responsible for his or her personal costs (including, but not limited to legal representation and copying fees) associated with his or her review, appeal, or mediation.

#### **4.5 DOCUMENTATION OF REVIEWS AND MEDIATION**

The client record shall contain documentation concerning actions and decisions relating to requests by applicants or recipients of services for an informal review, formal appeal, and/or mediation of DVR Counselor determinations.

#### **4.6 INFORMAL REVIEW**

The applicant or recipient may request an informal review by DVR to resolve the issue(s) under dispute with or without mediation or the conduct of a formal appeal. Informal review begins with a request for the applicable Supervisor I to review a decision concerning the provision of vocational rehabilitation services. If the individual is not satisfied with the decision made by the Supervisor I, the individual may then submit a written request for review to the Deputy Director for Field Services or designee to review the decision. Informal review shall be conducted in a timely manner that shall not delay a formal appeal and within thirty (30) days of the initial request unless both parties agree that additional time is necessary. If the informal review does not resolve the issue(s), and the formal appeal process has not been requested, the individual may request a formal appeal. When a formal appeal has been requested and the informal review does not resolve the dispute within the time established through mutual agreement, the formal appeal shall be conducted within the time frames outlined for the formal appeal process. An individual is not required to go through an informal review prior to or instead of a formal appeal.

If the issue under review involves the provision of rehabilitation teaching services or mobility services by DVR staff, these staff and their Supervisor shall be involved in the informal process to the same degree as the DVR Counselor.

## **4.7 FORMAL APPEAL**

An individual, or, as appropriate, his or her authorized representative, may initiate a formal appeal regarding DVR staff determinations by requesting an impartial due process hearing with an administrative law judge (ALJ). The request shall be submitted, in writing, to the Colorado Department of Personnel and Administration, Office of Administrative Courts within ninety (90) calendar days of the decision that affects provision of a vocational rehabilitation service. The written request shall be a statement identifying the basis of the appeal, including a description of the determination made by the DVR staff that the individual is appealing. The statement should include a description of what the individual wants from the appeal.

### **4.7.1 Hearing Timelines**

A hearing shall be held within sixty (60) calendar days of the informal pre-hearing conference, unless both parties agree additional time is necessary for good cause.

There may be situations when a time extension is necessary to allow either party or the administrative law judge sufficient time to prepare for the hearing following an informal review or when additional time is necessary for the completion of mediation. Even at those times, all parties must agree to the extension.

### **4.7.2 Additional Evidence and Witnesses**

The individual, or, as appropriate, his or her authorized representative may present additional evidence, information and witnesses to support the individual's position during the hearing.

### **4.7.3 Findings and Decision**

The administrative law judge shall render a decision and provide a written report of the findings and the grounds for this decision to the individual, or, as appropriate, his or her authorized representative, and the Division of Vocational Rehabilitation within thirty (30) calendar days of completion of the hearing.

### **4.7.4 Civil Action**

The Director of DVR or the applicant or recipient who wishes to challenge the final decision made by the administrative law judge may bring a civil action for review of such decision. The final decision of the administrative law judge shall be implemented pending the results of the review under a civil action. The civil action may be brought in any State court or in a district court of the United States, regardless of the amount in controversy. All records relating to the hearing shall be provided to the court in which the civil action shall be heard. Additional evidence may be provided upon request of the

individual or the Director of DVR. The decision of the court and any relief granted as a result of the civil action shall be deemed final.

#### **4.8 MEDIATION OF DISPUTES**

An applicant or recipient may seek mediation by a qualified impartial mediator as a means to resolve a dispute with DVR. Participation in mediation requested by the individual is voluntary on the part of DVR. The request for mediation shall be submitted, in writing, to the DVR Administration Office and directed to the Deputy Director for Field Services, at any time during the review process and no later than the 60th day from the date the formal hearing is requested. The written request shall identify the decision or action by the DVR staff that is being disputed, why it is being disputed, and what solution is requested.

##### **4.8.1 Mediation Requested by the Applicant or Client**

The Director of DVR or designee shall determine whether DVR will participate in mediation and shall notify the individual in writing of the reason for this decision within five (5) working days of the request. If DVR will participate in mediation, the applicant or recipient shall be sent written notification of the name of the mediator, selected at random, and information concerning his or her qualifications within ten (10) working days of receipt of the request. DVR shall participate in mediation unless:

1. DVR believes that it is not possible to resolve the dispute without placing DVR in clear violation of State or Federal law, rules, policy, or the approved Vocational Rehabilitation Services Portion of the Colorado Combined State Plan;
2. DVR believes based on documented evidence from previous experience with the individual concerning the issue under dispute that a mediated outcome is not possible;
3. The individual has committed acts of violence, has threatened acts of violence, or has engaged in other forms of harassment against a DVR staff member or office, or any other individuals involved in the provision of vocational rehabilitation services; or
4. The individual has failed to fulfill his or her responsibilities under a previous mediation agreement with DVR concerning the issue under dispute.

DVR shall not participate in an informal review and mediation with the same individual concerning the same issue at the same time.

##### **4.8.2 Mediation Requested by DVR**

DVR may seek mediation by a qualified impartial mediator as a means to resolve a dispute with a recipient before he or she requests an informal review or a formal appeal.

Participation in mediation suggested by DVR is voluntary on the part of the recipient. The individual must agree to the process of mediation prior to the mediation request being submitted.

#### **4.8.3 Representation during Mediation**

The individual may bring an authorized representative to assist him or her during the mediation process, when desired. The Deputy Director for Field Services or designee shall determine who will represent DVR during the mediation process.

#### **4.8.4 Timeframes**

1. Mediation shall be conducted in a timely manner and no later than the 60<sup>th</sup> day from the date the formal hearing is requested, unless both parties agree additional time is necessary for good cause.
2. Mediation shall commence within twenty-one (21) days of the request for mediation and shall be completed within one (1) calendar month of the initial request unless both parties and the impartial mediator agree that additional time is necessary for good cause.
3. Mediation shall be limited to a maximum of six (6) hours of mediation session(s) unless both parties and the impartial mediator agree that additional hours are necessary for good cause.

#### **4.8.5 Successful Mediation Agreement**

If mediation is successful, the agreement reached by both parties shall be set forth in a written mediation agreement, drafted by the impartial mediator and provided to both parties within seven (7) calendar days of the final mediation session.

Each party shall sign the agreement, which indicates agreement with its terms and a commitment to fulfill his or her respective responsibilities under the agreement. If agreement on all issues is reached, the parties shall withdraw any pending informal review or formal appeal request.

DVR shall not agree to any provision which it believes is contrary to State and Federal law, rules, policy, or the approved Vocational Rehabilitation Services Portion of the Colorado Combined State Plan.

#### **4.8.5(a) Failure to Act**

Failure of the applicant or recipient of services to honor his or her commitment under the terms of the mediation agreement shall void the mediation agreement and may result in the implementation of DVR's original position on the issue in review, including closure of the client record when the issue under review involves closure.

#### **4.8.5(b) Unsuccessful Mediation**

If mediation is not successful, the applicant or recipient of services may proceed with an informal review or request a formal appeal of the issue under dispute. DVR shall not participate in further mediation on this issue.

All discussions that occur during mediation shall be kept confidential and may not be used as evidence during any subsequent review, due process, or civil procedure.

### **4.9 GRIEVANCE OF DISCRIMINATION ON THE BASIS OF DISABILITY**

An individual who believes he or she has experienced discrimination in violation of the Americans with Disabilities Act (ADA), or Section 188 of the Workforce Innovation and Opportunity Act, or the Colorado Anti-Discrimination Act (CADA) is entitled to due process and may file a grievance.

#### **4.9.1 Informal Resolution**

An individual who believes he or she has experienced discrimination on the basis of his or her disability may seek informal resolution by contacting the Deputy for Field Services, or his or her designee, or the ADA and Section 504 Coordinator of the Department, as soon as possible to explain the concern and propose a solution. Informal review shall be conducted in a timely manner that shall not delay a formal grievance. If the informal review does not resolve the issue(s), and the formal grievance has not already been filed, the individual may seek resolution through the formal grievance procedures.

#### **4.9.2 Formal Grievance Procedures**

An individual, or his or her authorized representative, may initiate a formal grievance in lieu of seeking an informal resolution or if the informal resolution process did not satisfactorily resolve the concern.

##### **4.9.2(a) Formal Written Complaint**

A written complaint shall be considered when submitted to the Equal Opportunity Officer of the Department within 180 days of the alleged violation or incident. The complaint shall include the name, address, and telephone number of the person filing the complaint; a description of the incident or alleged offense with as much information as possible; the date and location of the incident or alleged offense; and a proposed agency response that would resolve the issue(s) to the satisfaction of the complainant.

Within thirty (30) calendar days of receipt of the complaint, the Equal Opportunity Officer shall conduct an investigation of the circumstances involved. At the conclusion of the investigation, the Equal Opportunity Officer shall respond in writing or, as appropriate, in a format accessible to the complainant, explaining the position of the Department.

#### **4.9.2(b) Additional Action**

If you believe you've been discriminated against, you may also file a discrimination complaint with the Colorado Civil Rights Division (CCRD) within sixty (60) days of the alleged discrimination. Additional information and instructions are available at:

[www.colorado.gov/dora/civil-rights](http://www.colorado.gov/dora/civil-rights).

If the individual files a complaint with the Equal Opportunity Officer, the complainant must wait until the Equal Opportunity Officer issues a written Notice of Final Action, or until ninety (90) days have passed (whichever is sooner), before filing with the United States Department of Labor's Civil Rights Center (CRC). If the Equal Opportunity Officer does not provide the complainant written Notice of Final Action within ninety (90) days of the date the complaint was filed, the individual may file a complaint with CRC before receiving that Notice. A complaint directly to CRC must be filed within 120 days of the day the individual filed a complaint with the Equal Opportunity Officer. If the Equal Opportunity Office does give written Notice of Final Action on the complaint, but the individual is dissatisfied with the decision or resolution, the individual may file a complaint with CRC. The complaint must be filed within thirty (30) days of the date on which the individual received the Notice of Final Action.

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## ***Chapter Five - Applications***

### **The Regulations**

#### **Section 361.41 Processing referrals and applications**

##### **(a) Referrals.**

**The designated State unit must establish and implement standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services . . . 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.**

##### **(b) Applications.**

**(1) Once an individual has submitted an application for vocational rehabilitation services . . . an eligibility determination must be made within 60 days, unless—**  
**(i) Exceptional and unforeseen circumstances beyond the control of the designated State unit preclude making an eligibility determination within 60 days and the designated State unit 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 361.42.**

**(2) An individual is considered to have submitted an application when the individual or the individual’s representative, as appropriate-**

- (i) (A) Has completed and signed an agency application form;**
- (B) Has completed a common intake application form in a One-Stop center requesting vocational rehabilitation services; or**
- (C) Has otherwise requested services from the designated State unit;**
- (ii) Has provided the designated State unit information necessary to initiate an assessment to determine eligibility and priority for services; and**
- (iii) Is available to complete the assessment process.**

### **5.1 REFERRAL**

Once a referral for DVR services has been received with enough information to contact the individual, an appointment to meet with DVR staff shall occur within thirty (30) calendar days. If the appointment cannot be conducted within 30 days, there shall be documentation in the client record of good faith efforts to schedule and conduct the appointment as soon as possible.

## **5.2 APPLICANTS AND APPLICATIONS**

An applicant is an individual who has applied for DVR services. Authorized representatives shall be involved in pertinent issues in the same manner as the applicant or client. DVR shall provide assistance and/or accommodations throughout the application process.

An individual is considered to have submitted an application when:

1. An application requesting services is signed and dated by the individual or, as appropriate, the individual's authorized representative; and
2. The individual is available to complete the assessment process; and
3. Information necessary to initiate the eligibility determination process is provided.

The information necessary to initiate the eligibility determination process may include documentation demonstrating potential and/or legal capacity to work.

All applicants age 18 and older shall provide a form of identification. The accepted forms of identification are based on state statutes, regulations, and information published by the Colorado Department of Revenue. A copy of the produced identification shall be filed in the applicant's client record. In addition, each applicant (age 18 and older) is required to execute an official State of Colorado affidavit stating that he or she is either a United States citizen, legally permanent resident, or that he or she is otherwise lawfully present in the United States pursuant to federal law.

For an applicant who has signed an affidavit stating that he or she is an alien lawfully present in the United States, verification of lawful presence shall be made through the Federal Systematic Alien Verification of Entitlement (SAVE) program operated by the United States Department of Homeland Security. Until such verification of lawful presence is made, the affidavit may be presumed to be proof of lawful presence.

## **5.3 CONSIDERATIONS REGARDING APPLICANTS**

### **5.3.1 Prior Closure(s)**

An applicant who was previously determined to be ineligible based on a finding that he or she was unable to achieve an employment outcome, due to the severity of his or her disability, has a right to have that decision reviewed within twelve (12) months from the date of case closure and annually thereafter upon request. An individual who wishes to reapply (within 12 months) following an ineligibility decision, shall provide evidence that suggests the individual can benefit from the provision of vocational rehabilitation services in terms of competitive integrated employment.

An individual whose client record was closed for reasons other than successfully rehabilitated during the previous twelve (12) months, or an individual who has multiple client records closed for such reasons, when reapplying, shall provide new information demonstrating potential to successfully achieve a competitive integrated employment outcome through the provision of DVR services. If information cannot be provided, the application shall not proceed and the individual shall be informed of his or her rights to appeal.

### **5.3.2 Ability to Work in the US**

The DVR Counselor shall ensure that an individual who is not a U.S. Citizen or national has documents required to work in the United States. Further information can be found at [www.uscis.gov/](http://www.uscis.gov/).

Common documents include:

- Permanent Resident card (“Green Card” or previously also known as Alien Registration Receipt Card) indicates permanent residency and allows non-U.S. citizens to live and work in the United States indefinitely. This card will have the individual’s photograph and may also be referred to as the USCIS Form I-551.
- Employment Authorization Document (EAD) allows a nonimmigrant to work temporarily in the United States. The EAD is usually granted for a 1 year period and the individual can file to renew an EAD within 120 days prior to the original EAD expiring. A variety of nonimmigrant statuses may allow an individual to qualify for an EAD.
- In certain situations, Student Visas may provide authorization to work in the US for limited periods of time.

*The I-9 Employment Eligibility Verification form which an employer must complete when hiring an individual is available at <http://www.uscis.gov/files/form/i-9.pdf>.*

### **5.3.3 Individual with an Outstanding Felony Warrant(s)**

If it is known that an individual has been convicted of a criminal offense and is a fleeing felon or that an individual has an outstanding felony arrest warrant(s), the DVR Counselor shall advise the individual of the requirement, prior to application for DVR services, to take care of his or her legal obligations. Documentation of such resolution shall be provided as part of the information necessary to initiate the eligibility determination process.

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## ***Chapter Six - Eligibility***

### **The Act**

#### **Title I, Section 102**

##### **(a) Eligibility**

##### **(1) Criterion for eligibility**

**An individual is eligible for assistance under this title if the individual—**

- (A) has undergone an assessment for determining eligibility and vocational rehabilitation needs and as a result has been determined to be an individual with a disability under section 7(20) (A); and**
- (B) requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. For purposes of an assessment for determining eligibility and vocational rehabilitation needs under this Act, an individual shall be presumed to have a goal of an employment outcome.**

##### **(2) Presumption of benefit**

- (A)...an individual shall be presumed to be an individual that can benefit in terms of an employment outcome from vocational rehabilitation services**
- (B) Prior to determining . . . that an applicant . . . is unable to benefit due to the severity of the individual's disability or that the individual is ineligible for vocational rehabilitation services, the designated State unit shall explore the individual's abilities, capabilities, and capacity to perform in work situations, through the use of trial work experiences . . .**

##### **(3) Presumption of Eligibility**

- (A) . . . an individual who has a disability or is blind as determined pursuant to title II or title XVI of the Social Security Act ...shall be—**
  - (i) considered to be an individual with a significant disability . . .**
  - (ii) presumed to be eligible for vocational rehabilitation services . . .**  
**(provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interest and informed choice of the individual) unless the state unit involved can demonstrate by clear and convincing evidence that such an individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability . . .**

### **The Regulations**

#### **Section 361.42 Assessment for determining eligibility and priority for services**

**In order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the State is operating under an order of selection), the designated State unit must conduct an assessment for determining eligibility and priority for services.**

**(a) Eligibility Requirements-**

**(1) Basic 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 determination by a qualified vocational rehabilitation counselor employed by the designated State unit that the applicant requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice. For purposes of an assessment for determining eligibility and vocational rehabilitation needs under this part, an individual is presumed to have a goal of an employment outcome.**

**(2) Presumption of benefit. The designated State unit must presume that an applicant who meets the eligibility requirements . . . can benefit in terms of an employment outcome.**

**(3) Presumption of eligibility for Social Security recipients and beneficiaries.**

- (i) Any applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act is—**
  - (A) Presumed eligible for vocational rehabilitation services . . .**
  - (B) Considered an individual with a significant disability**
- (ii) If an applicant for vocational rehabilitation services asserts that he or she is eligible for Social Security benefits under title II or title XVI of the Social Security Act . . . but is unable to provide appropriate evidence . . . the State unit must verify the applicant's eligibility under title II or title XVI of the Social Security Act by contacting the Social Security Administration. This verification must be made within a reasonable period of time that enables the State unit to determine the applicant's eligibility for vocational rehabilitation services within 60 days of the individual submitting an application for services.**

**(4) 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 . . . must intend to achieve an**

**employment outcome that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interest and informed choice.**

**(i) The State unit is responsible for informing individuals, through its application process for 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 achieve an employment outcome, and no additional demonstration on the part of the applicant is required.**

## **6.1 ELIGIBILITY REQUIREMENTS**

The eligibility criteria for vocational rehabilitation services require three determinations and one presumption:

### **Determinations**

1. The individual has a physical or mental impairment;
2. The impairment(s) constitutes or results in a substantial impediment to employment that is consistent with the individual's abilities and capabilities; and
3. The individual requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment consistent with his or her unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

### **Presumption**

DVR presumes that an applicant who meets all other eligibility criteria can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. If this presumption is questionable due to the severity of the applicant's disability, the DVR Counselor shall provide trial work experiences in order to determine eligibility or ineligibility.

#### **6.1.1 Physical or Mental Impairment**

The first DVR eligibility criterion requires documented evidence of a physical or mental impairment. The determination of a physical or mental impairment shall be made by qualified personnel. For the purposes of this eligibility criterion, DVR considers qualified personnel to be individuals, practitioners or organizations that are licensed and regulated by the Colorado Department of Regulatory Agencies to determine the existence of an impairment for their specific area of medical or psychological practice, or who otherwise meet established state or national licensing and certification requirements for that area of practice. In addition, the Social Security Administration (SSA) and education officials responsible for the public education of students with disabilities are considered by DVR

to be qualified personnel for this eligibility criterion. Documented evidence of the physical or mental impairment shall be contained within the DVR client record.

If information from the applicant, and when appropriate the applicant's family or authorized representative, is obtained by the DVR Counselor that indicates the probability of an existing physical or mental impairment that could be an impediment to employment, the DVR Counselor shall procure appropriate diagnostic information, to the degree needed, to establish the presence of a disability. If the individual has a physical or mental impairment, the individual meets the first criterion. If not, the individual shall be determined ineligible.

#### **6.1.1(a) Impairment Considerations**

Some impairments, which are episodic or slowly progressive, may require identification of the limitations that typically worsen in an exacerbation or that have strong likelihood of increasing as the condition progresses. The existence of an impairment is determined without regard to any medication or assistive device that the individual may use. Although medication or an assistive device may reduce the impact of the impairment, the individual is still considered to have an impairment.

#### **6.1.2 Substantial Impediment to Employment**

The second eligibility criterion requires documented evidence by qualified personnel that the impairment(s) constitutes or results in a substantial impediment to employment. DVR Counselors are the qualified personnel who will determine if there are medical, psychological, vocational, educational, communication and other related factors that interact with the impairment(s) to create a vocational impediment. Substantial impediment to employment means a physical or mental impairment that hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment consistent with the individual's abilities and capabilities. If a substantial impediment to employment is determined by the DVR Counselor to exist, the second eligibility criterion is met. If not, the individual is ineligible.

#### **6.1.2(a) Consideration of Employment and Education History**

Extensive employment and/or education history does not preclude a determination that an individual has an impediment to employment. The DVR Counselor will consider all of the information available, including the ways in which the individual's impairment has impacted his or her ability to prepare for, enter into, engage in, advance in, and retain competitive integrated employment. If the impairment, including attendant medical, psychological, vocational, educational, communication, and other related factors, hinders the individual in any of these areas, he or she has a substantial impediment to

employment, regardless of current employment status, employment history, level of education, and/or attainment of occupational credentials. If the individual does not experience disability-related barriers in any of these areas as a result of his or her impairment, he or she does not have a substantial impediment to employment and is not eligible for vocational rehabilitation services.

*Questions to consider that may assist in determining whether an individual with extensive work and/or educational history has substantial impediments to employment include:*

- *Does the current job, or employment history, reflect employment consistent with the individual's capabilities and abilities or is this job below the person's potential?*
- *Does the job offer wages and hours that enable the individual to be economically self-sufficient?*
- *Is the individual in a part-time position but capable of full-time employment?*
- *Can the individual advance with vocational rehabilitation assistance? Are advancement opportunities restricted or limited based on the disability?*

If the individual has only a limited work history or no work history, he or she has a substantial impediment to employment if the impairment(s) and disability-related barriers hinder him or her in preparing for, entering into, engaging in, advancing in, and retaining employment consistent with his or her abilities and capabilities. If not, there is no vocational impediment and the individual is ineligible.

### **6.1.3 Vocational Rehabilitation Service(s) Required for Employment**

The third eligibility criterion requires determination by the DVR Counselor that the applicant requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. If there is no necessary vocational rehabilitation service, the individual is ineligible.

## **6.2 ELIGIBILITY DETERMINATIONS**

### **6.2.1 Timelines**

The DVR Counselor shall determine an applicant's eligibility as soon as sufficient information is obtained to address the eligibility criteria and the severity of the individual's disability. The length of time between application and eligibility determination shall not exceed sixty (60) calendar days unless:

1. Exceptional and unforeseen circumstances beyond the control of DVR preclude making an eligibility determination within the designated time, and the DVR Counselor and applicant agree to a specific extension of time. Documentation

describing the reason for a time extension, its anticipated length and the applicant's agreement to the time extension shall be in the client record and shall be completed prior to the expiration of the sixty (60) calendar days. If eligibility determination is not completed before the original time extension expires, a new time extension is required. Every new extension shall include the reason for the time extension, and its anticipated length. The applicant's agreement to every new time extension shall be in the client record and shall be completed prior to the expiration of the current extension. Written documentation of all eligibility extensions shall remain permanently in the client record. A current time extension shall be in place until the eligibility determination has been made.

2. There is doubt that the individual can benefit from vocational rehabilitation services, and exploration of the individual's abilities, capabilities and capacity to perform in work situations is being carried out, through the use of trial work experience, to provide additional data necessary to determine eligibility.

### **6.2.2 Presumptive Eligibility**

Any applicant for DVR services who has been determined to be eligible for benefits from Social Security Title II (Social Security Disability Insurance-SSDI) or Title XVI (Supplemental Security Income-SSI) based on his or her disability is presumed to be eligible for DVR services and to be an individual with a significant disability.

Individuals may receive benefits from the Social Security Administration (SSA) for reasons other than a disability. Examples include Old-Age, Family, and Survivor benefits. Individuals are not presumptively eligible for DVR services based on these types of SSA benefits. Rather, if an individual is eligible for SSI and/or SSDI benefits based on his or her disability, even if not currently receiving a payment, he or she is presumed to be eligible for DVR services.

An individual who applies for services from DVR should be asked to provide evidence of eligibility from SSA. Verification of SSI or SSDI eligibility shall be placed in the client record. Acceptable documentation includes the following:

1. A copy of an entitlement award or continuation letter from the SSA, dated no more than three (3) months prior to application;
2. Any written documentation from SSA, such as a Benefits Planning Query (BPQY), received no more than three (3) months prior to application, reflecting that the individual is currently eligible for SSI/SSDI benefits;
3. A copy of an individual's Ticket to Work that has been verified as still in effect;  
or

4. Electronic verification from Social Security Administration or Disability Determination Services (DDS) that the individual is currently eligible for SSI/SSDI benefits.

If the applicant cannot provide one of the above forms of evidence, but asserts eligibility from SSA, the DVR Counselor shall contact SSA and verify the eligibility status of the applicant. This verification shall be made within a period of time that enables the DVR Counselor to determine the applicant's eligibility for vocational rehabilitation services within 60 days of the individual submitting an application for services. A copy of the written evidence of the eligibility and pertinent information will be requested of SSA by the DVR Counselor and shall be placed in the client record upon its receipt.

If the presumption of benefit in terms of an employment outcome is questioned, trial work experiences may be required. Presumptive eligibility does not create an entitlement to any vocational rehabilitation service.

### **6.2.3 Assessment to Determine Eligibility**

For all other applicants, the DVR Counselor shall base the determination of eligibility on a review and assessment of existing data to the maximum extent possible. Sources of existing data include direct Counselor observations, medical and psychological records, educational records, information provided by the individual and the individual's family or authorized representative, and information from other agencies, including SSA. The Counselor shall apply professional judgment while reviewing the existing data, including older records when appropriate, to determine if the existing information accurately reflects the applicant's current level of functioning and can be appropriately used for determination of eligibility. A permanent or stable physical or mental condition (e.g. amputation, intellectual disabilities, etc.) may be documented through previous medical or psychological report, regardless of recency, while a progressive or unstable condition will require records that are more recent.

Additional diagnostic services and assessments may be necessary if the existing data does not permit the identification of current level of functioning or is unavailable, insufficient or inappropriate to make an eligibility determination and to determine severity of disability. The provision of vocational rehabilitation services, including trial work experiences, assistive technology devices and services, personal assistance services, and other support services shall be provided if necessary to assess the individual's capacity to perform in a work environment and to supplement existing information.

Vocational rehabilitation services required to complete assessments shall be provided in the most integrated settings possible, consistent with the individual's needs and informed choice. DVR will provide applicants with opportunities, as well as necessary supports

and assistance, to exercise informed choice about decisions concerning the provision of assessment services.

Specialty examinations to identify the existence of a disabling condition and associated levels of functioning or to supplement existing information shall be conducted by professionals who are qualified to make a diagnosis within their scope of practice. DVR Counselors shall use independent judgment to assure that the evaluative information is within the scope of the provider's professional area of expertise or licensure. Medical consultation shall be obtained, when necessary, to clarify medical aspects, to assess the currency and adequacy of diagnostic materials, and to determine appropriate follow-up for medical recommendations.

The client record shall contain evidence and written documentation of the DVR Counselor's analysis of assessment data. This analysis may include counselor observations of the individual's level of functioning, abilities, and capabilities and shall always include how the impairment(s) hinders the individual in preparing for, entering into, engaging in, advancing in, or retaining employment consistent with the individual's abilities and capabilities. The analysis shall be based on the individual's unique life activities, circumstances, and employment experiences.

#### **6.2.4 Documenting the Eligibility Determination**

The Counselor's analysis of how the eligibility criteria have been met shall be thoroughly documented on the appropriate data pages in AWARE, including the Eligibility Determination page. The Eligibility Determination report shall be printed and signed by the DVR Counselor and the hard copy shall be placed in the client record.

All individuals shall receive written notice of their eligibility determination, using the agency-approved letter intended for this purpose.

#### **6.2.5 Determination of Ineligibility**

Any determination of ineligibility due to the severity of the individual's disability shall be based on clear and convincing evidence demonstrated in trial work experiences in realistic work situations.

##### **6.2.5(a) Clear and Convincing Evidence**

The clear and convincing standard constitutes the highest standard used in the U.S. civil system of law and is to be individually applied on a case-by-case basis. The term clear means unequivocal. 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” shall include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology) in real life settings.

### **6.2.5(b) Trial Work**

Trial work experiences shall be provided prior to the determination that an individual with a disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability. Trial work experiences shall provide an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work settings to determine whether or not there is clear and convincing evidence that an employment outcome is precluded by the severity of the individual's disability and an ineligibility decision is appropriate.

Trial work experiences for the purpose of determining eligibility, or continued eligibility, shall be provided under a Trial Work Experience Plan in competitive integrated employment settings to the maximum extent possible, consistent with the informed choice and rehabilitation needs of the individual. The DVR Counselor and the individual shall jointly develop the plan for the trial work experiences. Trial work experiences include supported employment, on-the-job training, and other experiences using realistic integrated work settings. Appropriate supports, including assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of the individual shall be provided during the trial work experiences. Criteria shall be identified in the written plan that reflects the level of performance necessary to meet work requirements. Assessments of the individual's progress toward demonstrating and/or developing abilities, capabilities, and capacity to perform in work situations shall be planned, provided, and documented in the client record at least every thirty (30) days.

Trial work experiences shall be of sufficient variety and over a sufficient period of time to determine that:

1. 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,
2. There is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability.

The number, scope and duration of trial work experiences that need to be provided to each individual are determined by the individual's unique situation and his or her needs. In essence, it is determined by what is necessary to secure clear and convincing evidence that the individual can or cannot obtain competitive integrated employment. However, it is typically expected that the individual will be provided more than one trial work experience so that he or she has sufficient opportunities to demonstrate and/or develop his or her abilities, capabilities and capacity to perform in integrated work settings.

## ***Chapter Seven - Order of Selection***

### **The Act**

#### **Title I, Section 101. State Plans**

**(a)**

##### **(5) Order of Selection for vocational rehabilitation services**

**In the event that vocational rehabilitation services cannot be provided to all eligible individuals with disabilities in the State who apply for the services, the State plan shall-**

- (A) show the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services;**
- (B) provide the justification for the order of selection;**
- (C) include an assurance that, in accordance with criteria established by the State for the order of selection, individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services; and**
- (D) . . . permit the State, in its discretion, to elect to serve eligible individuals (whether or not receiving vocational rehabilitation services) who require specific services or equipment to maintain employment; and**
- (E) provide that eligible individuals, who do not meet the order of selection criteria, shall have access to services provided through the information and referral system implemented under paragraph (20).**

### **The Regulations**

#### **34 CFR 361.36 Ability to serve all eligible individuals; order of selection for services**

##### **(a) General provisions.**

**(1) The designated State unit either must be able to provide the full range of services listed in section 103(a) of the Act and section 361.48, as appropriate, to all eligible individuals or, in the event that vocational rehabilitation services cannot be provided to all eligible individuals in the State who apply for the services, include in the State plan the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services.**

### **7.1 PRIORITIES FOR SERVICE**

According to DVR's state plan, Colorado is currently designated as an Order of Selection state. When there are insufficient human or financial resources to serve everyone, DVR activates wait lists based on priority classifications. Each individual found eligible for vocational rehabilitation services shall be classified by placement into one of the three following priority categories based on a determination of severity of his or her disability:

1. Eligible individuals with the most significant disabilities;
2. Eligible individuals with significant disabilities; and
3. All other eligible individuals.

An individual shall be classified in the highest priority category for which he or she is determined qualified. If an individual's circumstances change or when it has been determined that an individual has been misclassified, the priority classification shall be changed accordingly and the individual shall be notified of the change using the agency-approved letter for this purpose.

All clients within a higher priority category shall be served before any client in the next lowest priority category is served. When it is impossible to serve all clients within a priority category, individuals shall be placed on a wait list and served in chronological order based on the date of application for vocational rehabilitation services and in accordance with their priority category. The client record shall document current disability priority in AWARE and contain evidence to support the priority category classification.

## **7.2 NOTIFICATION**

When a wait list is activated, all applicants for vocational rehabilitation services shall be notified, in writing, of the policies and procedures governing the provision of goods and services under an order of selection. Upon placement into a priority category, the client shall receive written notification of his or her priority classification and information regarding the policies and procedures governing availability of vocational rehabilitation services, including notification of placement on a wait list, when applicable. The written notification shall include information about appeal rights and the Client Assistance Program. A copy of the written notification shall be placed in the client record.

When a client is reclassified into a different priority category, he or she shall be notified, in writing, of the reclassification and provided written information as to how the change will affect the availability of vocational rehabilitation services. The written notification shall include information and contacts about appeal rights and the Client Assistance Program.

## **7.3 VOCATIONAL REHABILITATION SERVICES DURING AN ACTIVE WAIT LIST**

Services necessary to establish eligibility and priority shall continue to be provided during an active wait list. Timeliness of eligibility determination and all eligibility requirements remain applicable under an order of selection.

All individuals who have established a signed and approved Individualized Plan for Employment (IPE) prior to the implementation of a wait list shall continue to receive vocational rehabilitation services. After implementation of wait lists, any individual placed on a wait list according to his or her priority classification shall receive only information and referral services. Those individuals not placed on wait lists based on their priority classification shall continue to receive vocational rehabilitation services.

All requirements for the provision of vocational rehabilitation services shall be applicable to clients receiving services under an order of selection. All policies governing the expenditure of vocational rehabilitation funds, the individual's financial participation and the use of comparable services and benefits are applicable to applicants and clients receiving vocational rehabilitation services under an order of selection wait list.

A DVR staff shall contact each client on the wait list at least once every two months to assure that current contact information is contained in the client record, resolve any questions the client may have regarding the wait list, and provide additional information and referral services as appropriate.

#### 7.3.1 Pre-employment Transition Services during an Active Wait list

When DVR implements an active wait list, students with disabilities who began receiving pre-employment transition services prior to applying for and being determined eligible for DVR will continue to have access to these services. Any student with a disability who is not yet participating in pre-employment transition services when the eligibility determination is made, and who is placed on an order of selection wait list will be subject to the wait list for all services, including pre-employment transition services. A student with a disability, regardless of whether he or she is receiving pre-employment transition services, who submits an application for vocational rehabilitation services will be subject to the wait list in the same manner as any other applicant for services.

### **7.4 INFORMATION AND REFERRAL SERVICES**

All clients on an order of selection wait list shall be provided information and guidance about services provided by other components of the statewide workforce development system and other Federal and State programs, including Employment Networks under the Ticket To Work program, which can be of assistance to persons with disabilities in preparing for, securing, retaining, advancing in, or regaining employment. Clients on an order of selection wait list shall be provided written referrals to those programs that are best suited to address their specific employment needs. Written referrals shall identify a

specific point of contact and the most suitable services to meet the client's employment needs. The client record shall document DVR information and referral services.

#### **7.5 EXPENDITURES FOR REASSESSMENT OF SEVERITY OF DISABILITY**

During an order of selection, no vocational rehabilitation funds shall be authorized or expended on any client on an order of selection wait list or on any individual subsequently determined eligible when classification puts him or her in a closed priority category, unless the expenditure is necessary to reassess the severity of the individual's disability.

## ***Chapter Eight - Severity of Disability***

### **The Act**

#### **Section 101 (10) Reporting Requirements**

##### **(A) In general**

**The State plan shall include an assurance that the designated State agency will submit reports in the form and level of detail and at the time required by the Commissioner regarding applicants for, and eligible individuals receiving, services under this title.**

##### **(E) Additional information**

**The Commissioner shall require that each designated State unit include . . . :**

##### **(i) information on—**

**(I) age, gender, race, ethnicity, category of impairment, severity of disability, and whether the individuals are students with disabilities; . . .**

### **The Regulations**

#### **Section 361.42 Assessment for Determining Eligibility and Priority for Services**

**(f) Data for determination of priority of services under an order of selection . . .**

#### **Section 361.47 Record of Services**

**(a) The designated State unit must maintain for each applicant and eligible individual a record of services that includes . . .**

**(4) If an individual has been determined to be an individual with a significant disability or an individual with a most significant disability, documentation supporting that determination.**

### **8.1 DETERMINATION OF SEVERITY OF DISABILITY**

The DVR Counselor shall determine the severity of an individual's disability, and his or her priority for services, at the time eligibility is determined. The severity determination shall not delay the determination of eligibility beyond sixty (60) days, and shall take place based upon the review and assessment of data used for eligibility determination and, if applicable, the outcomes of trial work experiences. All individuals shall receive written notification, using an agency-approved letter intended for this purpose, of their priority for services classification.

The client record shall contain evidence to support the determination of severity of disability. Documentation in the client record shall include a completed and accurate Disability Priority Page in AWARE.

Subsequent information obtained by the DVR Counselor, which indicates a level of severity that is different than the level determined at eligibility, shall be reflected by

updating the Disability Priority Page in AWARE. All supporting documentation shall be placed into the client record. Any time the severity and priority classification of an individual changes, the individual shall receive written notification using the agency-approved document intended for this purpose.

### **8.1.1 Social Security Determinations**

For individuals determined to be presumptively eligible based on SSI/SSDI verification, the existence of a significant disability is also presumed. Additionally, the DVR Counselor shall review and assess existing data and obtain any additional assessments necessary to determine if a most significant disability exists and to assist the individual in determining an appropriate employment outcome and necessary services. The Counselor shall complete the Disability Priority Page in AWARE and notify the individual, in writing, of his or her priority classification using the agency-approved letter intended for this purpose.

### **8.1.2 Severe Impairment**

A physical or mental impairment is determined to be severe if one or more physical or mental impairments exist 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 illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions, including paraplegia and quadriplegia, sickle cell anemia, intellectual disability, specific learning disability, end-stage renal disease or another disability or combination of disabilities determined on the basis of an assessment.

The impairments are considered to be severe because of the nature of the impairment. Other impairments may be severe for one individual but not for another, depending on the impact on the individual's life activities. Sometimes an individual may have two (2) or more impairments, neither of which alone is severe, but together cause serious functional limitations. These determinations shall be supported by assessment data and the analysis of the DVR Counselor as to the impact of the impairment(s) on the particular individual's life activities.

### **8.1.3 Serious Limitation**

A serious limitation means a reduction in functioning, due to a severe impairment, to the degree that the individual requires goods and services or special working conditions, such as job re-engineering, assistive technology, substantial on-the-job support or intensive supervision, not typically provided for other individuals in order to prepare for, enter,

engage in, advance in, or retain employment in previous jobs, usual line of work and/or occupations usually available to people of equivalent age, education and capacities who do not have disabilities. Non-disability related factors, such as geographical location, availability of public transportation and lack of financial resources or training are not considered when determining whether or not a limitation meets the criteria for “serious”.

#### **8.1.4 Functional Capacity**

A functional capacity area is a set of life activities or skills in which the ability to function is significant to successful independence and/or employment. The functional capacity areas DVR identifies for the purpose of determination of severity of disability are communication, interpersonal skills, mobility, motor skills, self-care, self-direction, work skills and work tolerance.

The DVR Counselor shall analyze the impact, in terms of a competitive integrated employment outcome, of serious functional capacity limitations on the individual’s current employment, previous jobs, usual line of work, opportunities for advancement, and/or occupations usually available to people of equivalent age, education and capacities who do not have an impairment.

##### **8.1.4(a) Functional Capacity Areas**

- A. Communication – The ability to give and receive information through language (writing, speaking, listening, sign language or other methods). Limitations may occur because of sensory, physical, cognitive or psychological impairment; challenges due solely to language or cultural differences are not considered.
- B. Interpersonal Skills – The ability to establish and maintain personal, family and community relationships as they affect or are likely to affect employment.
- C. Mobility – An individual’s physical access to his or her environment, either through his or her own ability (actions) or with the assistance of others; includes travel for activities of daily living, work, and training. It does not include lack of a driver’s license, geographic location or availability of transportation.
- D. Motor Skills – The purposeful movement and control of the body necessary to obtain, perform, and maintain employment.
- E. Self-Care – The ability to care for self and one’s own living environment to the degree necessary to participate in work.
- F. Self-Direction - The ability to independently plan, initiate, problem-solve, organize or carry out goal-directed activities to the degree necessary to work.
- G. Work Skills- The ability to learn, perform, and carry out essential job functions and duties toward completion of job tasks.

H. Work Tolerance- The capacity to effectively and efficiently sustain physical, cognitive and/or psychological demands of a job. Limitations may be due to physical disability, stamina/fatigue, pain management, effects of medication, psychological, or other impairment related factors.

### **8.1.5 Number of Services and Length of Service Provision**

The requirement for multiple vocational rehabilitation services over an extended period of time has been defined by Colorado DVR to mean two (2) or more core vocational rehabilitation services that require at least five (5) months of service provision. In identifying the number of vocational rehabilitation services, the DVR Counselor shall not count those services which are supportive to another service. Supportive services include transportation, maintenance, services to family members and personal assistance services.

### **8.2 MOST SIGNIFICANT DISABILITY**

An individual is classified as having a most significant disability when he or she has a severe physical or mental impairment that seriously limits three (3) or more functional capacity areas (mobility, motor skills, interpersonal skills, communication, work tolerance, work skills, self-care and self-direction) in terms of an employment outcome; and, whose successful vocational rehabilitation can be expected to require the provision of two (2) or more core vocational rehabilitation services for at least five (5) months.

### **8.3 SIGNIFICANT DISABILITY**

An individual is classified as having a significant disability when he or she has a severe physical or mental impairment that seriously limits one (1) or two (2) functional capacity areas and who otherwise meets the same criteria as for a most significant disability. In other words, the individual's successful vocational rehabilitation can be expected to require the provision of two (2) or more core vocational services for at least five (5) months. An individual who is determined to be eligible for SSI/SSDI on the basis of his or her own disability is presumed to have at least a significant disability.

### **8.4 INDIVIDUAL WITH A DISABILITY**

An individual is classified as having a disability when he or she meets DVR eligibility criteria but his or her disability does not meet the criteria for most significant or significant disability.

## *Chapter Nine – Individualized Analysis of the Comprehensive Assessment*

### **The Act**

#### **Sec. 7. Definitions**

##### **(a)(2) Assessment for determining eligibility and vocational rehabilitation needs**

The term “assessment for determining eligibility and vocational rehabilitation needs” means . . .

(B) to the extent additional data is necessary to make a determination of the employment outcomes, and the nature and scope of vocational rehabilitation services . . . a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment . . .

### **The Regulations**

#### **CFR 34, Section 361.45 Development of the individualized plan for employment**

**(b) Purpose. (1) The designated 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 IPE.**

### **9.1 COMPREHENSIVE ASSESSMENT ANALYSIS AND ACTIVITIES**

The comprehensive assessment is an analysis in which the DVR Counselor provides vocational counseling and guidance and necessary services and supports to help the client select a suitable employment outcome (including supported employment and self-employment, as appropriate) and identify the rehabilitation service needs to achieve that employment outcome. The agreed upon employment outcome and identified rehabilitation needs shall be indicated on the IPE. Whenever possible, the selected vocational goal shall allow the individual to increase self-sufficiency and decrease dependence on public benefits. The assessment of vocational rehabilitation service needs begins with the initial interview and continues until sufficient information is available to develop the IPE.

When the information used for the assessment of eligibility and priority for services is sufficient to identify the rehabilitation needs of the individual and an appropriate employment outcome, the counselor’s analysis of this information shall be documented, the comprehensive assessment shall be considered complete, and the IPE can be developed.

The comprehensive assessment analysis shall use, to the maximum extent possible, existing information that is current, including:

1. Information available from other programs and providers, particularly information used by education officials and the Social Security Administration (SSA);
2. Information provided by the individual and the individual's family; and
3. Information obtained during the assessment for determining the individual's eligibility and priority for services.

In some cases, additional information is needed to develop an appropriate employment outcome and identify the nature and scope of vocational rehabilitation services to be included in the IPE. Through comprehensive assessment activities, the DVR Counselor shall encourage and facilitate the individual's exploration of his or her unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

If necessary, the DVR Counselor may obtain or conduct additional assessments. These may include assessments of personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experiences, vocational aptitudes, personal and social adjustments, and the medical, psychiatric, psychological and other pertinent vocational, educational, cultural, social, recreational and environmental factors that affect the employment and vocational rehabilitation needs of the individual. Purchased assessment services may be used to obtain necessary information and to address questions that cannot be answered by the individual, his or her family, the DVR Counselor, or through existing sources.

The comprehensive assessment activities may include an analysis by the DVR Counselor of the individual's transferable skills from previous employment, unpaid work experience(s), or education. It may also include, as necessary, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop positive work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance. Additionally, assessment activities may include the use of work in realistic job situations to assess and develop the capacities of the individual to perform adequately in a work environment. Should the individual's ability to benefit from vocational rehabilitation services in terms of an employment outcome become questionable due to severity of the impairment(s), the requirements for trial work experiences must be met.

With a release of information signed by the individual, or as appropriate his or her authorized representative, the DVR Counselor shall obtain assessment data from schools, organizations, and service providers to whom the individual is known.

Assessment services provided by DVR may include vocational evaluation, situational assessment, work experience, job shadowing, rehabilitation technology evaluation, and other services necessary to explore key factors including interests, capacities, employment options and settings, and to help the individual clarify the employment outcome and the services needed.

When applicable, the comprehensive assessment analysis shall identify appropriate vocational rehabilitation service needs for self-employment and supported employment.

## **9.2 ADDITIONAL CONSIDERATIONS DURING COMPREHENSIVE ASSESSMENT**

The DVR Counselor shall identify barriers to employment not related to the impairment and these shall be included on the IPE as appropriate, given the employment outcome. Examples may include criminal background, legal mandates, inability to speak English, financial need, lack of family support, transportation needs, and other barriers.

### **9.2.1 Criminal Backgrounds and Other Risk Factors**

If an individual has a criminal history, the comprehensive assessment analysis shall include a discussion of the individual's history of misdemeanor and/or felony charges and convictions as it relates to identified or potential job goals and to searching for a job. Individuals who present with such concerns face additional barriers to employment; as a result, their vocational options may be restricted. When assessing the potential risk and safety of the individual and community, DVR shall obtain existing records. These may include Colorado Bureau of Investigation reports (CBI), psychosexual evaluations, pre-sentence investigation reports (PSIR), treatment records (progress notes, treatment plan), and terms of parole/probation. When possible, a signed release of information shall be obtained prior to requesting any background information.

During the comprehensive assessment, the DVR Counselor and client shall explore suitable employment options with special considerations given to the risk factors that impact the client, community, employer, and employment setting.

#### **9.2.1(a) Disclosure**

The need for disclosure is determined on an individual basis. For individuals involved in the legal system through law enforcement agencies and/or community based corrections, the primary responsibility for disclosure rests upon the law enforcement agency and the client. The DVR Counselor shall engage in counseling and guidance to educate clients about their responsibility to self-disclose criminal background information to the DVR Counselor, employers, and other relevant individuals or entities. If a DVR employee

identifies the existence of imminent risk or foreseeable harm and is considering disclosure, he or she shall seek consultation from a DVR Supervisor who may secure the opinions of other legal resources.

### **9.2.1(b) Individuals with Sex Offenses and Other Related Concerns**

The existence of a sex offense or other offense with system-mandated requirements shall not preclude an individual from participation in rehabilitation activities.

The goal in serving individuals with past sexual offending or predatory behavior whenever possible is to achieve an employment outcome that enables the individual to be successful and avoid repeating the behavior.

Although a history of sexual offending or sexually predatory behavior may or may not be directly related to an individual's disability, the behavior does represent a barrier to employment. If a DVR employee receives information that indicates a pattern or presence of behavior that is sexually inappropriate or predatory, the potential risk from that behavior shall be carefully assessed prior to referring the individual to community-based services and/or developing an employment plan. Once a DVR employee becomes aware of a potential risk, it is his or her responsibility to take the necessary steps to address those risks, in consultation with the DVR Supervisor or other qualified personnel.

#### **Additional Considerations for IPE Development**

DVR shall not support an employment outcome that allows access to vulnerable populations or will exacerbate risk factors previously identified.

DVR is not responsible for system-mandated supervision requirements. While job coaching services may be necessary for a successful employment outcome, job coaching shall not be considered a replacement for supervisory requirements stipulated for the individual. The IPE shall document the entity responsible for required supervision.

### **9.2.1(c) Federal Bonding Program**

The Federal Bonding Program is available to help individuals whose background or inexperience lead employers to question their honesty and deny them a job. The program will cover any individual routinely considered to be "at risk".

Referral for federal bonding may be identified as a rehabilitation need to be addressed in the IPE by an appropriately timed referral to a Colorado Workforce Center. Information on federal bonding is available at: <https://www.colorado.gov/pacific/cdle/federalbonding>

### **9.3 DETERMINING AN EMPLOYMENT OUTCOME**

A suitable employment outcome is work in the competitive labor market that is performed on a full-time or, if appropriate, part-time basis in an integrated setting, 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 do not have disabilities.

DVR Counselors shall work in collaboration with clients to thoroughly explore their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These exploration activities result in the identification of a suitable employment outcome. DVR Counselors shall help individuals explore existing skills, attributes and strengths during the employment outcome selection process. The existence of transferable skills does not dictate the selection of an employment outcome. The selected employment outcome shall align with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

*An integrated employment setting is at a location typically found in the community and requires the individual to interact with other employees on the work unit who do not have disabilities to the same extent as employees in comparable positions without disabilities. For additional guidance on the determination of whether an employment setting is integrated please review the definition in the appendix and/or guidance in the Supported Employment Chapter.*

### **9.4 IDENTIFICATION OF NATURE AND SCOPE OF SERVICES**

The comprehensive assessment shall be used to identify the nature and scope of services that will address the individual's barriers and allow the individual to successfully achieve his or her chosen employment outcome. The DVR Counselor and client shall work collaboratively to identify a comprehensive set of necessary services that will be included in the client's IPE. All necessary services shall be identified in the IPE regardless of provider or funding sources.

#### **9.4.1 Justification for Formal Training**

When an individual's planned employment outcome is anticipated to require formal training, the DVR Counselor and the individual shall conduct an analysis to determine and document specific training needs, to include: type of training relative to employment outcome, duration of training and comparisons of cost of training. The Vocational Goal

Development and Justification for Formal Training Form may be used to document this analysis.

## **9.5 DOCUMENTATION OF COMPREHENSIVE ASSESSMENT**

The DVR Counselor shall document the comprehensive assessment using the agency approved form and supported by case notes and other case documentation when appropriate. This required form shall be contained in the client record within DVR's electronic case management system and shall document the DVR Counselor's written analysis of the rehabilitation needs identified to address the individual's vocational barriers as necessary to attain an appropriate employment outcome. The DVR Counselor's written analysis shall identify the employment outcome chosen by the individual and address the suitability of the goal given the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. It is appropriate to discuss alternatives that were explored but not selected by the individual. Documentation shall also reflect the provision of vocational guidance and counseling between the DVR Counselor, the individual, and, as appropriate, his or her authorized representative, to assure that the individual was an informed decision maker throughout the comprehensive assessment analysis.

If, in the DVR Counselor's professional opinion, the requested employment outcome is not appropriate given the assessment data, and/or a requested rehabilitation service(s) is not necessary or not appropriate, the DVR Counselor shall not approve an IPE containing these items. Documentation in the client record shall clearly reflect the DVR Counselor's rationale for this determination.

The agency-approved comprehensive assessment form shall be completed and placed into the electronic case record each time the DVR Counselor and the client agree upon a change in employment outcome.

## **9.6 FINANCIAL NEED ANALYSIS**

A Financial Need Analysis (FNA) shall be conducted at the time of the comprehensive assessment analysis and prior to IPE development. If an individual declines to complete the FNA, all services that require financial participation shall be the full responsibility of the client, or other funding source(s), and will not be funded by DVR.

## **9.7 BENEFITS ANALYSIS**

In working with clients who receive government benefits [e.g., Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI) benefits, Medicare, Medicaid, Temporary Assistance for Needy Families (TANF), Section 8 housing assistance, etc.], it

is critical that the DVR Counselor and client understand the impact of employment on these benefits. The success or failure of a rehabilitation plan is often contingent on the client's understanding of the impact of these benefits, and his or her willingness to accept any applicable change in benefits that may be the result of working.

Therefore, the DVR Counselor shall address this issue during the comprehensive assessment activities. When appropriate, DVR will provide general information about benefits planning and Federal and State work incentives. When specialized technical assistance and/or individualized analysis is required, regional Work Incentive Coordinators (WIC) shall be utilized to assist the DVR Counselor and client.

## **9.8 TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999 (TWWIA)**

The Colorado Division of Vocational Rehabilitation is an Employment Network (EN) option under TWWIA. This law, administered by the Social Security Administration (SSA) through MAXIMUS Inc., is designed to increase options of SSA beneficiaries in obtaining rehabilitation and vocational services to help them go to work and attain their employment goals, remove barriers that require people with disabilities to choose between health care coverage and work, and provide more Americans with disabilities opportunities to lessen their dependence on public benefits.

### **9.8.1 Ticket to Work Program**

When an individual applies for services and reports that he or she is receiving SSI or SSDI benefits, in all likelihood, that individual also holds a "Ticket to Work". DVR includes language on its IPE indicating that when the client signs the IPE, he or she is using his or her Ticket to Work with Colorado DVR. This applies for all clients, regardless of their desired employment outcome, unless the client specifically requests, in writing, that the ticket not be placed in use with DVR.

If a client's Ticket is currently assigned to another EN, the DVR Counselor shall request that the Ticket be re-assigned to DVR. If a client chooses to keep his or her Ticket assigned to another EN, the EN's offered services are considered comparable benefits and DVR shall not provide funding for them. To locate an EN's offered services, utilize this resource:

<http://www.chooseworkttw.net/resource/jsp/searchByState.jsp>

SSA conducts medical Continuing Disability Reviews (CDR) to determine if an individual meets the medical requirements to collect disability. Participation in the Ticket to Work provides SSA beneficiaries with CDR protection.

Information regarding Ticket to Work procedures is available on the Intranet.

### **9.8.2 Continuing Disability Review and Timely Progress**

The DVR Counselor will inform Ticket to Work holders of their protection from CDR as long as timely progress is being made toward the employment outcome as outlined on the IPE.

### **9.8.3 Work Incentives Consultation and Benefits Planning Assistance**

All SSA beneficiaries shall be provided information and referrals necessary to assure understanding of SSA work incentives and the impact of earnings on Federal and State benefits. Beneficiaries are not required to use SSA work incentives to offset costs to DVR for necessary goods and/or services.

## *Chapter Ten - Expenditure of Funds and Comparable Benefits*

### The Act

**Sec. 101(a)(8)(A)(i) In general – . . . prior to providing an accommodation or auxiliary aid or service or any vocational rehabilitation service to an eligible individual, except those specified . . . the designated State unit will determine whether comparable services and benefits are available under any program (other than a program carried out under this title) . . .**

### The Regulations

**Sec. 361.53 Comparable services and benefits.**

**(a) Determination of availability. The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that prior to providing an accommodation or auxiliary aid or services or any vocational rehabilitation services, except those services listed in paragraph (b) of this section, to an eligible individual, or to members of the individual's family, the State unit must determine whether comparable services and benefits, as defined in Sec. 361.5(b)(10), exist under any other program and whether those services and benefits are available to the individual unless such a determination would interrupt or delay—**

- (1) The progress of the individual toward achieving the employment outcome identified in the individualized plan for employment;**
- (2) An immediate job placement; or**
- (3) 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.**

**(b) Exempt services. The following vocational rehabilitation services described in Sec. 361.48(a) are exempt from a determination of the availability of comparable services and benefits under paragraph (a) of this section:**

- (1) Assessment for determining eligibility and vocational rehabilitation needs.**
- (2) Counseling and guidance, including information and support services to assist an individual in exercising informed choice.**
- (3) Referral and other services to secure needed services from other agencies, including other components of the statewide workforce development system, if those services are not available under this part.**
- (4) Job-related services, including job search and placement assistance, job retention services, follow-up services and follow-along services.**
- (5) Rehabilitation technology, including telecommunications, sensory and other technological aids and devices.**

**(6) Post-employment services consisting of the services listed under paragraphs (b)(1) through (5) of this section.**

**(c) Provision of services.**

**(1) If comparable services or benefits exist under any other program and are available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE, the designated State unit must use those comparable services or benefits to meet, in whole or part, the costs of the vocational rehabilitation services.**

**(2) If comparable services or benefits exist under any other program, but are not available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE, the designated State unit must provide vocational rehabilitation services until those comparable services and benefits become available.**

**(d) Interagency coordination.**

**(1) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure . . . interagency coordination takes effect between the designated State vocational rehabilitation unit and any appropriate public entity . . . to ensure the provision of vocational rehabilitation services, and, if appropriate, accommodations or auxiliary aids and services . . . that are included in the IPE . . .**

**Sec. 361.54 Participation of individuals in cost of services based on financial need.**

**(a) No Federal requirement. There is no Federal requirement that the financial need of individuals be considered in the provision of vocational rehabilitation services.**

**(b) State unit requirements.**

**(1) The State unit may choose to consider the financial need of eligible individuals or individuals who are receiving services through trial work experiences under Sec. 361.42(e) for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, other than those services identified in paragraph (b)(3) of this section.**

## **10.1 COMPARABLE SERVICES AND BENEFITS**

Comparable services and benefits 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. They are available to the individual at the time needed to ensure progress toward achieving the employment outcome identified in the IPE and are commensurate to the services that the individual would otherwise receive from DVR. Awards and scholarships based on merit are not considered comparable services and benefits. Except when exempted, comparable services and benefits shall be explored and utilized to meet all or

part of the cost of any vocational rehabilitation service, including auxiliary aids and services provided as an accommodation to access vocational rehabilitation. The following services and goods are exempt from a comparable services and benefits search:

- Assessment services to determine eligibility and vocational rehabilitation needs;
- Vocational rehabilitation counseling and guidance including information and support services to assist the individual in exercising informed choice;
- Referral and other services to secure needed services from other agencies;
- Job related services including job search and placement assistance, job retention services, follow up services and follow along services;
- Rehabilitation technology services and goods;
- Post-employment services when the services and goods are listed in 1 through 5 above.

The search for comparable services and benefits is the responsibility of the DVR Counselor and can involve the client and other DVR staff. The DVR Counselor shall document the search and the availability of comparable benefits and services prior to the expenditure of DVR funds for any good or service that is not exempt.

Although a search is not required for an exempt service or good, the DVR Counselor is not precluded from identifying comparable benefits, as long as this does not delay services or otherwise negatively impact the client's vocational rehabilitation program.

#### **10.1.1 Time Frames**

The search for comparable benefits and services shall occur in compliance with agency-established time frames and shall not extend the sixty (60) days permitted for eligibility determination or the ninety (90) days permitted for IPE development.

#### **10.1.2 Comparable Benefit Search Responsibilities**

Throughout the rehabilitation process, the DVR counselor shall collaborate with the client to seek, apply for, and accept comparable services and benefits that appropriately meet service needs. The DVR Counselor shall advise the client of his or her responsibility to make maximum effort toward securing comparable benefits as soon in the IPE development process as possible to ensure that comparable benefits will be available at the time services are initiated.

#### **10.1.3 Wait Period for Benefit to Become Available**

If the search identifies a comparable service or benefit that is non-exempt, but is not available at the time needed by the individual to receive vocational rehabilitation services

under the IPE, DVR shall pay for the service or good until the comparable service or benefit becomes available. If DVR pays for a good or service when a comparable benefit is unavailable at the time of service delivery, the DVR Counselor shall create timeframes within the IPE that reflect only the specified period of DVR-paid services in the absence of the available comparable benefits. The DVR Counselor shall conduct a review for the comparable service or benefit as soon as possible, but no later than at the time of IPE amendment, IPE annual review, or when the FNA is reviewed. As soon as the comparable benefit or service becomes available to the client, DVR shall cease to pay for the benefit or service.

#### **10.1.4 Urgent Vocational Need**

A determination of the availability of comparable services and benefits is not required prior to the initiation of a non-exempt service or good if such a search would interrupt or delay the provision of services necessary to meet an urgent vocational rehabilitation need. Urgent vocational need occurs when:

1. The individual is determined to be at extreme medical risk by an appropriately licensed medical professional.
2. The conduct of a comparable services and benefits search jeopardizes an immediate job placement.
3. The conduct of a comparable services and benefits search after the initiation of an IPE would delay or interrupt the client's progress in achieving his/her employment outcome.

When the IPE is initiated under any of these circumstances to meet the urgent vocational need, a subsequent comparable services and benefits search shall be conducted as soon as possible. The client record shall document the conduct and outcome of the search and the IPE shall be amended to reflect the use of comparable services and benefits if they are secured.

#### **10.1.5 Client Refusal to Use Comparable Services and Benefits**

In the event an applicant or eligible individual chooses not to apply for or accept an available comparable benefit or service that would appropriately address the individual's identified rehabilitation needs, the DVR Counselor shall inform the individual of his or her responsibility for the cost of the benefit or service. When the comparable service or good is available for only a portion of a necessary benefit or service, the individual shall be responsible for any cost in excess of what DVR would pay if the comparable benefit or service were utilized.

## **10.2 EXPENDITURE OF VOCATIONAL REHABILITATION FUNDS**

An Authorization for VR Service form reflects DVR's commitment to pay for specific goods and services rendered in accordance with the terms and conditions of the authorization. Any service paid for in part or in whole by DVR shall be authorized by the DVR Counselor prior to its initiation, with written supervisory approval when necessary. When prior written authorization is not possible, or a prior authorization does not get completed due to error, the client record shall document this and a supervisor will review to determine whether it is appropriate for DVR to pay for the good/service. If payment is not appropriate, the Supervisor shall inform the Counselor who will notify the provider and involve the Supervisor in those discussions as necessary. All authorizations issued in AWARE shall be printed out, signed by a Counselor or Supervisor, and included in hard copy in the client record.

Once an IPE, Business Exploration Agreement (BEA), or Trial Work Experience (TWE) Plan has been developed and signed by the individual and DVR Counselor, no service or good may be authorized unless it is identified in the applicable plan while the plan is in effect; or if it falls into one of the exceptions to prior authorization. The counselor shall document in the client record all services/goods provided without prior authorization and the circumstances of the exceptions.

### **10.2.1 DVR Purchase/Reimbursement Restrictions**

The DVR Counselor and client shall work collaboratively to identify a comprehensive set of necessary services to be included in the individual's plan for the achievement of an employment outcome. However, DVR is restricted from purchasing, or reimbursing others for the purchase of, the following goods and services under any circumstances:

1. Firearms
2. Ammunition
3. Vehicles licensed to operate on public thoroughfares
4. Land or buildings
5. Marijuana in any form, or related equipment
6. Payments directly made to an employer in the marijuana industry

In the event that DVR is restricted from purchasing and/or reimbursing for a good/service, the DVR Counselor shall assist the client in finding other avenues to obtain the good/service when it is considered necessary and appropriate to reach the employment objective.

### **10.2.2 Absence of Prior Authorization**

Payment for a vocational rehabilitation service provided before it was authorized may only be made in the following circumstances:

1. To meet an urgent vocational rehabilitation need.  
Vocational rehabilitation services authorized and paid for to address an emergency situation shall be limited only to those services and goods that are necessary to meet the immediate need that cannot be authorized under DVR's normal procedures.
2. To pay for unanticipated medical procedures.  
When medical diagnostic or treatment procedures have been preauthorized and, during the course of medical examination or treatment, an additional procedure(s) and/or vendor was needed to accomplish the preauthorized medical service, payment may be made for the additional procedure(s) and/or vendor without preauthorization. Such circumstances are limited to those where the initial medical practitioner is unable to determine the exact scope of examination or treatment until medical services begin and the additional procedure(s)/vendor is necessary for the completion of the examination/treatment procedure(s) that has already been preauthorized.
3. Following premature cancellation of an existing authorization.  
When vocational rehabilitation services have been preauthorized and the authorization balance has been prematurely cancelled before all covered services or goods have been completely provided, payment for the remaining vocational rehabilitation services may be paid for under a new authorization, even though the service or good was rendered before the new authorization was prepared.
4. To pay for medical records.  
When DVR requests medical records, it may be unclear whether the entity providing the records will require payment. If payment is requested, an authorization shall be completed as soon as possible following receipt of the invoice and medical records.

#### **10.2.2(a) Payment of DVR Goods and Services Rendered Without Pre-Authorization**

Payments for DVR goods and services rendered before the beginning date of service on a corresponding draft authorization shall be approved in writing by a Supervisor I. In the case of a cancelled authorization, the client record shall contain the new authorization and the previous authorization along with supervisory approval and an explanation which is

documented on the agency-approved form for this purpose. The Counselor shall provide the Supervisor I with the following to support a payment request:

1. The draft authorization for the VR service for which payment approval is being requested;
2. The vendor's bill for the provision of goods and services;
3. An explanation about why a prior authorization was not prepared;

After reviewing all of the materials, the Supervisor I shall attach his or her approval or denial to the documentation and return materials to the Counselor. The Supervisor I shall work with the Counselor to remedy the situation if payment cannot be approved.

### **10.2.3 Approved Providers**

Payment for services and goods by DVR shall only be made to providers who are registered in accordance with purchasing requirements and meet required standards.

### **10.2.4 Authorizations/Payments to Clients**

Payments to clients shall only be approved when no alternatives exist. All direct payments to clients shall be authorized, including authorization amendments, in accordance with the established supervisory approval process. Authorizations to clients shall not circumvent State purchasing rules and shall not be broken down into several small amounts to avoid the supervisory approval process. All requests and approvals shall be fully documented in AWARE case notes, and all supporting documentation shall be placed or scanned into the client's case record. Examples of supporting documentation may include:

- a reason why a vendor is not available
- any research completed for maintenance/rent
- reasons why the client cannot use public transportation

Regardless of the amount, DVR staff shall ensure all receipts/invoices are attached to the corresponding authorization for direct payments to clients. DVR staff shall photocopy all warrants and attach these, with the remittance advice, to the corresponding authorization in the client's case record. DVR staff shall also ensure clients sign the Receipt of Warrant Form indicating they have received the warrant and shall place it with the corresponding authorization in the case record. The Receipt of State Purchased Goods Form shall be completed and signed when the direct payment to a client involves goods.

In rare cases when a client does not have available funds for a purchase and a direct payment to the client occurs so the client may make the purchase of the good or service, a final receipt(s) shall be received from the client within seven (7) business days unless otherwise specified on the Direct Payments to Clients/Receipt of Warrant Form.

### **10.3 FEE SCHEDULE**

DVR Counselors shall authorize services and goods and approve payment in accordance with the DVR Fee Schedule, which identifies market-based standardized rates of payment and other rate setting procedures for each available vocational rehabilitation service. They shall be reviewed periodically and adjusted when needed to assure that applicants and recipients of services have meaningful choices of vocational rehabilitation service providers. DVR may authorize and approve payment of a fee exceeding standard rates contained in the Fee Schedule when an individual's vocational rehabilitation needs are such that he or she requires a specialized service or service delivery mechanism not typically required by other persons with disabilities within the parameters incorporated into the Fee Schedule. DVR may also exceed the fee schedule in order to offer a service or good within an individual's home community when appropriate. Documentation supporting the need to exceed the standard rates contained in the Fee Schedule for any service shall be included in the client record.

### **10.4 PURCHASING PROCEDURES AND BID PROCESS**

All of the services and goods purchased by DVR shall be essential to assess an individual's eligibility and severity of disability, to establish his or her vocational rehabilitation needs, to overcome or circumvent vocational impediments, or to attain the individual's chosen employment outcome. When purchasing any good or service, the DVR Counselor will first check for any applicable State price agreements to determine if there is a vendor under a State price agreement that meets the needs of the client. However, the State price agreement is not required to be used if the good or service can be purchased with another vendor at least possible cost or if the use of the State price agreement would delay services. State price agreements can be searched at:

<https://www.bidscolorado.com/co/portal.nsf/xpPriceAgreementsByCategory.xsp>

Purchase of goods or services costing \$2,000 and above shall follow informal bid procedures with the exception of:

- customized, prescriptive equipment requiring a fitting; or
- the purchase of goods or services at a cost that does not exceed the rate established in DVR's Fee Schedule.

*Customized, prescriptive equipment requiring a fitting, may include vehicle modifications, prosthetics, specialized wheelchairs, and similar equipment requiring an individualized fitting to ensure safety/effectiveness. Equipment requiring only adjustments among standard settings (e.g. crutches or walkers) will typically not be considered to be customized.*

*Additionally, the purchase of out-of-state and/or private school tuition exceeds the rate established in the Fee Schedule and informal bid procedures must be documented to demonstrate least possible cost.*

#### **10.4.1 Authority to Purchase and Approvals**

1. \$1,999 and less

The DVR Counselor is authorized to purchase goods and services that cost \$1,999 or less without any additional procurement requirements beyond DVR's policy of procuring necessary and appropriate goods and services at the least possible cost.

2. \$2,000 - \$4,999

For goods and services costing between \$2,000 and \$4,999, the DVR Counselor has the authority to authorize the purchase in compliance with informal bid procedures.

3. \$5,000-\$7,999

Purchases of \$5,000 to \$7,999 require written approval by the Supervisor I prior to execution of an authorization for purchase. The DVR Counselor shall provide the Supervisor I with copies of:

- Bids and bidding documentation
- Eligibility Determination
- Individualized Plan for Employment
- Justification of need – documented in a case narrative or memo
- Draft authorization

The Supervisor I shall review and provide written approval. After approving the request, the Supervisor I shall issue the draft authorization and it will be submitted to the vendor.

4. \$8,000 - \$49,999

Purchases of \$8,000 - \$49,999 require written approval by the Supervisor I and the Regional Manager. The DVR Counselor shall provide the Supervisor I with the same data as the prior approval level. The Supervisor I shall forward these materials to the Regional Manager along with his or her written approval. After approving the request, the Regional Manager shall issue the draft authorization and it will be submitted to the vendor.

5. \$50,000 and above

Purchases of \$50,000 and above require written approval by the Supervisor I, Regional Manager, and Deputy for Field Services. The DVR Counselor shall

provide the Supervisor I with the same data as the prior approval level. The Supervisor I shall forward these materials to the Regional Manager along with his or her written approval. The Regional Manager shall forward these materials to the Deputy for Field Services who will issue the authorization if approved and the authorization will be submitted to the vendor.

#### **10.4.2 Informal Bid Procedures**

Three written informal bids shall be obtained, when available, for purchase of goods and services costing \$2,000 and above. If the individual chooses a provider who appears on a State bid award, two additional bids are not needed. However, purchase of a good or service through the state price agreement is not required if the good or service can be purchased with another vendor at the least possible cost. Informal bids shall comply with the following requirements:

1. All bids shall be in writing.
2. All bids shall provide specifications, when applicable.
3. All three bids shall be for the same or comparable items.

The DVR Counselor shall document the bid activities in the client record and include copies of the informal bids, when required; justification if the chosen provider is not the lowest bidder; and explanation of why three providers are not available to bid, if applicable.

Informal bids are not required for the purchase of customized, prescriptive equipment requiring a fitting or the purchase of goods or services at a cost that does not exceed the rate established in DVR's Fee Schedule. Purchases costing \$5,000 or more for these items shall follow the supervisory approval process without the requirement to document multiple bids. In these situations, the DVR Counselor is not prohibited from obtaining bids when necessary to determine least possible cost.

#### **10.4.3 Authorizations, Approvals, and Payments**

Authorizations shall not be issued until the appropriate approvals have been obtained. In accordance with DVR Operational Guidance Letter (DOG FIN-01), prior approval from the Rehabilitation Services Administration (RSA) shall be obtained prior to committing or expending funds on purchases made on behalf of recipients of services in the following categories:

- Fines, penalties, damages and other settlements;
- Memberships, subscriptions, and professional activity costs;
- Participant support costs for attendance at conferences and seminars when total cost exceeds \$5000

Payment shall be made only after receipt of an invoice for goods or services provided in accordance with the authorization and other supporting documentation required by DVR's bill payment procedure. All authorizations, supervisory approvals, associated amendments to the authorization, and invoices shall be maintained in the client record, along with documentation that the good or service was received:

For Goods:

- The client-signed agency-approved form for receipt of state equipment
- A client-signed receipt
- The client-signed invoice
- An email from the client indicating goods were received
- Verbal verification from the client by the agency bill-payer

For Services:

- A progress report from the provider

#### **10.4.4 Sole Source**

If there is only one good or service that can reasonably meet a vocational rehabilitation need and only one vendor who can reasonably provide that good or service, rationale for a sole source procurement shall be explained and documented as part of the least possible cost analysis.

### **10.5 FINANCIAL PARTICIPATION**

Throughout the DVR process, payment for most services or goods for individuals, other than individuals who are eligible to receive SSI/SSDI benefits for disability or blindness, is based upon the economic need of the individual. The DVR Counselor shall conduct a determination of the individual's economic need prior to the preparation and approval of an Individualized Plan for Employment or Business Exploration Agreement whenever the plan contains a vocational rehabilitation service that is not exempted from financial participation. While some financial information is reported by individuals at time of application for purposes of required federal reporting, the information documented at the time the individual's economic need is being determined may be different and shall be supported by verifying documents and information. DVR shall use agency approved forms to document differences in reported financial information.

DVR does not require the financial participation of the individual for the following vocational rehabilitation services:

1. Assessment services to determine eligibility and vocational rehabilitation needs, including transportation necessary to participate in the assessment(s);
2. Vocational rehabilitation counseling and guidance;

3. Referral services;
4. Professional fees to providers of vocational adjustment and personal adjustment training, independent living skills training, job coaching, on-the-job training and job seeking skills training, or business consultation services provided through a Business Exploration Agreement;
5. Interpreter services and note-taking services for individuals who are deaf;
6. Reader services and note-taking services for individuals who are blind;
7. Personal assistance services;
8. Auxiliary aids needed for an individual with a disability to participate in the vocational rehabilitation program;
9. Job-related services;
10. Occupational goods & services;
11. Self-Employment goods & services;
12. Secondary education; and
13. Pre-Employment Transition Services

Re-determinations of the individual's economic need shall be conducted and documented within 45 days of any change to the individual's financial circumstances. If rehabilitation services are not immediately needed following a change to the individual's financial circumstances, the review may be postponed until services resume. This may occur when the DVR Counselor is monitoring the client's employment without the ongoing provision of vocational rehabilitation services, when the client's services are interrupted because he or she is not immediately available to participate in services, or in other similar situations. During such periods of time, services are limited to necessary assessment, information and referral, and vocational counseling and guidance required to resume case progress or monitor the stability of the client's employment.

*Individuals eligible to receive SSI or SSDI benefits for disability or blindness who pursue self-employment are subject to DVR policies addressing client contribution of start-up costs. Please see Chapter 16 for more detailed information.*

### **10.5.1 Financial Need Analysis**

All economic need determinations shall be documented on the DVR Financial Need Analysis (FNA) document. Individuals who are currently eligible for SSI and/or SSDI benefits due to disability or blindness are exempt from financial contribution. Therefore, no additional financial information is required. The DVR Counselor shall document the exemption on the FNA and the client is not required to sign and date the FNA document. When an eligible individual is anticipated to require only services that are exempt from financial need analysis, the DVR Counselor shall document this exemption on the FNA

and the client is not required to sign and date the FNA document. In all other circumstances, the FNA shall be signed and dated by the DVR Counselor and the client.

When possible, the client shall provide documented proof of financial status. Proof of financial status may include: pay stubs, W-2 forms, bank statements from checking & savings accounts, canceled checks, payroll documentation, earnings statements, employment security wage reports, unemployment records, letters from previous employers with last day worked, incarceration records or releases, retirement program documents, copies of current or previous year's federal income tax returns, and documentation from public or private economic support programs.

If proof of financial status is unavailable or cannot be obtained, this shall be documented and the statement of the client and/or member of his or her family unit shall establish data used to complete economic need determinations. Services shall not be delayed if proof of financial status is unavailable.

If an individual who is not exempt from financial contribution requirements declines to provide available proof of financial status or refuses to share sufficient information to determine whether available monthly resources exist, DVR shall be unable to provide any services that are subject to financial needs analysis.

DVR shall strictly observe the confidentiality of all financial information obtained from the individual and/or family members.

#### **10.5.1(a) Family Unit**

The family unit consists of the applicant or client, the spouse of the individual and any other persons whom the individual claims as a dependent for income tax purposes. When the individual is dependent upon his or her parents, the parents and persons for whom the parents are financially responsible shall be considered part of the family unit. An individual who is living with his or her parents is considered a dependent unless the parents have not claimed the individual as a dependent for income tax purposes for the tax year previous to the financial need determination and do not intend to claim the individual as a dependent in current and future years.

When there is a clear indication that the individual is not receiving financial support, he or she may be considered his or her own family unit regardless of dependent status for income tax purposes.

### **10.5.1(b) Monthly Income**

Financial need determinations shall consider the gross income from all sources for all individuals in the family unit. Income reported for a period greater than one month or weekly income shall be calculated to determine a monthly amount. Income that comes in one lump sum is considered as part of liquid assets.

Monthly income includes:

1. The gross amount of income from wages, salaries, tips, and commissions. Amounts deducted from paychecks due to garnishment of wages for court-ordered payments are to be included in the amount reported as income. (Court-ordered payments shall be considered as deductions).
2. Self-employment income considering the gross amount of earnings minus necessary business expenses. Self-employment income includes income generated by providing day care services.
3. SSI/SSDI payments received by family members other than the applicant or client.
4. Monthly public assistance that comes to any member of the family unit in the form of cash payments or coupons expended as cash.
5. Any disability installment payments not identified as public assistance payments that come to any member of the family unit in the form of cash payments or coupons expendable as cash.
6. Child support payments received. If they are not received on a regular basis, divide an estimated amount received by the estimated number of months between payments to determine the monthly income amount.
7. Cash remaining after the payment of tuition, fees, books and supplies from need-based student financial aid, grants or scholarship awards which come to the individual who is or will be a student. Divide the remaining amount by the number of months in the award period to determine the monthly amount to report as income. Remaining cash resulting from a student loan (after payment of tuition/fees, books and supplies) that shall be repaid by a member of the family unit is not considered income.
8. Investment income including installment income from trusts, inheritances, liquid assets and net rental income (after rental property expenses).
9. Other income including but not limited to alimony payments received, with the monthly amount calculated in the same manner as child support payments; Social Security retirement benefits; all other retirement benefits and pensions and unemployment insurance payments.

### **10.5.1(c) Monthly Deductions**

Monthly deductions are allowed for any member of the family unit for the following:

1. Impairment-related expenses:

Expenses related to the impairment of any member of the family unit are allowable deductions. Deductions are limited to those that the family unit is currently paying for and shall continue to pay for under the Individualized Plan for Employment or Business Exploration Agreement. The deduction shall reflect the amount actually expended, after insurance payments and other subsidies, for required medical or other specialized services to treat a disabling condition. Expenditures for routine medical care, normal illnesses, and conditions not expected to impose permanent functional limitations are not allowed unless needed to prevent exacerbation of a disabling condition. Expenditures for the purchase of health insurance are not an allowable deduction. Allowable deductions for impairment related expenses include:

- Prescription and non-prescription medications ordered to treat a disabling condition and monitored on an ongoing basis by the treating physician
- Required medical supplies/equipment to treat disabling conditions
- Payments for ongoing treatment and therapy for a disabling condition ordered by the treating physician
- Attendant care provided by an individual not included in the family unit
- Maintenance on required assistive devices
- Expenditures necessary to maintain the health and vitality of a guide dog or other service animal if the animal enables the person to overcome functional limitations in order to work (e.g. training, food, licenses, and veterinary services); documentation to assess the need for the service animal is required.

2. Debt payment on previously incurred impairment related expenses:

Deductions for debt payment on previously incurred impairment related expenses for any member of the family unit's disabling conditions are allowable and shall be based on the actual amount expended or the minimal amount required each month, whichever is less. The maximum deduction allowed for previously-incurred impairment related expenses is 20% of the family unit's total monthly income or the actual amount expended, whichever is less. Previous expenses for routine medical care, normal illnesses, and conditions not expected to impose permanent functional limitations are not allowed unless needed to prevent

exacerbation of a disabling condition. Allowable deductions for debt reduction of previously incurred impairment related expenses include:

- Payments for medications ordered and monitored by the treating physician
- Payments for disability treatment and therapy ordered and monitored by the treating physician
- Payments for residence modifications needed for a family member's disabling conditions
- Payments for modifications to an automobile required for a family member's disabling conditions. This does not include payments for the vehicle.

3. Court-Ordered Payments:

The amount actually being expended or the amount legally required, whichever is less, for court-ordered payments required of any member of the family unit are an allowable deduction. This deduction is only available when payments are for the support of an individual(s) not included in the family unit. Allowable categories of court-ordered payments include:

- Child support payments that are being made
- Alimony payments that are being made
- Restitution payments that are being made to an individual other than a member of the family unit
- Court-ordered treatment for conditions that do not constitute a disability (Treatment for a condition that would meet DVR's eligibility standards for impairment should be deducted as an impairment related expense and not deducted under the court-ordered category)

4. Cost Of Living Allowance:

Standardized allowances for normal living costs are determined by the size of the family unit. DVR establishes these rates annually, based on an established percentage of the federal poverty guidelines as identified by the U.S. Department of Health and Human Services. These allowances are documented on DVR's agency approved form for documenting the individual's Financial Need Analysis.

**10.5.1(d) Liquid Assets**

Liquid assets of all members of the family unit, including family members other than the applicant or client who are receiving SSI/SSDI, are considered as part of the economic need determination. Liquid assets are any assets that are or may be readily converted into

cash. Do not include assets that generate a periodic income. Rather, consider the periodic income from these under monthly income.

1. Cash or savings

The following shall be considered as cash or savings:

- Lump sum public assistance back-payments for disability, including SSI back payments other than the applicant or client
- Lump sum SSDI back payments other than the applicant or client
- Lump sum worker's compensation settlements
- Lump sum veteran's benefit payments
- Lump sum insurance cash settlements
- Lump sum retirement payment
- Other cash savings accounts
- Do not include savings from PASS plans

2. Stocks, bonds, mutual funds and money market funds

The amount recorded for stocks, bonds, mutual funds, and money market funds shall include their estimated current value minus estimated sales expenses. Include only those that can be converted to cash without incurring a penalty. If held in a retirement account, they are not considered liquid until the account holder is at least 59 ½ years old. Selling securities at a loss and payment of sales commissions are not considered penalties. For securities, such as Certificates of Deposit, which are expected to mature and therefore become liquid before the completion of the plan, a new financial need analysis shall need to be completed upon maturity. For securities held in retirement accounts where the owner shall become eligible to liquidate them without penalty before the completion of the plan, a new financial need analysis shall need to be completed when they become available.

3. Cash resulting from a loan that shall be repaid by a member of the family unit is not considered a liquid asset.
4. Exclusion of four (4) times the cost of living allowance for the family unit is allowable in determining the net liquid assets. In order to convert the amount of net liquid assets (total liquid assets minus the allowable exclusion) into a monthly amount, divide net liquid assets by twelve (12) at the time of completion or review of the financial need analysis form.

### **10.5.1(e) Total Monthly Resources**

The total monthly gross income and the monthly available liquid assets represent the monthly gross amount of resources of the individual. This amount is reduced by the total monthly deductions and any remaining balance represents the monthly resources considered to be available to the individual.

When more than one member of a family unit is an applicant or client, the financial need analysis for each individual shall include all members of the family unit. Income, deductions and liquid assets shall be calculated for all members of the family unit. The available monthly resources shall be divided among all applicants or clients in the family unit in accordance with the amounts that DVR is or shall be paying for services and goods under the plan so that the maximum amount of the family unit's available monthly resources are used to help pay for non-exempt goods and services. The portion that each shall be required to contribute shall appear on the individual's financial need analysis, along with a footnote explaining how the amount was established.

### **10.5.1(f) Application of Available Monthly Resources**

All available monthly resources of the family unit, where there are available resources as determined by the DVR financial need analysis document, shall be applied to the cost of vocational rehabilitation services other than those that are exempt from a financial need analysis or financial participation. When an individual chooses a more expensive service or good from among alternatives that all fully meet the individual's vocational rehabilitation needs, available monthly resources of the family unit shall be used to defray DVR's costs for all goods and services under the applicable plan before they can be applied to the excess costs of the more expensive alternative.

The available monthly resource shall be applied after the initiation of the applicable plan. Ongoing services and a one-time service are treated alike for the purposes of the use of the available monthly resource. Ongoing services might include monthly psychotherapy or vocational skills training. A one-time service might be the purchase of a rehabilitation technology device or another piece of equipment. The available monthly resource listed on the financial need analysis is **not** cumulative and does not carry over to the next month for the purchase of a non-exempt planned service or good after the initiation of the applicable plan.

The DVR Counselor and individual shall jointly determine what amounts the individual shall need to contribute, how the amounts shall be applied to specific goods and services, and a schedule for contributions.

### **10.5.2 Notification and Documentation of Financial Participation**

The client shall be notified, either as part of the written comprehensive assessment summary, on the IPE or in another written form of the amount he or she shall contribute to the cost of goods and services under the IPE.

The client record shall contain written documentation of determinations of economic need and how the available monthly resource shall be utilized in the provision of vocational rehabilitation services, where applicable. The IPE shall show use of the available monthly resource as a funding source for all or any portion of the service(s) and/or good(s) for which the individual is responsible.

The responsibilities section of the applicable plan shall document the individual's commitment to his or her financial participation, what to do if his or her financial situation changes and the potential consequence if the individual does not fulfill the agreed upon financial participation responsibilities.

#### **10.5.2(a) Individual's Failure to Contribute Required Resources**

If the individual's financial situation, as per the financial need determination, has not changed when the time for the individual's financial participation arrives and the individual does not have the money he or she has agreed to pay under the plan or is no longer willing to contribute toward the payment of goods or services, there shall be an interruption in provision of planned goods and services until:

1. The individual can acquire resources to make the required contribution; or
2. The individual and DVR Counselor can redevelop the plan in terms of its employment outcome and/or necessary goods and services so that a financial contribution is not required.

## **FINANCIAL NEED AND COMPARABLE BENEFITS GUIDE**

Financial Need Analyses (FNA) for individuals other than SSI and SSDI recipients, based on his or her disability, and comparable benefits searches (CB) are required for services as follows:

<b>TYPE OF VOCATIONAL REHABILITATION SERVICE</b>	<b>FNA</b>	<b>CB</b>
<b>Assessment Services, including necessary transportation</b>	No	No
<b>Auxiliary Aids and Services (accommodations to access DVR)</b>	No	Yes
<b>Benefits Counseling</b>	No	Yes
<b>Customized Employment</b>	No	No
<b>Information and Referral Services</b>	No	No
<b>Interpreter/Reader/Notetaker Services</b>	No	Yes
<b>Job Search and Placement Services</b>		
Job Seeking Skills Training/Resume Services	No	No
Job Placement	No	No
Job Placement Clothing, Grooming and Supplies	No	Yes
<b>Job Training</b>		
Job Coaching	No	Yes
On-the-Job Training	No	Yes
<b>Occupational tools &amp; equipment</b>	No	Yes
<b>Pre-Employment Transition Services</b>		
Job Exploration Counseling	No	Yes
Work-based Learning Experiences	No	Yes
Counseling on Postsecondary Education	No	Yes
Workplace Readiness Training	No	Yes
Instruction in Self-Advocacy	No	Yes

<b>TYPE OF VOCATIONAL REHABILITATION SERVICE</b>	<b>FNA</b>	<b>CB</b>
<b>Rehabilitation/Assistive Technology Goods And Services</b>		
Rehabilitation/Assistive Technology Assessment	No	No
All Other Rehab/Assistive Technology Goods/Services	Yes	No
<b>Restoration, Physical &amp; Mental</b>	Yes	Yes
<b>Self-Employment Goods and Services, including Self-Employment Business Consultation</b>	No	Yes
<b>Support Services</b>		
Child/Elder Care, Family Counseling, and Maintenance	Yes	Yes
Personal Assistance Services	No	Yes
Transportation	Yes	Yes
<b>Training</b>		
Vocational and Academic Training	Yes	Yes
Secondary Education	No	Yes
Personal Adjustment Training	No	Yes
Work Adjustment Training	No	Yes
Books, Supplies & Materials, not included in training fee	Yes	Yes
<b>Vocational Rehabilitation Counseling &amp; Guidance</b>	No	No

**FINANCIAL STATUS VERIFICATION GUIDE**

The Financial Need Analysis requires proof of financial status to the extent possible. The Client may provide a variety of documents to prove reported financial status. While not an exhaustive list, the following provides guidance as to the documents that can be accepted by DVR staff to verify reported financial status.

TYPE OF INCOME	VERIFICATION
Cash Financial Aid after Tuition, Fees, and Books	Student Financial Aid Report Statement from Educational Institution
Child Support	Bank Statement Court Documents Check Stub Award Letter Family Support Registry Payment Record
Family Members' Social Security (SSI/SSDI)	Award Letter Benefit Statement
Family Members' Gross Wages, Tips, and Commissions	Check Stub W-2 Income Tax Return (Total Income on form 1040) Schedule C of Tax Return (Self-Employment) Profit & Loss Statement(s) (Self-Employment)
Individual's Gross Wages, Tips, and Commissions	Check Stub W-2 Income Tax Return (Total Income on form 1040) Schedule C of Tax Return (Self-Employment) Profit & Loss Statement(s) (Self-Employment)
Investment Income (Trusts, Real Estate, etc.)	Earnings Statement
Other (Alimony, Retirement, etc.)	Award Letter Bank Statement Check Stub
Other Disability Income (VA, Workers Comp, etc.)	Award Letter

	Benefit Statement
Other Public Assistance (TANF, Food Stamps, etc.)	Award Letter Benefit Statement
Unemployment Insurance (Self and/or Family)	Award Letter Benefit Statement

TYPE OF LIQUID ASSET	VERIFICATION
Cash or Savings	Bank Statement
Other	Statement of the value of the asset
Stocks, Bonds, Mutual Funds, Mature CDs	Earnings Statement Financial Statement Bank Statement

TYPE OF DEDUCTION	VERIFICATION
Court Ordered Payments (Child Support, Alimony, etc.)	Court Document Canceled Check Family Support Registry Payment Record
Impairment Related Expenses <ul style="list-style-type: none"> <li>• Prescription and non-prescription medication ordered to treat disabling condition</li> <li>• Required medical supplies/equipment to treat disabling condition</li> <li>• Payments for ongoing treatment and therapy for disabling condition ordered by treating physician</li> <li>• Maintenance of required assistive technology</li> </ul>	Itemized Receipts Canceled Check For service animal also include documentation from provider of the barrier to employment the service animal is addressing

<p>Previously Incurred Medical Expenses (Payment on Debt)</p> <ul style="list-style-type: none"> <li>• Payments for medications ordered and monitored by the treating physician</li> <li>• Payments for disability treatment and therapy ordered and monitored by the treating physician</li> <li>• Payments for residence modifications needed for a family member’s disabling conditions</li> <li>• Payments for modifications to an automobile required for a family member’s disabling conditions. This does not include payments for the vehicle.</li> </ul>	<p>Itemized Receipts Canceled Check</p> <p>For service animal also include documentation from provider of the barrier to employment the service animal is addressing</p>
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FAMILY UNIT	VERIFICATION
<p>Clear indication that the individual is not receiving financial support when dependent for income tax purposes</p>	<p>Rent Receipts Written statement from head of household where individual is living (when different from person claiming individual)</p>

**GUIDE FOR PURCHASE OF EQUIPMENT AND OTHER GOODS**

EXPENDITURE RANGE	APPROVAL LEVEL	REQUIREMENTS
\$1 - \$1,999	Counselor	No special requirements.
\$2,000 - \$4,999	Counselor	<p>Obtain three written, informal bids (when available) for placement in the client record unless the item is a van modification, wheelchair or other adaptive equipment that is customized, prescriptive or requires a fitting. Assure case note justification:</p> <ul style="list-style-type: none"> <li>• if selected provider is not the lowest bidder.</li> <li>• if three providers are not available to bid</li> </ul> <p>If a state price agreement vendor is available, purchase of a good can be completed without obtaining bids.</p> <p>(website: <a href="https://www.bidscolorado.com/">https://www.bidscolorado.com/</a> ). However, the state price agreement is not required to be used if the good can be purchased with another vendor at the least possible cost.</p>
\$5,000 - \$7,999	Supervisor I	<p>Counselor provides Supervisor I with a purchase request packet consisting of the following client record copies:</p> <ol style="list-style-type: none"> <li>1) Bids and bidding documentation described above (bids not required for a van modification, wheelchair or other adaptive equipment that is customized, prescriptive or requires a fitting).</li> <li>2) Eligibility Determination</li> <li>3) Individualized Plan for Employment</li> <li>4) Justification of Need documented in a case narrative or memo</li> <li>5) Draft authorization</li> <li>6) Supervisor I reviews and provides written approval. After approving the request, the Supervisor I shall issue the draft authorization and it will be submitted to the vendor.</li> </ol>

EXPENDITURE RANGE	APPROVAL LEVEL	REQUIREMENTS
\$8,000 - \$49,999	Regional Manager	<p>Counselor provides Supervisor I with a purchase request packet as described above.</p> <ol style="list-style-type: none"> <li>1. Supervisor I reviews and provides written approval and forwards packet to Regional Manager.</li> <li>2. Regional Manager reviews and provides written approval.</li> <li>3. After approving the request, the Regional Manager shall issue the draft authorization and it will be submitted to the vendor.</li> </ol>
\$50,000 and over	Deputy for Field Services	<p>Counselor provides Supervisor I with a purchase request packet as described above.</p> <ol style="list-style-type: none"> <li>1. Supervisor I reviews and provides written approval and forwards packet to Regional Manager.</li> <li>2. Regional Manager reviews and provides written approval, then forwards packet to Deputy for Field Services.</li> <li>3. After approving the request, the Deputy for Field Services shall issue the draft authorization and it will be submitted to the vendor.</li> </ol>

Unless extenuating circumstances apply, purchased goods should be shipped to DVR offices and then issued to clients using the Receipt of State Equipment form.

## ***Chapter Eleven - Individualized Plan for Employment***

### **The Act**

#### **Sec. 102. Eligibility and Individualized Plan for Employment**

##### **(b) Development of an Individualized Plan for Employment**

##### **(1) Options for developing an individualized plan for employment**

**If an individual is determined to be eligible for vocational rehabilitation services as described in subsection (a), the designated State unit shall complete the assessment for determining eligibility and vocational rehabilitation needs, as appropriate, and shall provide the eligible individual or the individual's representative, in writing and in an appropriate mode of communication, with information on the individual's options for developing an individualized plan for employment, including—**

**(A) information on the availability of assistance from a qualified vocational rehabilitation counselor, or as appropriate, a disability advocacy organization in developing all or part of the individualized plan for employment for the individual;**

**(B) a description of the full range of components that shall be included in an individualized plan for employment;**

**(C) as appropriate—**

**(i) an explanation of agency guidelines and criteria associated with financial commitments concerning an individualized plan for employment;**

**(ii) additional information the eligible individual requests or the designated State unit determines to be necessary; and**

**(iii) information on the availability of assistance in completing designated State agency forms required in developing an individualized plan for employment; and**

**(D) (i) a description of the rights and remedies available to such an individual including, if appropriate, recourse to the processes set forth in subsection (c); and**

**(ii) a description of the availability of a client assistance program established pursuant to section 112 and information about how to contact the client assistance program.**

##### **(2) Mandatory procedures**

**(A) Written document— An individualized plan for employment shall be a written document prepared on forms provided by the designated State unit.**

**(B) Informed choice— An individualized plan for employment shall be developed and implemented in a manner that affords eligible individuals the opportunity to exercise informed choice in selecting an employment outcome, the specific vocational rehabilitation services to be provided under the plan, the**

entity that will provide the vocational rehabilitation services, and the methods used to procure the services, consistent with subsection (d).

(C) Signatories— An individualized plan for employment shall be—

(i) agreed to, and signed by, such eligible individual or, as appropriate, the individual's representative; and

(ii) approved and signed by a qualified vocational rehabilitation counselor employed by the designated State unit.

(D) Copy— A copy of the individualized plan for employment for an eligible individual shall be provided to the individual or, as appropriate, to the individual's representative, in writing, and if appropriate, in the native language or mode of communication of the individual or, as appropriate of the individual's representative.

### **The Regulations**

#### **34 CFR 361.45 Development of the Individualized Plan for Employment**

(a) General requirements. The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that-

(1) An individualized plan for employment (IPE) meeting the requirements of this section and section 361.46 is developed and implemented in a timely manner for each individual determined to be eligible for vocational rehabilitation services or, if the designated State unit is operating under an order of selection . . . , for each eligible individual to whom the State unit is able to provide services; and

(2) Services will be provided in accordance with the provisions of the IPE.

#### **11.1 INDIVIDUALIZED PLAN FOR EMPLOYMENT (IPE) DEVELOPMENT**

An Individualized Plan for Employment (IPE) shall be developed and implemented in a timely manner for each individual determined to be eligible for vocational rehabilitation services or, if DVR is operating under an order of selection, each client to whom DVR is able to provide services.

The employment outcome and the nature and scope of rehabilitation services included in the IPE shall be determined based on the data used for the assessment of eligibility and priority for services and the data obtained during comprehensive assessment activities.

##### **11.1.1 Options for IPE Development**

The DVR Counselor shall use the agency form to provide information about the options for IPE development to each client or, as appropriate, the individual's authorized representative. This information shall be provided in writing and, if appropriate, in the

native language or mode of communication of the individual or the individual's authorized representative.

A client or, as appropriate, his or her authorized representative may develop all or part of the IPE:

1. Without assistance from a DVR Counselor or another entity; or
2. With assistance from –
  - The DVR Counselor;
  - A qualified vocational rehabilitation counselor not employed by DVR;
  - A disability advocacy organization; or
  - Any other resource.

### **11.1.2 Information for IPE Development**

The DVR Counselor shall provide information to assist the individual or, as appropriate, the individual's authorized representative in developing the IPE, including:

- A. Information describing the full range of components that shall be included in an IPE;
- B. A description of the individual's rights under an IPE and his or her appeal rights;
- C. A description of the availability of and how to contact the Client Assistance Program.

### **11.1.3 IPE Development Assistance**

If the individual chooses to develop his or her IPE alone or with assistance from someone other than the DVR Counselor, a written comprehensive assessment summary shall be provided to the client or his or her authorized representative that includes:

1. The chosen employment outcome;
2. The type of employment outcome and, if a supported employment outcome, the agreed upon number of hours for a weekly work goal or, if self-employment, the anticipated breakeven date;
3. The vocational rehabilitation needs identified as necessary for achievement of the employment outcome including, for supported employment, the need for extended services; and,
4. The individual's financial monthly contribution to goods and services identified in the IPE, if any.

When an individual or someone other than the DVR Counselor develops the IPE, additional information and assistance shall be provided to the client or his or her authorized representative including, but not limited to:

1. DVR forms and written instructions about how to complete the IPE including information on special requirements for supported employment or self-employment outcomes;
2. A written description of vocational rehabilitation services and the policies governing their use;
3. A DVR Financial Needs Analysis Form;
4. Lists of providers of needed services who are registered with DVR and information about their locations, costs, accessibility, qualifications and the types of service settings typically used; and, consistent with the request of the client; and
5. Technical assistance in preparing all or part of the eligible individual's Individualized Plan for Employment, including but not limited to, assistance in understanding and applying DVR's policies and requirements and assistance in conducting a required comparable services and benefits search.

DVR shall not pay a professional fee to the client or any other individual or organization for the preparation of an IPE.

### **11.2 USE OF IPE AND SUPPLEMENT FORMS**

The IPE form shall be used for all IPEs including self-employment and supported employment. The Individualized Plan for Employment form includes all of the components required to be in an IPE and is to be used for all IPEs. A copy of the IPE form shall be provided as part of the information given to assist the individual or his or her authorized representative in preparation of the individual's IPE. If the employment outcome for an individual is supported or self-employment, there are additional IPE components. These forms shall also be provided to assist in IPE preparation.

### **11.3 TIMELINE FOR IPE DEVELOPMENT**

The IPE shall be developed as soon as possible following the determination of eligibility. When the individual chooses to prepare the IPE with the DVR Counselor, the time between the determination of eligibility and finalization of the IPE shall not exceed ninety (90) calendar days unless additional comprehensive assessment is necessary to fully assess the individual's rehabilitation needs and/or determine an employment outcome.

An extension of time to prepare the IPE shall be agreed upon by the individual and the DVR Counselor. The extension shall be written and shall describe the additional data needed and the length of additional time required. The extension shall describe the information required to fully assess the individual's rehabilitation needs and to determine an employment outcome, as well as the length of additional time required. The extension shall be documented in the client record and completed before the expiration of ninety (90) days unless documentation shows good cause why the extension was not completed in a timely manner. If the IPE is not completed before the original time extension expires, a new time extension is required. Every new extension shall include the reason for the time extension, and its anticipated length. The individual's agreement to every new time extension shall be in the client record and shall be completed prior to the expiration of the current extension. Written documentation of all plan development extensions shall remain permanently in the client record. A current time extension shall be in place until the IPE has been approved.

When the individual chooses to prepare the IPE alone or with an individual other than the DVR Counselor, the time between the determination of eligibility and provision of a written comprehensive assessment summary shall not exceed sixty (60) calendar days unless it is mutually agreed upon that additional comprehensive assessment is necessary. In that case, the extension for additional assessment shall be in writing, describing the information needed to fully assess the individual's rehabilitation needs and determine an employment outcome and when completion of the additional assessments is expected. This extension shall be documented in the client record and completed before the expiration of sixty (60) days unless documentation shows good cause why the extension was not completed in a timely manner. A written summary of the comprehensive assessment shall be provided to the individual after the additional information is obtained.

*If a client and counselor are unable to agree on an extension, the counselor will carefully consider whether sufficient information has been gathered to develop an IPE, with the understanding that further development of the IPE may be necessary as the case progresses and the IPE can be amended to address emerging needs or changes to the employment outcome. However, if the counselor cannot reasonably develop or approve an IPE based on insufficient information and the client is unwilling to agree to an extension of the comprehensive assessment, the counselor will inform the individual of his or her appeal rights, including the availability of the Client Assistance Program.*

#### **11.4 INFORMED CHOICE**

The DVR Counselor, and any other individual preparing an IPE, shall provide information and assistance to assure that the client makes informed choices in the

development of the IPE and subsequent changes to the IPE with respect to the selection of the:

1. employment outcome;
2. vocational rehabilitation services needed to achieve the employment outcome;
3. providers of goods and services;
4. employment setting and the settings in which the services shall be provided; and
5. methods available for procuring goods and services.

### **11.5 CONTENT OF THE INDIVIDUALIZED PLAN FOR EMPLOYMENT (IPE)**

Regardless of the approach that a client selects for purposes of developing the IPE, each IPE shall include:

1. A specific employment outcome chosen by the client, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice consistent with the general goal of competitive integrated employment (for a student and/or youth with a disability the goal may be more general when consistent with the individual's projected post-school employment outcome);
2. A description of—
  - A. Necessary VR goods and services to be provided in order to achieve the planned employment outcome consistent with the assessment of VR needs;
  - B. In the case of a student and/or youth with disability, the specific transition services and supports needed to achieve the individual's employment outcome or projected post-school employment outcome.
    1. Provide for services in the most integrated setting that is appropriate for the services involved and is consistent with the informed choice of the individual;
    2. Timelines for the initiation and the anticipated duration of each vocational rehabilitation service and a projected time frame for the achievement of the employment outcome;
    3. Objective criteria, procedures, and schedules to be used for periodic evaluation and monitoring of progress toward achieving the planned employment outcome;
    4. Identification of the provider(s) for each good and service, consistent with the individual's informed choice, including methods used to procure those services;
    5. Terms and conditions for the provision of vocational rehabilitation services including:

- a. Comparable services and benefits available under any other program(s) and the extent to which they will be utilized to pay for goods and services;
  - b. The amount(s) that the individual shall contribute to the costs of goods and services, if any, and how his or her contributions shall be used to pay for necessary goods and services;
  - c. The responsibilities of the individual in implementing the IPE, including applying for comparable services and benefits and achieving the planned employment outcome;
  - d. The responsibilities of DVR in assisting the individual in implementing the IPE and achieving the planned employment outcome; and
6. The anticipated cost, over the life of the plan, of every good and service listed on the IPE

*For further policy on IPE development for Transition Students, Supported Employment and Self-Employment, please refer to the appropriate chapters.*

#### **11.6 IPE APPROVAL AND SIGNATURES**

The IPE shall be signed and dated by the DVR Counselor and by the individual or, as appropriate, the individual's authorized representative. If an individual other than the DVR Counselor prepares the IPE, that individual shall also sign the IPE.

Provisions of the IPE shall not take effect until the DVR Counselor and the client approve the IPE by signing it. The DVR Counselor cannot approve the IPE unless it is consistent with and reflective of all DVR policies and procedures regarding all requirements for IPE content.

A copy of the signed and approved IPE shall be provided to the client or, as appropriate, to the individual's authorized representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, the individual's authorized representative.

#### **11.7 MONITORING THE IPE**

DVR staff and the client shall monitor progress of IPE objectives on an ongoing basis in accordance with expectations documented on the IPE. The nature of this progress will be reflected in case notes in AWARE as appropriate.

## **11.8 ANNUAL IPE REVIEW**

The entire IPE shall be reviewed annually by a DVR Counselor and the individual or, as appropriate, the individual's representative. The DVR Counselor shall assure that the annual IPE review is conducted and documented in the client record.

The annual review shall encompass:

1. The progress toward and continued appropriateness of the planned employment outcome; vocational rehabilitation services; providers of goods and services; and evaluation criteria, methods, and schedules contained in the IPE; and
2. The need to address new vocational rehabilitation needs.

## **11.9 AMENDING THE IPE**

The IPE shall be amended whenever deemed necessary and appropriate by the client and the DVR Counselor to meet the individual's vocational rehabilitation needs. Amending the IPE is required whenever there is any **substantive** change in the IPE including but not limited to:

1. Changes in the planned employment outcome
2. The vocational rehabilitation services to be provided
3. The providers of the vocational rehabilitation services and/or
4. Other provision(s) deemed appropriate by the individual and the DVR Counselor

The DVR Counselor shall document the rationale for any change to the IPE assuring that all additional services and goods are necessary to the employment outcome and the identified rehabilitation needs of the individual.

The individual or his or her authorized representative may prepare the amended IPE without assistance, jointly with the DVR Counselor, with a qualified rehabilitation Counselor other than the DVR Counselor, a disability advocacy organization, or any other resource. All of the requirements for the development, preparation, and content of the IPE shall apply to the development, preparation, and content of an amended IPE. The amended IPE shall be provided in writing to the individual in the native language or mode of communication of the individual or the individual's authorized representative.

The amended IPE shall be approved, signed, and dated by the client and by the DVR Counselor before its provisions take effect.

### **11.9.1 Urgent Vocational Need**

An urgent vocational rehabilitation need is one that requires the immediate provision of a good or service:

- To avoid placing the individual at extreme medical or psychological risk;

- To save an existing job placement; or,
- To enable the individual to participate in planned services that shall begin within two weeks from the date the urgent need is identified.

In such a circumstance, the DVR Counselor shall obtain supervisory approval to arrange and/or pay for a good or service to address the urgent vocational rehabilitation need. The IPE shall be amended, signed, and dated by both the client and DVR Counselor within thirty (30) calendar days of authorizing a good or service to meet an urgent vocational rehabilitation need. Authorization for such goods or services is limited to one month until the amended IPE is signed and dated.

Prior to completion of a written authorization for the urgent service or good, the DVR Counselor shall assure and document in the client record that the individual has been provided the opportunity to exercise informed choice in selecting the new good or service, the provider(s) furnishing the good or service, and the method to provide and/or procure the good or service to meet the urgent need; and the individual has been apprised of and verbally agrees to the amended IPE provisions.

### **11.9.2 IPE End Dates**

Each IPE will contain estimated end dates representing the date on which the DVR Counselor and client anticipate the provision of vocational services will draw to a close. When an end date has occurred or the annual review of the IPE is due and rehabilitation services are not immediately needed, a period of time may lapse between approved plans for employment. This may occur when the DVR Counselor and client determine additional assessment is necessary to re-evaluate the employment goal and/or the nature and scope of services, when no services are immediately required, when the DVR Counselor is monitoring the client's employment without the ongoing provision of vocational rehabilitation services, or in other similar situations. During such periods of time, services are limited to necessary assessment, information and referral, and vocational counseling and guidance required to amend the IPE or monitor the stability of the client's employment. As soon as sufficient information is available, the IPE will be amended.

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## *Chapter Twelve - Vocational Rehabilitation Services*

### The Act

#### **Title I, Section 103 Vocational Rehabilitation Services**

##### **(a) Vocational Rehabilitation Services for Individuals**

**Vocational rehabilitation services provided under this subchapter are any services described in an individualized plan for employment necessary to assist an individual with a disability in preparing for, securing, retaining or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice of the individual, including--**

- (1) an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;**
- (2) counseling and guidance, including information and support services to assist an individual in exercising informed choice consistent with the provisions of section 102(d);**
- (3) referral and other services to secure needed services from other agencies through agreements developed under section 101(a)(11), if such services are not available under this title;**
- (4) job-related services, including job search and placement assistance, job retention services, follow-up services and follow-along services;**
- (5) vocational and other training services, including the provision of personal and vocational adjustment services, books, tools and other training materials, except that no training services provided at an institution of higher education shall be paid for with funds under this title unless maximum efforts have been made by the designated State unit and the individual to secure grant assistance, in whole or in part, from other sources to pay for such training;**
- (6) to the extent that financial support is not readily available from a source (such as through health insurance of the individual or through comparable services and benefits consistent with section 101(a)(8)(A)), other than the designated State unit, diagnosis and treatment of physical and mental impairments, including--**
  - (A) corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition that constitutes a substantial impediment to employment, but is of such a nature that such correction or modification may reasonably be expected to eliminate or reduce such impediment to employment within a reasonable length of time;**
  - (B) necessary hospitalization in connection with surgery or treatment;**
  - (C) prosthetic and orthotic devices;**

- (D) eyeglasses and visual services as prescribed by qualified personnel who meet State licensure laws and who are selected by the individual;**
- (E) special services (including transplantation and dialysis), artificial kidneys and supplies necessary for the treatment of individuals with end-stage renal disease; and**
- (F) diagnosis and treatment for mental and emotional disorders by qualified personnel who meet State licensure laws;**
- (7) maintenance for additional costs incurred while participating in an assessment for determining eligibility and vocational rehabilitation needs or while receiving services under an individualized plan for employment;**
- (8) transportation, including adequate training in the use of public transportation vehicles and systems, that is provided in connection with the provision of any other service described in this section and needed by the individual to achieve an employment outcome;**
- (9) on-the-job or other related personal assistance services provided while an individual is receiving other services described in this section;**
- (10) interpreter services provided by qualified personnel for individuals who are deaf or hard of hearing, and reader services for individuals who are determined to be blind, after an examination by qualified personnel who meet State licensure laws;**
- (11) rehabilitation teaching services, and orientation and mobility services, for individuals who are blind;**
- (12) occupational licenses, tools, equipment and initial stocks and supplies;**
- (13) technical assistance and other consultation services to conduct market analyses, develop business plans and otherwise provide resources, to the extent such resources are authorized to be provided through the statewide workforce development system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;**
- (14) rehabilitation technology, including telecommunications, sensory and other technological aids and devices;**
- (15) transition services for students with disabilities, that facilitate the transition from school to postsecondary life, such as achievement of the employment outcome in competitive integrated employment, or pre-employment transition services;**
- (16) supported employment services;**
- (17) customized employment;**

- (18) encouraging qualified individuals who are eligible to receive services under this title to pursue advanced training in science, technology, engineering, or mathematics (including computer science) field, medicine, law, or business;**
- (19) services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome; and**
- (20) specific post-employment services necessary to assist an individual with a disability to retain, regain, or advance in employment.**

### **The Regulations**

**Sec. 361.50 Written policies governing the provision of services for individuals with disabilities.**

**(a) Policies. The State unit must develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified in Sec. 361.48 and the criteria under which each service is provided. The policies must ensure that the provision of services is based on the rehabilitation needs of each individual as identified in that individual's IPE and is consistent with the individual's informed choice. The written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome . . .**

**Sec. 361.32 Provision of training and services for employers.**

**The designated State unit may expend payments received under this part to education and provide services to employers who have hired or are interested in hiring individuals with disabilities under the vocational rehabilitation program . . .**

### **12.1 SCOPE OF VOCATIONAL REHABILITATION SERVICES**

As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's informed choice, DVR shall ensure that vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, advancing in, or regaining an employment outcome. The employment outcome shall be consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

Except for assessment services necessary to determine eligibility, severity of disability, and vocational rehabilitation needs, all vocational services and goods shall be identified in the Individualized Plan for Employment (IPE), amended IPE, Business Exploration Agreement (BEA), or Trial Work Experience Plan. Services and goods shall be provided no longer than is required to accomplish the service objective leading to the employment outcome. Qualified providers shall be used and services and goods shall be provided in

the most integrated settings possible, as appropriate and consistent with informed choice. The client record shall include the rationale for use of any non-integrated setting if used.

### **12.1.1 Determination of Services**

When determining vocational services and goods that shall be provided, DVR shall first determine if the service is necessary and then identify the most appropriate option. Once necessity and appropriateness of a service or good have been determined, DVR staff shall procure the service/good at the least possible cost.

#### **12.1.1(a) Necessary Vocational Rehabilitation Services and Goods**

All of the services and goods provided by DVR shall be determined by the DVR Counselor to be essential to assess an individual's eligibility and severity of disability, to establish his or her vocational rehabilitation needs, to overcome or circumvent vocational impediments, and to attain the individual's chosen employment outcome.

#### **12.1.1(b) Appropriate Vocational Rehabilitation Services and Goods**

Each necessary vocational rehabilitation service and good shall be suitable and of sufficient quality to fully meet the individual's particular needs and circumstances. To be considered appropriate, the access to or use of a service or good shall not require sacrifices or adjustments that would not be reasonably expected of an individual who does not have a disability.

#### **12.1.1(c) Least Possible Cost Services and Goods**

All services and goods that have been determined to be necessary and appropriate shall be procured at the least possible cost to DVR insofar as they are adequate to meet the needs of the individual. Services and goods shall be planned and authorized according to DVR policies regarding financial participation and use of comparable benefits and resources; consistent with DVR contracts, provider standards and agreements and, compliant with the DVR fee schedule and the purchasing rules and regulations of the State of Colorado. The DVR Counselor will first check the State Pricing Agreements to determine if there is a vendor available that meets the needs of the client.

<https://www.bidscolorado.com/co/portal.nsf/xpPriceAgreementsByCategory.xsp>

#### **12.1.1(d) Exceeding Least Possible Cost to Meet Vocational Rehabilitation Needs**

All services and goods provided to an applicant or client shall meet the vocational rehabilitation needs of the individual and be at the least possible cost to DVR. When an individual chooses a more expensive service or good from among alternatives that all

fully meet the individual's vocational rehabilitation needs, DVR shall not be responsible for those costs in excess of the least costly alternative.

### **12.1.1(e) State Ownership**

Equipment valued at \$5000.00 or more purchased by DVR for use by a recipient of services shall remain the property of the State of Colorado until successful closure from DVR occurs. When such items are issued to the individual, the client record shall contain the individual's written acknowledgment of State ownership using the agency form established for this purpose. Individual items making a comprehensive unit of equipment are valued as a full unit, rather than individual pieces (e.g. if the total value of a toolset including various hand and power tools such as wrenches, pliers, hammers, drills, saws, etc. and the toolbox to store the tools exceeds \$5000.00, state ownership applies). Consumable goods valued at less than \$5000.00 and items purchased through post-employment services are exempt from state ownership, including recovery.

While DVR is restricted from purchasing vehicles licensed to operate on public thoroughfares, DVR may at times assist with the purchase of equipment required to be titled and registered in the State of Colorado, such as trailers and UTVs. When DVR purchases equipment of this nature, the State of Colorado holds the title until successful closure, when the title will be transferred to the individual. The individual shall be responsible for all costs associated with insuring the equipment and provide proof of insurance to DVR. The DVR counselor shall contact DVR's Finance and Operations Unit for technical assistance prior to authorizing the purchase.

Upon termination of an individual's plan for employment that does not result in a successful vocational rehabilitation outcome, the individual shall be requested, in writing, to return any State owned equipment in accordance with the established procedure. Recovery is limited to equipment with a fair market value of \$5000.00 or more at the time of termination of the IPE. Fair market value shall be established by DVR's Finance Manager.

Recovered equipment shall be re-issued to other recipients of services who require the equipment to achieve their employment outcomes. Documentation of re-issued items shall be placed in the client record of the individual from whom state owned equipment was recovered, as well in the client record of the individual to whom it is being re-issued.

## **12.2 CORE VOCATIONAL REHABILITATION SERVICES**

DVR staff shall ensure that the following core vocational rehabilitation services are available:

### **12.2.1 Pre-employment transition services**

Pre-employment transition services shall be provided to students with disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services. These services are:

- Job Exploration Counseling is career counseling designed to assist students explore career options, develop motivation for employment, and understand the role of high school and post-secondary education;
- Work-Based Learning Experiences use the workplace or realistic work situations to provide students with the knowledge and skill that will help them connect school to future career opportunities. These experiences augment the learning process and can include both in-school and after school opportunities, as well as experiences outside the traditional school setting such as internships;
- Counseling on Post-Secondary Education is counseling and guidance on a variety of post-secondary education and training opportunities including community colleges, colleges, and universities; career pathway related workshops/training programs; trade/technical schools; military; and post-secondary programs at community colleges, colleges, and universities for students with intellectual and developmental disabilities;
- Workplace Readiness Training is provided to develop the skills and behaviors that are necessary in any job, including specific social or interpersonal skills and independent living skills that are required for employment success.
- Instruction in Self-Advocacy supports a student's ability to effectively communicate, negotiate, and/or assert his or her own interests and/or desires, including the development of the skills necessary for self-determination.

Pre-employment transition services are provided to students with disabilities in order to further develop an awareness of career and education opportunities, the general skills needed for employment success in any field, and the skills needed to appropriately advocate for themselves as they prepare to exit secondary education and enter the workforce or other post-school activities.

*For additional information and guidance on the provision of pre-employment transition services, please see DVR Service Delivery Policy Chapter 15: Transition.*

### **12.2.2 Assessment Services**

Assessment services shall be provided for determining eligibility, severity of disability, and vocational rehabilitation needs, including, if appropriate, assessment by personnel skilled in rehabilitation technology. Evaluation and diagnostic services are procured only when necessary to supplement the use of existing information. Diagnostic services may

include situational assessments in community-based settings and community rehabilitation program facilities to assess work behaviors, interpersonal skills and job-related skill levels. When necessary, personal adjustment evaluations may be provided to assess an individual's skills, behaviors and needs in the areas of independent living, communications, mobility and community travel and personal functioning. Personal adjustment evaluations shall be relevant to employment.

When necessary, supplemental assessment activities may be provided following the implementation of eligibility and/or Individual Plan for Employment.

### **12.2.3 Vocational Rehabilitation Counseling and Guidance**

Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice, shall be provided throughout an individual's rehabilitation process to encourage and facilitate full participation in the DVR program. Planned counseling and guidance shall be identified as a specific service in an individual's IPE for the purpose of addressing identified vocational impediments.

### **12.2.4 Benefits Counseling**

Benefits counseling services shall be available as necessary to assist an individual who is uncertain how income earned through employment may impact any disability benefits and/or entitlements received. Additionally, benefits counseling services may assist an individual to understand the various benefits that may be available to support employment. Analysis of the individual's current benefits and financial situation, and the effect various earning levels will have on the individual's future benefits and financial situation assists the individual to make informed decisions about employment.

Assistance throughout the VR process is often necessary for individuals receiving disability benefits, such as SSI or SSDI.

### **12.2.5 Physical and Mental Restoration Services**

Physical and mental restoration services may be provided as necessary for the attainment of an appropriate employment outcome, and only to the extent they are not covered through comparable benefits.

Physical and mental restoration services are provided when DVR staff collaborates with the individual and appropriate providers to determine that they shall benefit the client in removing or adjusting barriers to an employment outcome. Medical or psychological conditions that do not or are not expected to adversely affect the attainment of the

employment outcome shall not be addressed through the provision of physical or mental restoration services by DVR.

Restoration services provided by DVR shall, within a reasonable period of time, be expected to correct, stabilize or significantly modify an impairment which constitutes a substantial impediment to employment. In estimating "a reasonable period of time", DVR staff shall ensure continuing progress toward achieving a functioning level that allows the individual to participate in vocational rehabilitation and employment activities.

Medical prescriptions from qualified providers are required for prosthetic devices including eyeglasses; orthotic devices; wheelchairs; physical, occupational, speech and other therapies; drugs and medical supplies. Prosthetic and other medically prescribed items necessary to implement a physical restoration plan, other than wheelchairs, may be purchased without use of the State bid process.

Diagnosis and treatment of physical and mental disorders shall be provided by individuals qualified in accordance with Colorado licensure and certification laws or equivalent licensure and certification laws governing the provision of medical services in the state of purchase.

#### **12.2.5(a) Dental Restoration Services**

Dental restoration services are limited to situations in which a dental condition creates a substantial vocational impediment, or which, in connection with other conditions, has resulted or is likely to result in barriers to employment. Dental conditions that may warrant restoration services, include: a serious facial deformity involving the mouth and/or teeth; serious dental infections affecting other body systems; decay that seriously affects the individual's daily living; badly malformed or positioned teeth; or other similar conditions creating a significant barrier to employment.

Dental restoration services are limited to those which are necessary to mitigate or resolve the associated barrier to achieving the individual's employment outcome. DVR shall provide clear referral information to the dentist evaluating and developing the individual's treatment plan to support the identification of the appropriate scope of treatment, ensuring least possible cost to DVR. The DVR counselor shall consult with internal subject matter experts if extensive treatment, estimated to cost over \$1500, is recommended and may seek a second opinion based on this consultation.

DVR shall not assist with the cost of preventative dental services or treatment of acute dental conditions.

*Health First Colorado (Medicaid) members of all ages have access to a range of dental benefits. For more information:*

### **12.2.6 Vocational and Other Training Services**

Vocational and other training services, including personal and vocational adjustment training, and necessary books, tools and training materials shall be provided when necessary to an individual's rehabilitation needs and employment outcome. The case file shall contain rationale supporting the necessity of planned training to the achievement of the agreed-upon employment outcome. No training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes or hospital schools of nursing) may be paid for with DVR funds unless maximum efforts have been made by DVR and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

#### **12.2.6(a) Training in Institutions of Higher Education**

DVR requires and assists individuals to apply for financial aid grants, need-based scholarships, and all other alternative sources of funding, including training assistance that may be available through Colorado Workforce Centers. DVR shall not finalize the provisions for training services in an institution of higher education until the individual's financial aid award status is determined and documented, in accordance with the timelines governing financial aid award decisions at the chosen training facility. All financial awards shall be applied to the required training expenses prior to determination of the amount that DVR shall pay. Individuals shall apply for financial aid early enough so that the training institution has sufficient information to determine the award amount for each school term before it begins.

If a client is in default on a federal school loan, federal regulations require that maximum efforts be made to clear his or her default status before DVR can fund training. Maximum efforts include loan repayment, repayment plan arrangements, or obtaining an approved deferral. Clients should work with their schools or the appropriate funding agency to see if their loan(s) can be forgiven due to disability related reasons. This forgiveness may make the student eligible for PELL and/or other grants. Bankruptcy does not cancel student loans; therefore, the student must still make maximum repayment effort.

DVR does not require an individual to apply for or accept loans for training. Merit-based scholarships and awards or Social Security PASS plans are not considered to be comparable benefits.

### **12.2.6(b) Payment for Training**

When more than one training program is available to fully meet the vocational rehabilitation needs of the individual, all associated costs for each of the training programs shall be considered in determining which training program shall be at the least possible cost to DVR. Required supportive services, accommodations, and the duration of the training shall be included in this consideration.

DVR shall pay tuition and required fees for courses that are necessary to obtain the required degree, certification, or occupational skills upgrade to achieve the employment outcome. Payment for elective courses shall be limited to those with no special fees attached whenever there are elective courses available to meet a particular degree or certification requirement.

DVR shall pay necessary tuition and required fees at in-state tuition rates established by Colorado public institutions offering academic programs that meet the individual's identified employment goal. If the individual chooses to attend an out-of-state institution when there is a comparable in-state program available, DVR shall only pay the equivalent of the public in-state tuition rate and shall not be responsible for any costs in excess of available in-state training including transportation.

DVR shall purchase only required books and supplies as outlined in the applicable course syllabus and shall purchase used books for academic and vocational training programs when they are available and adequate to meet the individual's training and employment needs. DVR shall rent or lease equipment needed for academic and vocational training programs when rental or leasing is adequate to meet the individual's training needs unless the total rental/lease costs exceed purchase costs.

### **12.2.6(c) Establishing Colorado Residency for Tuition**

DVR may pay for tuition and required fees to public Colorado colleges and universities at out-of-state rates for a client who is not yet a Colorado resident for tuition purposes only, until the individual, or his or her parents or guardians, can establish Colorado residency. DVR shall not pay out-of-state tuition rates longer than the earliest date when the individual can meet Colorado's residency requirements. The IPE and/or amended IPE shall include statements of the individual's responsibilities for establishing Colorado residency, as well as when it is expected.

### **12.2.6(d) Training Progress**

The individual shall submit grade reports for each reporting period in a training program. An individual enrolled in any training program shall maintain a minimum of a 2.0 grade

point average or meet the requirements of his or her specific training program for each individual reporting period. If a grade point system is not used, the individual shall maintain a satisfactory performance level for each individual reporting period. If satisfactory performance is not achieved in any single reporting period, the DVR Counselor may approve continuation of the training program for only one additional reporting period to provide the client the opportunity to fulfill his or her grade point average or equivalent to meet satisfactory performance level required for continuation. If the individual is still not able to maintain the required grade point average or meet the training program requirements, DVR shall inform the individual in writing that training support shall be discontinued. DVR and the individual shall then work together to re-develop an appropriate vocational goal as necessary and if possible.

#### **12.2.6(e) Repeated Courses/Incompletes**

If DVR has financially supported a client in a course and he or she receives a failing grade and/or withdraws after the add/drop date, the client shall be responsible for payment of the course and the costs of any required books and supplies associated with retaking the course. Clients shall make every effort to appeal a failed grade, and do so by seeking guidance from their specific training institution.

If a client receives an incomplete in a course, he or she is responsible for finishing the coursework in a timely manner, as determined by the guidelines of the educational institution. If the coursework is not completed in a timely manner and results in a failing grade, it shall be the responsibility of the individual to cover the costs of the repeated course, as above.

Exceptions may be considered for individuals whose failure to complete a course, withdraw after add/drop deadlines, or whose attainment of a failing grade is due to special circumstances or a disability related reason.

#### **12.2.6(f) Remedial Courses**

It is the responsibility of the DVR Counselor and client to look for and utilize comparable benefits available in his or her community to pay for remedial courses. If none are available, and in keeping with DVR fee schedule, DVR may provide financial support when determined appropriate by the DVR Counselor.

#### **12.2.6(g) Advanced Degrees (Graduate School)**

In some instances, advanced degrees may be required for the achievement of an employment goal. DVR supports the provision of graduate level training (leading to a Master's or Doctoral degree), including advanced training to support employment in

science, technology, engineering, and math fields, when the agreed-upon and approved vocational goal necessitates this level of training. Sufficient written justification shall demonstrate the client has attempted and is unable to reach the selected employment goal without graduate education and/or that an advanced degree is the commonly recognized standard. If the vocational goal can be attained with a lesser degree, the advanced degree will not be financed by DVR.

DVR will pay tuition and required fees for courses that are necessary to obtain the required degree or certification to achieve the employment outcome. When more than one training program is available to fully meet the vocational rehabilitation needs of the individual, all associated costs for each of the training programs shall be considered in determining which training program shall be at the least possible cost to DVR. Required supportive services, accommodations, and the duration of the training shall be included in this consideration.

DVR will purchase only required books and supplies as outlined in the applicable course syllabus and will purchase used books for advanced training programs when they are available and adequate to meet the individual's training and employment needs. DVR will rent or lease equipment needed for academic and vocational training programs when rental or leasing is adequate to meet the individual's training needs unless the total rental/lease costs exceed purchase costs.

#### **12.2.6(h) Summer Semester Courses**

Timelines for completing post-secondary training or a college program are typically established by the training-educational institutions. While it is the expectation that students should maintain a full academic load as outlined by the training entity's timelines, students and Counselors shall develop a timeline for completion suitable to meet their specific needs. Some programs (courses on block system, open exit/entry programs, etc.) do require a continuum of attendance, which may include summer semester. In addition, summer semester courses, with appropriate documentation (i.e. graduation plan, degree audit, medical documentation, etc.) can be approved if:

1. The course(s) is not available during the fall or spring semesters or other standard grading periods;
2. The course(s) enables the client to retake a course not completed due to a disability/health related reason to meet the completion target date on the IPE; or
3. The course(s) shall reduce the time needed for the student to successfully complete his/her training program (graduate early).

### **12.2.6(i) Full Time Enrollment**

It is the expectation that clients shall maintain a full time status in order to achieve the employment goal in a timely manner. Full time status will be defined by the educational institution. Part time enrollment may be considered if related to the limitations of the disability or special circumstances. Documentation related to the need for part time attendance shall be clearly documented in the file.

### **12.2.6(j) Duration of Training Support**

The timeframe for the duration of the training program shall be documented in the IPE per DVR's established fee schedule and satisfactory progress toward the completion of the training program shall be monitored each grading period. The IPE shall contain evaluation criteria that address maintenance of a specific grade point average, full or part time status, and clear identification of how sufficient progress shall be monitored.

### **12.2.7 Interpreter Services**

All types of interpretation services shall be provided when necessary to ensure an individual has access to communication and materials in his or her native language and/or through appropriate modes of communication. Interpreter services, including sign language and oral interpreter services, shall be available for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind.

### **12.2.8 Rehabilitation Teaching and Orientation and Mobility Services**

Rehabilitation teaching services, orientation and mobility services and reader services shall be available for individuals who are blind or visually impaired.

### **12.2.9 Job-Related Services**

Job-related services, including job seeking skills training and placement assistance, job retention services, and follow-up services, are to be available and provided as necessary to meet the needs of each individual.

#### **12.2.9(a) Job Placement Services**

Assistance may be provided to help an individual obtain competitive integrated employment, which is suitable, stable, and satisfactory, and which is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

Job placement services include job development services, assistance in completing work applications and arranging for interviews, on-site job analyses, on-site consultation with

the employer, recommendations for work-site job modifications, and/or orientation to the work place, as appropriate to the individual's specific needs. DVR prioritizes the delivery of staff-provided services whenever sufficient to meet the job seeker's placement needs.

### **12.2.9(b) Supported Employment Services**

Supported employment services are a set of ongoing support and other appropriate services needed to support and maintain an individual with a most significant disability, once an individual is placed in employment.

### **12.2.10 Occupational Licenses, Tools, Equipment, Initial Stocks and Supplies**

Occupational goods and services shall be provided as necessary relative to an employment outcome. Occupational equipment refers to non-adaptive equipment normally required for job performance by all workers. Adaptive equipment necessary to accommodate limitations imposed by the impairment(s) for the performance of job tasks is rehabilitation technology. Tools, equipment and initial inventory for self-employment shall be procured in compliance with DVR purchasing procedures for equipment and other goods.

### **12.2.11 Computer Purchase and Rental**

The purchase of a computer is not considered rehabilitation technology. Clients use computers in the same situations or for the same reasons that others use it in the same environment. Computers are common in work and training environments. However, a client may need adaptations to the computer to promote, increase or maintain a skill or ability related to the person's functional limitations. Examples of adaptations that are considered rehabilitation technology include augmented speech (which would also be an auxiliary aid for effective communication), a device to operate an environmental system, or an adaptive device or software to operate the computer (such as screen readers or dictation software.)

DVR shall not purchase any computer-related equipment if a client's needs can be effectively met through alternative means. An assessment of the client's needs for computer-related equipment shall be conducted before a purchase if the client or the Counselor is unsure of the client's needs. The assessment shall be conducted by a person knowledgeable about computers and computer equipment.

Client financial participation applies to purchase of computers. A comparable benefits search is required unless such a search would cause the loss of an immediate placement. Computer rental should also be considered and explored if it results in cost savings and still meets the needs of the client.

Generally, DVR shall purchase no more than one (1) computer for a client. If changes or upgrades are needed for disability-related reasons, or because of agreed-upon changes to the IPE, a new computer can be purchased. Efforts should be made to trade in the original computer or have it returned to the agency for reassignment to another client.

### **12.2.12 Rehabilitation Technology**

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.

Rehabilitation technology goods and services include adaptive equipment and auxiliary aids for individuals with impaired sensory or written and/or oral communication skills, including hearing aids, but do not include prosthetic, orthotic or other medical assistive devices. Rehabilitation technology also includes vehicle modification. Although vehicle modifications are not goods, they shall comply with DVR procurement procedures.

DVR will typically not make repeat purchases of rehabilitation technology due to loss or misuse of the item, therefore recipients of these services and goods accept responsibility to safeguard the technology received. DVR shall not be responsible for the cost of any repair, replacement, or upgrade of rehabilitation technology that has been modified or altered without prior authorization from DVR, or inappropriately used by the individual. DVR shall not be responsible for the cost of any troubleshooting or repair of rehabilitation technology that is not functioning properly if these services are arranged without prior written authorization from DVR. In the event rehabilitation technology is stolen, the individual shall provide substantiation of stolen property, such as a police report, before DVR will consider whether replacement is appropriate.

If the DVR counselor determines it necessary and appropriate to purchase replacement technology, the rationale for this determination shall be clearly documented in the case record.

### **12.2.13 Phone and Internet**

The use of the internet and access to reliable means of phone usage, including cell phones, is often crucial to complete many aspects of job seeking, job placement activities, and training or school requirements. These items may be provided if deemed necessary and appropriate to achieve the vocational goal, and currently unavailable to the individual.

The individual will be advised of the appropriate use of the service and/or equipment, including timeframes of possession, state ownership guidelines, and client financial participation, if warranted through completion of Financial Need Analysis. In addition, the items shall be used for educational and vocational purposes only and this shall be explained to the individual. The individual and the Counselor shall sign the Receipt of State Purchased Equipment form.

Phones and internet cards may be considered as there are no contract requirements and can be purchased through state vendors at least possible cost. If an individual will be reimbursed for items, or circumstances exist that require contract service, the Counselor shall follow DVR procedural guidelines and obtain appropriate approvals.

In cases where phones are purchased as adaptive equipment, the above policy also applies.

#### **12.2.14 Referral Services**

Referral and other services shall be provided as necessary to assist applicants and clients to secure needed services from other agencies, including other components of the statewide workforce development system and to advise individuals about the Client Assistance Program.

#### **12.2.15 Vehicle Modifications**

Vehicle modifications shall be necessary, appropriate, and procured at least possible cost to DVR. Thorough rationale shall be available in the client record, demonstrating why the modification(s) is necessary for the individual to achieve his or her employment outcome.

Modifications are limited to those required for the individual to safely and independently enter, exit, or operate the vehicle. To determine the least possible cost options that will appropriately address the individual's need, the DVR Counselor will consult with the Certified Driver Rehabilitation Specialist (CDRS), vendor installing the modifications, and internal DVR subject matter experts as needed. Should the individual elect to modify a vehicle that differs from that recommended by the CDRS or adds extra features to the modification resulting in higher modification cost, DVR shall support the cost of the modification up to the least possible cost option only and the individual shall be responsible for the difference.

Prior to agreeing to support a vehicle modification, the following criteria shall be met:

1. There are no other means of transportation available. Vehicle modifications cannot be purchased if the individual can effectively use public transportation.

2. The vehicle modification is required to support the individual's employment at the time that it is being authorized. Generally, vehicle modification is determined to be necessary only when the individual is prepared to enter or is currently employed in a job that requires him or her to independently operate a vehicle.
3. The title to the vehicle to be modified shall identify the individual or a member of his or her family as the owner. If there is a lien against the vehicle, the debt or obligation shall be in good standing. A vehicle acquired through a lease or subscription service is typically not eligible for modification assistance through DVR. Exceptions may be considered when the required equipment is easily and universally transferable, without requiring permanent modification to the vehicle. DVR is prohibited from assisting with the purchase of any vehicle licensed to operate on public thoroughfares.
4. The vehicle is in good working order and with proper maintenance reasonable service life remains in the vehicle. For used vehicles, mileage typically shall not exceed 65,000 and a "pre-purchase inspection" shall be completed by a certified mechanic (i.e. Automotive Service Excellence (ASE) or comparable certification) prior to DVR agreeing to a vehicle modification. Any necessary repairs identified during the inspection shall be made prior to DVR assisting with the vehicle modification. The cost of the "pre-purchase inspection" and any associated repairs shall be the responsibility of the individual.
5. The individual has the means to maintain the vehicle and modification, including insurance on the modification, without additional support from DVR. The individual shall provide proof of insurance to DVR. When an extended warranty is available to cover modifications, DVR shall purchase the warranty to provide coverage for five years. The individual shall be responsible to complete all maintenance on both the vehicle and the modifications in accordance with the maintenance schedule(s) established by the manufacturer and vendor installing the modifications. The individual shall provide proof of maintenance performed to DVR upon request. DVR shall not assist with any repair or replacement when the individual fails to properly maintain the vehicle and modification.

#### **12.2.15(a) Repair and Re-Modification (Same Vehicle)**

Maintenance and repair to a modified vehicle, including the modifications, are generally the responsibility of the individual. When an individual is prepared to enter or is currently working in competitive integrated employment which requires the individual's use of a vehicle and a component of the modification breaks, prohibiting the individual from safely and independently operating the vehicle, DVR may assist with necessary repairs that are essential to maintain the individual's employment. The individual shall

demonstrate routine maintenance has been completed in accordance with the maintenance schedules established by the manufacturer and vendor who installed the modifications. DVR shall not assist with repairs if damage or wear is due to negligence on the part of the individual, including failure to reasonably comply with established maintenance schedules. The warranty shall be utilized to cover all repairs to the extent the needed repairs are covered. If the damaged equipment is not covered, a “pre-purchase inspection” and an inspection of all modified equipment shall be completed to ensure reasonable service life remains in the vehicle, including modifications, and repairing the equipment is the least possible cost option.

DVR may assist with additional modifications on a previously modified vehicle when the need is due to changes in the individual’s disability. All criteria and requirements outlined in 12.2.15 apply to re-modification, including proof of maintenance, proof of insurance on both the vehicle and the modified equipment, and prepared to enter or are currently working in competitive integrated employment which requires the individual’s use of a vehicle.

#### **12.2.15(b) Subsequent Modification (Different Vehicle)**

In the event DVR has previously funded a vehicle modification for the individual, no subsequent modification shall be considered until the individual has demonstrated five years of consistent employment since the time of final inspection and delivery of the prior modification. Exceptions may be considered when the subsequent modification is necessary due to a change in disability. Prior to approving a subsequent modification, the following shall apply:

1. The individual is currently working in competitive integrated employment and can demonstrate stable work history in the time since the prior vehicle modification (consideration will be given to extenuating circumstances, such as losing a job through no fault of the individual);
2. The prior modification no longer allows for safe and independent operation of the current vehicle;
3. A “pre-purchase inspection” of the current vehicle has been completed by a certified mechanic (i.e. ASE or comparable certification) and an inspection of the current modification has been completed by a qualified provider (as described in 12.2.14(d)) and indicate repair/re-modification to the current vehicle/modification is either not possible or does not reflect the least possible cost option;
4. The individual has provided maintenance records demonstrating the established maintenance schedule(s) for the vehicle and modifications have been reasonably followed and the need for a subsequent modification is not due to negligence;

5. A new adaptive driving evaluation has been completed by a CDRS demonstrating the need for a subsequent modification; and
6. All criteria described in 12.2.15 are met.

### **12.2.15(c) Vendor Requirements**

The individual shall receive training by the provider on the proper use and care of the equipment to ensure safe operation of the equipment. All providers of vehicle modifications shall be a member in good standing of the National Mobility Equipment Dealer Association (NMEDA) and certified as a NMEDA-QAP (Quality Assurance Program) dealer who is thereby qualified to meet minimum standards for vehicle modifications and adapted driving equipment installation, as established by NMEDA and other applicable requirements.

### **12.2.16 Residential Modifications**

DVR may provide modifications or adaptations to an individual's residence to enable access to and independent function within the residence to the degree necessary for the individual to obtain his or her employment outcome.

Modifications are limited to the following adaptations within the primary living quarters:

1. Widening of two exterior doorways to allow safe egress;
2. Addition of a ramp to the exterior door;
3. Widening of interior doors, not to exceed one bathroom, one bedroom, and one kitchen door;
4. Retrofitting of one bathroom;
5. Lowering of kitchen countertops;
6. Installation of a stair lift to access primary living quarters;
7. Environmental controls and utilities to the extent these modifications go beyond normal homeowner expenses; and
8. Other essential modifications required for the individual to participate in his or her IPE.

All modifications shall be essential for the individual to participate in his or her individualized plan for employment. The scope of work, including quality of finishes, is limited to that which is essential for the safe and independent function of the individual within the home. The DVR Counselor and/or internal subject matter experts shall be onsite and actively engaged with the individual and any contractors while establishing the scope of work. Any increased costs associated with any expansion to the scope of work or quality of finishes shall be the responsibility of the individual. The individual shall be responsible for all upkeep, maintenance, and insurance of residential modifications, as applicable.

Typically, residential modification is considered a one-time service; exceptions may be made when the need for additional modification is due to increased functional limitation as a result of a new or progressive disability. In the event substantial modifications make the home uninhabitable during construction, it shall be the individual's responsibility to arrange for and fund alternative housing. Any modifications to the home's structure or systems shall require the contractor to obtain appropriate permits from the city/county in which the home is located. DVR shall be provided copies of all permits, including final inspection documents.

DVR shall make modifications to rental property only when prior written permission from the landlord/owner has been obtained. Modifications to rental property shall be restricted to portable and/or removable items.

To determine the least possible cost options that will appropriately address the individual's need, the DVR Counselor will consult with the individual's physician/physical therapist/occupational therapist, contractor(s)/architect(s) bidding the project, and internal DVR subject matter experts as needed.

#### **12.2.17 Technical Assistance and Other Consultation Services**

Self-employment, telecommuting, or establishing a small business operation as an employment outcome shall include necessary technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources to the extent those resources are authorized.

#### **12.2.18 Other Goods and Services**

Other goods and services shall be provided as determined necessary for the individual with a disability to achieve an employment outcome. The purchase of warranties should be on a case by case basis with consideration to the client's IPE and home location as well as the length of warranty provided by the seller or manufacturer. The purchase of all goods shall comply with DVR procurement procedures.

*Warranties may be considered when a client's situation or circumstance precludes him or her from either accessing repair or if the item is expected to require regular repair over an extended period of time. Examples of justification for extended warranties include if a client lives in a remote area and is unable to transport his or her equipment for repair or if a plan is expected to take significant time and it would be a cost savings to purchase an extended warranty rather than pay for ongoing maintenance.*

## **12.3 SUPPORTIVE VOCATIONAL REHABILITATION SERVICES**

Supportive services, which include maintenance, transportation, services to family members, and personal assistance services, are provided for the purpose of enabling the individual to participate in and benefit from other necessary services and goods. DVR shall not provide a supportive service alone or in conjunction with only other supportive services. Supportive services necessary for an individual to participate in assessment services including supplemental evaluations do not require the financial participation of the individual, but do require a comparable benefits search. Maintenance, transportation, and services to family members that correspond with services provided under an IPE, BEA, TWE Plan do require financial participation for individuals other than SSI/SSDI recipients, if there is a monthly resource, as well as a search for and utilization of comparable benefits.

### **12.3.1 Maintenance**

Maintenance is monetary support provided to an individual for expenses, such as food and shelter, that are **in excess** of the normal expenses of the individual and that are created by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an IPE. Maintenance shall be provided only for expenses that the individual would not have, if not receiving vocational rehabilitation services.

Maintenance payments shall not exceed the **additional** cost of living incurred by the individual as a result of his or her participation in the assessments for determining eligibility and vocational rehabilitation needs and/or planned goods and services under the IPE. The amount of a monthly maintenance payment does not include costs for normal living expenses covered by previous sources of income that are no longer available due to participation in the vocational rehabilitation program.

For short-term maintenance (30 days or less), reimbursement shall be limited to the actual costs incurred as documented by receipts verifying purchases, not to exceed Federal per diem rates established by the US General Services Administration. No reimbursement shall be allowable in the absence of receipts. The purchase of alcohol is not eligible for reimbursement under any circumstance. Meal reimbursement is not allowable when travel is limited to a single day. Services requiring travel over consecutive days may be eligible for the following:

- Breakfast reimbursement if travel is required before 5:00AM
- Lunch reimbursement if travel begins prior to 11:00AM and ends after 1:00PM
- Dinner reimbursement if travel ends after 8:00PM

<https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup>

For long-term maintenance (in excess of 30 days), reimbursement shall be limited to the additional cost of living as determined by MIT's Living Wage Calculator.

<http://livingwage.mit.edu>

*The following are examples of expenses that meet the definition of maintenance. The examples are illustrative, do not address all possible circumstances and are not intended to substitute for individual Counselor judgment:*

- 1. The cost of short-term residence (hotel, lodging) that is required in order for an individual to participate in assessment activities or vocational training at a site that is not within commuting distance of an individual's home.*
- 2. The initial one-time costs, such as a security deposit or charges for the initiation of utilities that are required in order for an individual to relocate for a job placement.*

*Additional detailed examples describing the application of maintenance policies are available in Appendix E.*

### **12.3.2 Transportation Services**

Transportation services are provided as a support service for travel and related expenses that are necessary to enable an applicant or client to participate in a vocational rehabilitation service.

Whenever available, public transportation shall be used unless the individual's impairment-related limitations prevent use of public transportation. If the individual chooses to use his or her own vehicle when public transportation is available and accessible, DVR may provide reimbursement for mileage, up to the cost of public transportation.

When DVR pays for reimbursement related to the use of a personal automobile for transportation to obtain required goods and services, the driver shall have a valid driver's license, possess an active insurance policy to drive the automobile, and use an automobile which is appropriately licensed and registered. The rate of payment for mileage is established in the DVR fee schedule. The client or applicant shall provide appropriate documentation to DVR to support that the reimbursement is related to services necessary for eligibility determination or the provision of services. The documentation shall be placed in the case record.

When transportation to an out-of-state training institution is determined to be a necessary and appropriate service, DVR may pay for one round trip between home and the training

institution per year unless the individual experiences an impairment-related medical emergency which can be reasonably treated only in Colorado.

*The following are examples of expenses that meet the definition of transportation. The examples are purely illustrative, do not address all possible circumstances and are not intended to substitute for individual Counselor judgment:*

- 1. Travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or client to travel to participate in any vocational rehabilitation service.*
- 2. The repair of vehicles, including vans, but not the modification of these vehicles, as modification would be considered a rehabilitation technology service.*
- 3. Relocation expenses incurred by a client in connection with a job placement that is not within a commutable distance from the client's current residence.*

### **12.3.2(a) Vehicle Repair**

Maintaining and repairing a private vehicle is primarily the responsibility of the owner. DVR does not routinely pay for license plates, insurance, depreciation, and/or routine maintenance for vehicles because these are part of the typical costs of maintaining a vehicle. Individuals are expected to participate in the cost of their transportation expenses when using their own vehicle, as in most cases, vehicles are not used exclusively for rehabilitation activities.

Assistance with vehicle repair is intended for emergency situations where services have been initiated under the IPE and participation in the IPE cannot continue without the repair. Generally, this shall mean that the vehicle cannot be driven without the repair. In order to repair a vehicle, it shall be the client's primary means of transportation and shall be owned by the client or a family member. If the vehicle needs emergency repair and the cost of that repair exceeds the blue book value of the car, supervisory approval is required.

Before providing vehicle repair, the DVR Counselor shall consider the following:

1. The overall condition of vehicle (i.e. is the vehicle likely to require frequent repairs);
2. The extent of the repairs needed;
3. The availability of other appropriate transportation;
4. The vehicle is necessary for work or training;
5. There is no other source of funding for the repairs; and
6. The ability of the individual to assume long-term upkeep of the vehicle.

### **12.3.3 Services to Family Members**

Vocational rehabilitation services to family members are services to an individual (either a relative, guardian, or someone living in the same household as an applicant or client), who has a substantial interest in the well-being of that individual; and, whose receipt of vocational rehabilitation services is necessary to enable the individual to achieve an employment outcome.

### **12.3.4 Personal Assistance Services**

Personal assistance services are 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 shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services shall be necessary for 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.

## **12.4 COMMUNITY-BASED WORK SITES**

Community based work sites will be developed to provide situational assessments and job skill training in realistic work settings. Situational assessments may be used as a vocational evaluation tool to provide trial work experiences when initial or on-going eligibility is in question and as supplemental evaluations for individuals receiving supported employment services. When necessary to develop realistic work settings in the community, an employer may be paid for use of the work site provided that the following conditions are met:

1. The individual's work performance provides no net benefit to an employer; and,
2. No other service(s) is being provided to the individual by the employer; and,
3. The work experience is in an integrated employment setting.

### **12.4.1 Developing Unpaid Community-Based Employment Experiences**

Whenever an employment relationship exists, an employer shall be held responsible by the U.S. Department of Labor to fully comply with all applicable sections of the Fair Labor Standards Act (FLSA). This means that, whenever DVR Counselors arrange for a situational assessment, a work adjustment training program, job coaching, or other vocational training program in a real work setting, the employer is required to compensate the client unless all of the following criteria for a **non-employment**

**relationship** under the FLSA are met. These requirements can help DVR Counselors and individuals with disabilities structure assessments and training programs with employers who do not wish to consider the client to be an employee:

1. The assessment and/or training is for the benefit of the individual with a disability and not the employer, and is a clearly defined component of the individual's vocational rehabilitation assessment and/or Individualized Plan for Employment;
2. The individual with a disability does not displace any regular employee, relieve an existing employee of assigned duties, result in a reduction of hours for an existing employee, or fill a vacancy;
3. The individual with a disability is under continued and direct supervision by vocational rehabilitation service providers and/or employees of the business;
4. The activities of the individual with a disability, even if solely performing duties not ordinarily performed by existing employees, do not result in an immediate advantage to the business or the advantage is clearly offset by the burden to the employer from training and supervision provided;
5. The individual with a disability is not entitled to a job at the end of the assessment and/or training period; and
6. The individual with a disability voluntarily participates in the assessment or training program with the clear understanding that his or her participation does not entitle him or her to wages or other employee benefits.

In addition, the U.S. Department of Labor considers the length of time of the assessment or training component as part of its determination about whether or not an employment relationship exists. Although the existence of an employment relationship will not be determined exclusively on the basis of the number of hours, as general rule non-employment assessments and training programs are expected to comply with the following limitations:

- |  |                   |
|--|-------------------|
| 1. VOCATIONAL EXPLORATION                                    | 5 hours per job   |
| (career awareness, job shadowing, job site evaluation)       |                   |
| 2. VOCATIONAL ASSESSMENT                                     | 90 hours per job  |
| (other situational assessments)                              |                   |
| 3. VOCATIONAL TRAINING                                       | 120 hours per job |
| (work adjustment training, job skill training, job coaching) |                   |

#### **12.4.2 Requirements for Payments to Employers**

Payment to an employer for providing a work site for situational assessment shall not exceed two months at the weekly or monthly rate defined in the DVR Fee Schedule.

Payments made to an employer for the provision of job skill training, including on-the-job training, require that the employer has the necessary expertise, credentials, and formal training program(s) required to meet the client's skill development needs. DVR shall not pay an employer for on-the-job training following payment for job skill training for the same client. DVR shall not make payments to an employer within the marijuana industry.

An employer shall not be paid for both the use of a work site and as a service provider. Payment as a service provider requires that the employer meet the same standards and expectations as would be required of any other provider.

##### **12.4.2(a) On-The-Job Training (OJT) Payment**

On-the-job training is an opportunity for clients to experience employment opportunities with the clear expectation that the employment in the same or a similar job for the employer shall continue if successful. Employers shall compensate the client at the employer's usual and customary wages for the required skill level and type of position into which the individual is placed. The employer may be reimbursed a percentage of the individual's wage according to the DVR Fee Schedule. An OJT Provider Agreement is required. On-the-job trainings are normally limited to three months.

##### **12.4.2(b) Paid Work Experience**

Paid work experience training is a service provided in a competitive and integrated employment setting in which the client performs real work while receiving wages for all time spent on the job. Clients participating in paid work experiences shall be compensated at the prevailing State or Federal minimum wage, whichever is higher. The allowable reasons for paid work experience shall include at least one of the following outcomes for the trainee:

1. Job skills training which results in the acquisition of occupational skills;
2. An opportunity to demonstrate competitive employment skills;
3. An opportunity to try-out employment accommodations;
4. Completion of internships/externships which culminate in the receipt of an occupational or academic degree, certificate, or endorsement;
5. The opportunity to gain work experience in an employment field or occupational area; or
6. To establish a current work history.

## **12.5 POST-EMPLOYMENT SERVICES**

Post-employment services are vocational rehabilitation services that are provided subsequent to the achievement of an employment outcome that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

Post-employment services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and duration. If more comprehensive services are required, then a new rehabilitation case should be considered. Post-employment services are to be provided under an amended IPE; thus, a re-determination of eligibility is not required. If the request for post-employment services is five (5) years after closure, the client record will have been purged and it shall be necessary for the individual to reapply for services. The provision of post-employment services is subject to the same requirements as the provision of any other vocational rehabilitation service.

*The examples below are illustrative only and not intended to cover all possible circumstances appropriate for the provision of post-employment services.*

*Post-employment services are available to assist an individual to:*

- 1. Maintain employment e.g., the individual's employment is jeopardized because of conflicts with supervisors or co-workers, and the individual needs mental health services and counseling to maintain the employment;*
- 2. Regain employment, e.g., the individual's job is eliminated through reorganization and new placement services are needed; and*
- 3. Advance in employment, e.g., the employment is no longer consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.*

### **12.5.1 Amending the IPE for Post-Employment Services**

An amended IPE is required for the provision of post-employment services. The amended IPE shall contain a description of the terms, conditions, and the anticipated duration of the provision of post-employment services. The post-employment plan shall also describe the use of cooperative agreements with other vocational rehabilitation service providers, when applicable.

## **12.6 SERVICES TO EMPLOYERS**

To ensure a diverse workforce and competitive integrated employment opportunities for individuals with disabilities, DVR may provide education and other services to employers

who have hired or are interested in hiring individuals with disabilities. These services include—

1. Training and technical assistance regarding the employment of individuals with disabilities, including disabilities awareness and the requirements of the Americans with Disabilities Act of 1990, as amended, and other employment-related laws;
2. Developing opportunities for work-based learning experiences, including internships, short-term employment, apprenticeships, and fellowships;
3. Developing opportunities for pre-employment transition services;
4. Recruiting qualified job applicants who are individuals with disabilities;
5. Training employees who are individuals with disabilities;
6. Promoting awareness of disability-related obstacles to continued employment;
7. Providing consultation, technical assistance, and support to employers on workplace accommodations, assistive technology, and facilities and workplace access, to enable the employers to recruit, job match, hire, and retain qualified individuals with disabilities who are recipients of vocational rehabilitation services; and
8. Assisting employers with utilizing available financial support for hiring or accommodating individuals with disabilities.

## ***Chapter Thirteen - Services for Individuals who are Blind and/or Visually Impaired***

### **The Act**

#### **Title I Section 101 State plans**

##### **C) Responsibility for services for the blind**

**If the State has designated only 1 State agency pursuant to subparagraph (A), the State may assign responsibility for the part of the plan under which vocational rehabilitation services are provided for individuals who are blind to an organizational unit of the designated State agency and assign responsibility for the rest of the plan to another organizational unit of the designated State agency, with the provisions of subparagraph (B) applying separately to each of the designated State units.**

### **The Regulations:**

#### **34 CFR 361.13 State agency for administration**

##### **(b) Designation of State unit**

**(2) In the case of a State that has not designated a separate State agency for individuals who are blind, as provided for in paragraph (a)(3) of this section, the State may assign responsibility for the part of the vocational rehabilitation services portion of the Unified or Combined State Plan under which vocational rehabilitation services are provided to individuals who are blind to one organizational unit of the designated State agency and may assign responsibility for the rest of the plan to another organizational unit of the designated State agency, with the provisions of paragraph (b)(1) of this section applying separately to each of these units.**

##### **(c) Responsibility for administration—**

**(1) Required activities. At a minimum, the following activities are the responsibility of the designated State unit or the sole local agency under the supervision of the State unit:**

- (i) All decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available services, and the provision of these services.**
- (ii) The determination to close the record of services of an individual who has achieved an employment outcome in accordance with Section 361.56.**

### **13.1 REHABILITATION TEACHING/ORIENTATION AND MOBILITY SERVICES**

Rehabilitation teaching/orientation and mobility evaluations and training services are available through DVR Instructors and private DVR vendors. Personal Adjustment

Training (PAT) evaluations and training can occur in a facility or in an individual's home and/or worksite.

DVR strongly believes that PAT, which teaches the skills to allow a person who is blind or visually impaired to function independently, is critical to success both in a career and in life. Enrolling in PAT to gain skills of independence can enhance a person's capacity to compensate for visual deficits that impede his or her ability to perform a variety of personal tasks. If the individual is having difficulty performing tasks such as reading print, using a computer, cooking, cleaning, or traveling independently, PAT may be of benefit.

In Colorado, there are several facilities (the DVR Rehabilitation Center and private, not-for-profit facilities), and two DVR field services options (internal staff or private vendors) for the provision of PAT. The DVR Counselor shall assist the individual in gathering initial information about each facility to address questions about specific issues or concerns regarding the training available through each program. After touring and/or discussing the different options, the individual shall be ready to make an informed choice as to the service and service provider, and the Counselor shall make the necessary arrangements. The client record shall include written documentation of the individual's choice.

## **13.2 REFERRALS TO DVR PERSONAL ADJUSTMENT TRAINING SERVICES**

### **13.2.1 Referrals to Center-based PAT**

The DVR Counselor shall complete a referral form, providing all pertinent information, as outlined on referral form, to the PAT Supervisor or designee. The PAT Supervisor or designee shall provide written acknowledgment to the DVR Counselor of the referral indicating the approximate time when the evaluation or training service can be scheduled. The PAT Supervisor or designee shall also contact the client and acknowledge receipt of referral and approximate time when the evaluation or training service can be scheduled.

### **13.2.2 Referrals to Itinerant PAT**

Itinerant PAT referrals shall be completed by the DVR Counselor. The referral form shall include all applicable information as outlined on the referral form. DVR Counselors in the Denver metro DVR offices shall provide the PAT Supervisor or designee with the referral. The PAT Supervisor or designee shall meet with the itinerant Vision Rehabilitation Therapists (VRT)/Orientation & Mobility Specialists (O&MS) who serve the Denver metro area to determine collectively whom shall receive the referral. The itinerant VRT/O&MS who is assigned to take the referral shall provide written acknowledgement, through a case note in AWARE, to the DVR Counselor of the referral

indicating the approximate time when the evaluation can be scheduled. The itinerant VRT/O&MS shall also contact the client to acknowledge receipt of the referral and schedule a meeting to begin the evaluation.

For outlying areas across the state, the DVR Counselor shall provide the referral to the lead itinerant VRT/O&MS assigned to the DVR office. The itinerant VRT/O&MS shall provide written acknowledgment through an AWARE case note to the DVR Counselor of the referral indicating the approximate time when the evaluation can be scheduled. The itinerant VRT/O&MS shall also contact the client to acknowledge receipt of referral and schedule a meeting to begin the evaluation.

### **13.3 EVALUATION SERVICES WHEN UTILIZING PERSONAL ADJUSTMENT TRAINING**

Comprehensive evaluations shall recommend potential training services. PAT evaluations may include one or more of the following components:

1. Orientation and Mobility
  - a. Travel skills in familiar areas, including familiar indoor environments, residential and business environments, and use of public transportation
  - b. Travel skills in unfamiliar areas including unfamiliar indoor environments, residential and business environments and use of public transportation
2. Adaptive Communication
  - a. Including knowledge and use of audio services, Braille, filing/labeling, handwriting, self-note-taking, keyboarding, and use of telephone
3. Assistive Technology
  - a. Including accessibility, knowledge of computer basics, knowledge and use of assistive technology, and basic ability to use operating systems and standard software
  - b. Also including, if applicable, other electronic devices and their usage (i.e. Braille note-takers, smart phones, etc.)
4. Daily Living Skills
  - a. Home management skills including financial management, home maintenance and safety, housecleaning, meal preparation, care of family members, and time management
  - b. Personal management skills including medical management, grooming, hygiene and care of clothing, eating skills, and coping with vision loss
5. Low Vision
  - a. The ability to effectively use residual vision and/or magnification devices

### **13.3.1 Center Based Evaluation**

Typically individuals who are seeking evaluation in 3 or more areas and who are available to come to the Center shall be referred for a Center based evaluation. Clients shall be available to attend the Center 4-5 days per week from the hours of 8am until 4pm. Clients shall be able to perform activities of daily living (with or without the use of personal assistant services) to include: ability to feed oneself, administer medication, use the restroom, and move from training area to training area independently. Following the evaluation, a staffing shall be held, which shall include the DVR Counselor, client, PAT Supervisor or designee, and appropriate teachers. Within one week of evaluation staffing, the DVR Counselor shall receive reports from all evaluated PAT areas, including a Summary Case Management report, which shall provide timelines to complete the recommended training.

### **13.3.2 Itinerant Evaluations**

Itinerant evaluations can occur in an individual's home and/or worksite; typically training is not done in assisted living facilities. Client self-care criteria (with or without the use of personal assistant services) is: ability to feed oneself, administer medication, and use the restroom. Within two weeks of completion of the evaluation, the DVR Counselor shall receive reports from the itinerant VRT/O&MS that shall include all evaluated PAT areas with timelines to complete the recommended training.

## **13.4 REHABILITATION TEACHING AND ORIENTATION AND MOBILITY TRAINING SERVICES**

Following evaluation, recommended training services shall be determined by the client and DVR Counselor. These shall be provided in accordance with provisions contained within an IPE and shall detail required outcomes related to the employment goal and the specific rehabilitation teaching and/or orientation and mobility services that are needed. Training components and the associated subject areas are the same as the components identified in the previous section for comprehensive evaluation.

Prior to beginning a rehabilitation teaching or orientation and mobility training program, the DVR Counselor shall provide the DVR VRT/O&MS/PAT Supervisor or designee with a copy of the applicable IPE or amended IPE. Occasionally, situations may warrant additional evaluation time. The DVR Counselor can request that training occur without a signed IPE as part of a comprehensive evaluation if necessary. In those situations, the DVR Counselor can request training, up to 30 days, in order to establish an appropriate vocational goal or to gather more information on an individual's aptitudes, interests, and abilities. However, most evaluations shall be complete and an IPE developed and provided prior to initiating training services.

Throughout the training process, regular and consistent reports shall be provided to the DVR Counselor and client. These reports shall be provided in accordance with what is noted on a client's IPE.

### **13.5 BUSINESS ENTERPRISE PROGRAM**

Business Enterprise assessment and training services are available from the DVR Business Enterprise Program (BEP). This program is governed by the Randolph-Sheppard Act to authorize the operation of vending facilities/stands (vending machines, cafeterias, snack bars, cart service, counters) in federal buildings and other properties for individuals who are blind, and have been determined to have a significant disability, to improve their economic opportunities.

#### **13.5.1 Referrals to BEP**

BEP staff shall provide an informal, informational interview to a client who shows initial interest in the BEP. The interview provides information about the length of the program as well as the requirements of the program. It gives an interested client a chance to ask pertinent questions regarding BEP opportunities and locations. The client's DVR Counselor shall also join this meeting in person or by phone when possible.

When an interested client is considered appropriate for the BEP, the DVR Counselor shall complete a BEP referral form, providing all pertinent referral information to the BEP Trainer, and a copy of the following:

- Highest academic accomplishment (minimum high school diploma or equivalent);
- Proof of Citizenship;
- Latest vision report documenting the client meets the definition established for legal blindness;
- Completed CBI (most, if not all, BEP locations require background clearance for both operators and employees in order to work in these facilities); or
- Completed Federal Background Check (if client has resided outside of Colorado); and
- Drug testing as determined per location.

#### **13.5.2 BEP Initial Interview**

Upon receipt of a completed referral form and pertinent documentation from the DVR Counselor, the BEP Trainer shall schedule an initial interview and notify the DVR Counselor by e-mail of the scheduled interview date. The BEP Trainer shall set up and conduct a face-to-face interview with the interested client at a mutually agreed upon location. If the interview cannot be scheduled within thirty (30) calendar days, of the DVR referral, the BEP Trainer shall provide the DVR Counselor written notification as to

why this could not be accomplished (an initial interview is required of the client prior to IPE development for any IPE that includes a BEP operator goal).

The initial interview shall consist of the following individuals:

- The Client
- The BEP Trainer
- The BEP Program Manager (if applicable)
- DVR Counselor (if possible)
- Vision Rehabilitation Therapist/Orientation & Mobility Specialist (if possible)
- A member of the Committee of Blind Operators (if possible)

Once the interview has been completed, the BEP Trainer shall fill out an “Interview Outcome Summary.” This Summary shall be sent to the PAT Supervisor or designee, BEP Program Manager and the client’s DVR Counselor within fourteen (14) business days of the completed interview.

As the BEP Trainer explores a client’s compatibility to the program, the BEP may require additional background information such as the client’s:

- Management experience
- Attendance history
- Leadership development
- Professionalism
- Communication skills
- Business math aptitude
- Food service experience
- Interest in the food service industry
- Work history
- Work competency

After this process is complete, the Trainer shall either: recommend the client into the BEP Training Program; recommend additional testing or evaluation from the client; or decline the client into the Program. On occasion, the BEP may recommend conditional acceptance or that additional action steps be addressed before the client is admitted into the Program. Once a decision has been made, the Trainer shall inform the client, PAT Supervisor or designee, client’s DVR Counselor, and BEP Program Manager.

### **13.5.3 BEP Training Program**

Once the client has been accepted into the BEP Training Program and completed a PAT evaluation, the client shall address any recommended personal adjustment skills, pass a ServSafe food safety training course with a score of 75% or better and complete any

other simulated on-the-job-training exercises determined appropriate before advancing to the BEP portion of the training process as recommended by the BEP Trainer, DVR Counselor, and client. Upon successful completion of this initial process, the client shall advance to the BEP business leadership training program.

*\*Exceptions:* On occasion, the BEP Program Manager may decide that a client applying to the program be granted an exemption to the traditional training process. Only the BEP Program Manager can make such exceptions. If and when an exception is made, the BEP Program Manager shall make them on a case-by-case basis and document justification for the exemption. This documentation shall be placed in the client DVR case record within AWARE and into the BEP client file. Prior to the beginning of the BEP business leadership training process, the DVR Counselor shall provide the BEP Trainer with a copy of the Individual Plan for Employment and any amendments. Additionally, the DVR Counselor shall provide the BEP Trainer with any assessments or reports that may be completed throughout the comprehensive assessment that are pertinent to the success of the client's training program. All reports shall be sent to the BEP Trainer. In lieu of a BEP Trainer, all reports shall be sent to the attention of the BEP Program Manager and the BEP Program Manager shall take responsibility to get the reports to the appropriate parties and into the client's BEP file.

The BEP portion of business leadership training shall focus on vending and restaurant management. For clients to become certified and eligible to bid on available BEP sites, they shall complete the BEP business leadership training course. In addition to the BEP course curriculum, the client shall actively participate in all interactive class and lab exercises, get an 80% or better on all course tests, and be able to write and present an effective business plan. Certification is received upon the successful completion of all phases of training. Clients shall not receive certification unless they complete the entire course curriculum. Some clients may be eligible to test out of certain phases of training but this shall be determined on a case-by-case basis and is at the discretion of the BEP Trainer and Program Manager. Clients who do not successfully achieve certification may retake sections they did not pass during the next training class. The decision to allow a client to retake sections shall be at the discretion of the BEP Trainer and Program Manager. During the training program, the DVR Counselor and BEP Trainer shall meet at regular intervals to discuss the client's progress; the DVR Counselor shall document the content and outcome of these meetings in the DVR client record/electronic case management system. The BEP Trainer shall provide the DVR Counselor with a written training progress report every month, which shall be placed in the client case record. The progress report shall identify client:

- Management and leadership development
- Professionalism

- Attendance history
- Communication skills
- Effective note taking
- Business math aptitude
- Course progress
- Milestone evaluations

Requirements for monthly progress reports and other progress meetings shall be included as evaluation methods and schedules on the IPE. The BEP Trainer shall notify the client and Counselor, in writing, when the BEP training has been successfully completed.

Once the BEP client has successfully completed training, the BEP Trainer shall provide the DVR Counselor with a written, final report. The report shall identify:

- That the client has successfully completed the BEP training curriculum.
- The client's date of course completion.
- Validation client received course certification.
- Any relevant issues or concerns impacting the training outcome.
- A review of the BEP's training plan in relation to the client's Individual Performance Objectives.
- Recommended client support resources, such as start up cash, all business license expenses, liability insurance (specifically for the client) and other eligible start-up business expenses as determined by the BEP Program Manager, PAT Supervisor, BEP Trainer and DVR Counselor.

#### **13.5.4 BEP Business Consultant Trainer**

After the successful completion of the BEP Business Leadership Training Program and once the BEP client has won a bid on a location and been assigned to that location, a BEP Business Consultant shall provide the client with location support as needed. Support shall initially be focused on business collaboration, communication, and start-up business needs with the client for the first ninety (90) days. During these ninety (90) days, the BEP Business Consultant or Program Trainer shall provide written reports to the DVR Counselor on the progress of the Operator every month until the DVR Counselor successfully closes the client's case. The client shall become a Licensed Operator after successfully operating his or her location for ninety (90) days. If the client does not successfully operate his or her assigned location and become a Licensed Operator after ninety (90) days the client may be referred back to the DVR Counselor for additional support including guidance and counseling. After the client becomes a Licensed Operator, his or her Business Consultant shall continue to provide the Licensed Operator with on-going business collaboration.

Reports provided by the BEP Business Consultant shall contain:

- Date of the report
- Issues and factors that are influencing the client's placement
- Additional training needs, if any
- Equipment needs, if any

*On-going and frequent communication between the DVR Counselor, client, and BEP Business Consultant are paramount to the success of the vocational objective. All parties need to be actively engaged in this communication process to troubleshoot any employment problems.*

### **13.5.5 DVR Client Record Closure from BEP**

The client record maintained by the BEP Trainer and/or BEP Business Consultant shall not be closed until the DVR client record is closed. It shall be the DVR Counselor's responsibility to notify the BEP Program Manager when the DVR client record is closed and the reason for closure.

BEP is responsible to maintain documentation and a case record for all BEP Clients and operators throughout involvement with BEP. Documentation is separate from the DVR Counselor's case file, the BEP Trainer's desk file, and the BEP Business Consultant's desk file.

### **13.5.6 Client Appeals**

If a DVR client has an appeal during the BEP training process, it shall be addressed by DVR or by the BEP, based upon the issue under appeal. If the issue under appeal is a DVR matter, the client shall use the formal or the informal processes available to DVR clients and applicants. If the client is a licensed blind vendor and is dissatisfied with a determination made by the BEP, a formal appeal shall be requested as described in the Colorado Code of Regulation, 12 CCR 2513.1 (Volume 9) 9.431.1

## ***Chapter Fourteen - Supported Employment***

### **The Act**

#### **Title VI, Section 621 Purpose**

**It is the purpose of this subchapter to authorize allotments, in addition to grants for vocational rehabilitation under subchapter I, to assist State in developing collaborative programs with appropriate entities to provide supported employment services for individuals with the most significant disabilities, including youth with the most significant disabilities, to enable such individuals to achieve the employment outcome of supported employment in competitive integrated employment.**

### **The Regulations**

#### **Sec. 363.3 Who is eligible for services**

**A State may provide services under this program to any individual, including a youth with a disability if—**

**(a) The individual has been determined to be—**

**(1) Eligible for vocational rehabilitation services in accordance with; 34 CFR 361.42 and**

**(2) An individual with a most significant disability;**

**(b) For purposes of activities carried out under 363.4(a)(2), the individual is a youth with a disability . . . , and(c) Supported employment has been identified as the appropriate employment outcome for the individual on the basis of a comprehensive assessment of rehabilitation needs . . . , including an evaluation of rehabilitation, career, and job needs.**

### **14.1 DETERMINING NEED FOR SUPPORTED EMPLOYMENT**

Individuals appropriate for supported employment are those:

1. Youth and adults for whom competitive integrated employment has not traditionally occurred or for whom competitive integrated employment has been interrupted or intermittent as a result of a most significant disability;
2. And who, because of the nature and significance of their disabilities, need intensive supported employment services from DVR.
3. And who need extended services provided by another entity after achieving an employment outcome to maintain employment.

## **14.2 ELIGIBILITY AND COMPREHENSIVE ASSESSMENT**

To receive supported employment services, the following information shall be documented on the Justification for Supported Employment form:

1. An individual shall have been determined eligible for DVR services;
2. The individual shall have been determined to be an individual with a most significant disability; and
3. Supported employment shall be identified as the appropriate rehabilitation objective for the individual on the basis of a comprehensive assessment of rehabilitation needs including an evaluation of rehabilitation, career, and job needs.

## **14.3 SUPPORTED EMPLOYMENT SERVICES**

Supported employment services are provided by DVR as ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability. These services are provided:

1. for a period of time not to exceed 24 months once the individual begins work, unless under special circumstances the individual and the DVR Counselor jointly agree to extend the time to achieve the employment outcome identified in the IPE; and/or
2. for a discreet period of time as post-employment services that are unavailable from an extended service provider when necessary to maintain, regain, or advance in employment; and
3. by DVR as extended services to youth 24 years old and younger for a period not to exceed 4 years. The Intent to Transfer Services Form is not applicable for these youth.

### **14.3.1 Competitive Integrated Employment**

Competitive integrated employment means work that:

1. Is performed on a full-time or part-time basis (including supported self-employment) and for which an individual—
  - a. Is compensated at a rate that is not less than the higher of the Federal, State, or local minimum wage law for the place of employment;
  - b. Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are in similar situations in similar occupations by the same employer and have similar training, experience, and skills, and:

- c. In the case of an individual who has a supported self-employed goal, the employment yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on a similar tasks and who have similar training, experience, and skills; and
  - d. Is eligible for the level of benefits
2. Is at a location –
    - a. Typically found in the community; and
    - b. Where an employee with a disability interacts, for the purpose of performing the job duties of the position, with other employees within the particular work unit and the entire work site, and as appropriate to the work performed other persons (e.g. customers and vendors) who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons; and
  3. Presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

*Considerations when determining whether employment is in a competitive integrated employment setting:*

- *Focus should be placed on the interaction between employees with and without disabilities and not solely on the interaction of employees with disabilities with people outside of the work unit. For example, the interaction of individuals with disabilities employed in a customer service center with other persons over the telephone, regardless of whether these persons have disabilities, would be insufficient to satisfy the definition. Instead, the interaction of primary consideration should be that between the employee with the disability and his or her colleagues without disabilities in similar positions.*
- *Interaction between employees with and without disabilities need not be face to face and employment settings where an individual works alone, such as telecommuting, temporary employment, and work in mobile or scattered locations, are within the scope of the definition of “competitive integrated employment,” so long as the employee with the disability interacts with employees of the employer in similar positions and interacts with other persons without disabilities to the same extent that employees without disabilities interact with others.*

- *Entities that are set up specifically for the purpose of providing employment to individuals with disabilities will likely not satisfy the definition. These entities often provide little to no opportunity for interaction between individuals with and without disabilities and are often considered sheltered or non-integrated employment sites.*
- *Individuals with disabilities hired to perform work under service contracts, either alone, in mobile work crews, or in other group settings (e.g., landscaping or janitorial crews), whose interaction with persons without disabilities are limited to interactions with persons working in or visiting the work location, rather than other employees without disabilities in similar positions, would not be performing work in an integrated setting.*
- *Generally a business is considered “not typically found in the community,” if any of the following factors apply: (1) positions are funded through Javits-Wagner-O’Day Act (JWOD) contracts; (2) the business is allowed under FLSA to compensate employees at subminimum wages; or (3) the business must comply with a mandated direct labor-hour ratio of persons with disabilities (e.g. Ability One, NISH). It is the responsibility of the DVR Counselor to take these factors into account when determining if a particular work location is an integrated setting. The Supported Employment Coordinator will be consulted as needed to ensure a work location is integrated.*

To determine the appropriateness of each setting, the DVR Counselor shall consider each employment situation on a case-by-case basis and ensure the criteria as related to competitive integrated employment are adhered to and consistent with DVR requirements for a successful employment outcome. DVR Counselors will consult with their Supervisor and/or the Supported Employment Coordinator when guidance is required to determine whether an employment situation is consistent with competitive integrated employment.

### **14.3.2 Ongoing Support Services**

Ongoing support services are time-limited services, up to 24 months, provided by DVR that are needed to support and maintain an individual with a most significant disability, including a youth with a disability, in supported employment. These services are identified based on a determination by DVR of the individual's vocational need as specified in an Individualized Plan for Employment. DVR provides these ongoing services from the time of job placement until transition to extended supported employment services.

Ongoing Support Services, provided by DVR, shall include and consist of:

- An assessment of employment stability and provision and coordination of specific services at or away from the worksite that are needed to maintain stability.
- At a minimum, twice monthly monitoring at the worksite of each individual in supported employment, or if under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring.
- Any assessment supplementary to the comprehensive assessment of rehabilitation needs.
- The provision of skilled Job Trainers/Coaches who accompany the individual for intensive job skill or social skill training on or off the work site.
- Regular observation or supervision of the individual.
- Arranging for the provision of extended services.
- Arranging any other service identified as a necessary vocational rehabilitation service.
- Facilitation of natural supports at worksite.
- 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.

#### **14.4.3 Extended Services**

Extended services are ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in supported employment. They are provided by an agency, which may include a State agency, a private nonprofit organization, the employer or any other appropriate resource including family member(s). The extended support provider shall contact the employer and the employee at least twice per month to monitor job stability. If under specific circumstances, especially at the request of the individual, the IPE provides for off-site monitoring, twice monthly meetings with the individual shall be conducted.

When an individual does not appear to have, on the surface, an identified extended services resource/provider, the comprehensive assessment process shall include a thorough identification of the type of extended supports an individual will require as well as the support intensity and frequency for sustainability of employment. Counselors shall examine all potential resources/providers for extended services that will fully meet an individual's extended support needs.

Options for consideration may include:

- SSA work incentives such as Plan for Achieving Self-Support (PASS), Impairment Related Work Expenses (IRWE);
- private pay;
- local resources for extended supports (e.g., mill levy-supported funds for employment supports, TBI Care Coordination resources);
- state demonstration project options or other non-traditional funding mechanisms, such as individualized development accounts (IDAs) – these allow persons to set aside income for special purposes;
- Medicaid waiver services administered by the Division for Intellectual and Developmental Disabilities and any other Medicaid waiver services that may be administered by the State which include extended employment services provision for supported employment;
- ABLE (Achieving a Better Life Experience) Accounts
- funding provided from the Office of Behavioral Health to local mental health centers; and/or, in some situations
- natural supports (e.g., supervisors or co-workers).

When relying on natural supports to meet a client’s need for extended services, extensive planning, development, and negotiation is required to ensure the individual is able continue to perform job tasks satisfactorily after intensive services have concluded. Regardless of the provider, Counselors shall use professional judgment in the identification of extended services and may elect to gain commitments for alternative sources of these services in writing, when deemed necessary.

DVR may fund extended services for a youth age 24 years or younger for a period not to exceed 4 years when no other funding source is available. In all other situations, funding for extended services shall come from sources other than DVR.

The client is required to transition to an extended service provider at least 90 days prior to closure to ensure stability with the level of support that will continue to be available on an ongoing basis.

The Transfer of Services Form is to be utilized to initiate the provision of extended services by an entity or individual other than DVR.

### **14.5 IPE FOR SUPPORTED EMPLOYMENT**

The IPE for an individual whose employment outcome is supported employment shall include the IPE Supplement for Supported Employment, in addition to the standard IPE form. The following requirements shall be addressed in the IPE and/or the IPE Supplement:

1. The specific supported employment services to be provided by DVR and the job stabilization criteria that will define the point at which it is appropriate for extended services to be implemented;
2. The expected extended services needed, which may include natural supports;
3. Identification of the source of extended services. If extended services are not available at the time, a description of the basis for concluding that there is a reasonable expectation that those sources will become available;
4. Provision for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the IPE by the time of transition to extended services;
5. Provision for the coordination of services provided under an IPE with services provided under other individualized plans established under other Federal or State programs such as Education, Medicare/Medicaid, Office of Behavioral Health, Division for Intellectual and Developmental Disabilities, etc. Examples are the Service Plans by the Mental Health Agency or Community-Centered Board program;
6. Placement in a competitive integrated employment 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.

#### **14.6 PAYMENT FOR SUPPORTED EMPLOYMENT SERVICES**

Title VI-B funds (supported employment funds) shall be used only for the implementation of IPEs for a supported employment outcome for individuals with the most significant disabilities. Title VI-B funds are special funds and are maintained by staff in the Administration office.

After an individual has transitioned from DVR services to extended services provided by an entity other than DVR, DVR shall not pay for those extended services arranged under the IPE except in those circumstances where the client is a youth age 24 years or younger, in which case, DVR may provide extended services for a period not to exceed four years.

## ***Chapter Fifteen - Transition***

### **The Act**

#### **Section 101(a)(11)**

**(D) Coordination with education officials. The State plan shall contain plans, policies, and procedures for coordination between the designated State agency and education officials responsible for the public education of students with disabilities, that are designed to facilitate the transition of the students with disabilities from the receipt of educational services in school to the receipt of vocational rehabilitation services, including pre-employment transition services, under this subchapter, including information on a formal interagency agreement with the State educational agency that, at a minimum, provides for—**

- (i) consultation and technical assistance, which may be provided using alternative means for meeting participation (such as video conferences and conference calls), to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services;**
- (ii) transition planning by personnel of the designated State agency and educational agency personnel for students with disabilities that facilitates the development and completion of their individualized education programs under section 614(d) of the Individuals with Disabilities Education Act...;**
- (iii) the roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services; and**
- (iv) procedures for outreach to and identification of students with disabilities who need the transition services.**

#### **Section 102 (a)(4) Use of existing information.**

**(A) In general. To the maximum extent appropriate and consistent with the requirements of this part, for purposes of determining the eligibility of an individual for vocational rehabilitation services under this subchapter and developing the individualized plan for employment described in subsection (b) for the individual, the designated State unit shall use information that is existing and current (as of the date of the determination of eligibility or of the development of the individualized plan for employment), including information available from other programs and providers, particularly information used by education officials and the Social Security Administration, information provided by the individual and the family of the individual, and information obtained under the assessment for determining eligibility and vocational rehabilitation needs.**

**(B) Determinations by officials of other agencies - Determinations made by officials of other agencies, particularly education officials described in section 101(a)(11)(D) of this title, regarding whether an individual satisfies one or more factors relating to whether an individual is an individual with a disability under section 7(20)(A) of this title or an individual with a significant disability under section 7(21)(A) of this title shall be used, to the extent appropriate and consistent with the requirements of this part, in assisting the designated State unit in making such determinations.**

**The Regulations:**

**Sec. 361.22 Coordination with education officials.**

**(a) Plans, policies, and procedures.**

**(1) The vocational rehabilitation services portion of the Unified or Combined State Plan must contain plans, policies, and procedures for coordination between the designated State agency and education officials responsible for the public education of students with disabilities that are designed to facilitate the transition of students with disabilities from the receipt of educational services, including pre-employment transition services, in school to the receipt of vocational rehabilitation services under the responsibility of the designated State agency.**

**(2) These plans, policies, and procedures in paragraph (a)(1) of this section must provide for the development and approval of an individualized plan for employment in accordance with Sec. 361.45 as early as possible during the transition planning process and not later than the time a student with a disability determined to be eligible for vocational rehabilitation services leaves the school setting or, if the designated State unit is operating under an order of selection, before each eligible student with a disability able to be served under the order leaves the school setting.**

**(b) Formal interagency agreement. The vocational rehabilitation services portion of the Unified or Combined State Plan must include information on a formal interagency agreement with the State educational agency that, at a minimum, provides for—**

**(1) Consultation and technical assistance, which may be provided using alternative means for meeting participation (such as video conferences and conference calls), to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including pre-employment transition services and other vocational rehabilitation services;**

**(2) Transition planning by personnel of the designated State agency and educational agency personnel for students with disabilities that facilitates the**

**development and implementation of their individualized education programs (IEPs) under section 614(d) of the Individuals with Disabilities Education Act;**

**(3) The roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services and pre-employment transition services;**

**(4) Procedures for outreach to and identification of students with disabilities who are in need of transition services and pre-employment transition services. Outreach to these students should occur as early as possible during the transition planning process and must include, at a minimum, a description of the purpose of the vocational rehabilitation program, eligibility requirements, application procedures, and scope of services that may be provided to eligible individuals**

### **15.1 TRANSITION DEFINITIONS**

A **student with a disability** is an individual with a disability in a secondary, postsecondary, or other recognized education program who is between the ages of 15-21, is eligible for, and receiving, special education or related services under Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or is an individual with a disability, under Section 504 of the Rehabilitation Act

A **youth with a disability** is any individual with a disability who is between the ages of 14-24, regardless of educational status.

**Transition services** are a coordinated set of activities for a student or youth with a disability designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, competitive integrated employment, supported employment, continuing and adult education, adult services, independent living, and/or community participation.

The coordinated set of activities must be based upon the individual's needs, taking into account the individual's preferences and interests, and shall 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.

**Pre-employment transition services** are provided to students with disabilities and consist of job exploration counseling; work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that is provided in an integrated environment in the community to the maximum extent possible; counseling on opportunities for enrollment

in comprehensive transition or postsecondary educational programs at institutions of higher education; workplace readiness training to develop social skills and independent living; and instruction in self-advocacy.

*Additional guidance and descriptions of each pre-employment transition service can be found at <http://www.wintac.org/topic-areas/pre-employment-transition-services>.*

## **15.2 COORDINATION WITH EDUCATION**

The Division of Vocational Rehabilitation (DVR) shall coordinate with officials of the Colorado Department of Education (CDE) and local school districts around development and application of policies and practices with regard to the planning and provision of transition services to students and youth with disabilities. DVR and CDE shall maintain a state-level formal ***CDE/DVR Cooperative Services Agreement*** related to the planning and provision of transition services. This Agreement shall include: the roles and responsibilities of each agency, including financial responsibilities; the provisions for determining State lead agencies and qualified personnel responsible for transition services and the procedures for outreach to and identification of students and youth with disabilities.

### **15.2.1 Related DVR Documents**

DVR and education staff have collaboratively developed documents that focus on the identification and description of roles and responsibilities of each transition partner. DVR staff shall use these documents as a guide to the delivery of transition services in collaboration with local education providers:

***The Cooperative Services Handbook for Youth in Transition*** is designed to promote flexible and collaborative planning and service delivery among DVR, CDE, and local school districts in support of transitioning youth.

***The Cooperative Assessment Guidelines for Youth in Transition*** is intended to assist education staff to understand the nature of DVR, eligibility criteria, the kinds of documentation that are needed to determine eligibility for DVR, and the kinds of services that DVR may provide.

## **15.3 DVR TRANSITION RESPONSIBILITIES**

Every supervisor and rehabilitation counselor has responsibility to liaison with the local school districts, cultivate relationships, and provide education and information to partners. DVR shall assign specific staff to function as liaisons and service providers with each school district in the State.

## **15.4 CONSULTATION/TECHNICAL ASSISTANCE**

DVR shall provide consultation and technical assistance to education agencies in planning for the transition of students and youth with disabilities from school to post-school activities, including vocational rehabilitation services.

## **15.5 OUTREACH**

DVR shall initiate outreach to students and youth with disabilities to identify those who are in need of transition services. This shall take place as early as possible during the transition planning process. School districts shall be provided with contact information for the local DVR office and staff.

DVR shall inform education staff, students, youth, and, as appropriate, families and authorized representatives regarding:

1. A description of the purpose of the vocational rehabilitation program;
2. Information regarding DVR eligibility requirements;
3. Information regarding application procedures; and
4. Information about the scope of services that may be available to students and youth with disabilities.

*DVR staff with transition responsibilities should be acquainted with the aspects of the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act that address transition activities.*

*IDEA mandates that local education agencies invite adult agency representatives, such as DVR counselors, to mandated student-related meetings. These meetings are held for special education students at least annually. When the DVR staff is invited by a school district to attend a student meeting such as an IEP meeting, the staff should consider how his or her involvement could be beneficial with regard to consultation, technical assistance, referral to DVR or the planning and coordination of service provision.*

*There may be times when a DVR staff is not able to attend scheduled student-related meetings. Options for involvement beyond the physical presence of the DVR staff at the meeting could include the sharing of informational sheets and brochures, telephone conferencing, or other creative mechanisms developed at the local level.*

*In addition to student-related meetings, other opportunities to interact with educators, students, and families exist for DVR participation. These may include parent nights, education staff meetings, school based agency events, career fairs, and others. Attendance at these events fosters and advances collaboration with education. Many communities within Colorado have a local youth council or interagency transition team. It is expected that DVR staff shall participate on these local teams.*

## **15.6 POINT OF REFERRAL AND APPLICATION**

Local DVR and education providers shall identify a consistent system for referrals to DVR. There is no specified point at which referral and application to DVR must occur for a student or youth with a disability. Referrals should be a collaborative decision between education and DVR, and should not be limited to just those students in special education. Exact timing of the referral will vary based on each individual's need.

Students with disabilities may access pre-employment transition services prior to submitting an application to DVR and a referral may occur before the student chooses to apply for services. A referral of this nature can occur at any time after the student turns 15 years old. The student may choose to apply to DVR at any time in order to determine if he or she is eligible for a more comprehensive scope of vocational rehabilitation services. A student seeking pre-employment transition services prior to applying for and being determined eligible for DVR must provide DVR with documentation of his or her impairment prior to receiving these services.

DVR staff shall consider the following guidance for use during discussions with education staff and others around point of referral and submission of an application for DVR services:

- Does the student require pre-employment transition services to begin exploring post-school employment and educational options;
- Has the student or youth's focus begun to shift from education to employment, including work-based learning opportunities or formal planning for continued employment preparation upon exit from high school;
- Is the student or youth ready and available to participate in the DVR program including, if applicable, assessment to determine eligibility and vocational rehabilitation?

If a youth has withdrawn from school, DVR staff shall encourage the individual to return to school. DVR shall work with the school to plan and support collaborative services that will lead to completion of an appropriate course of study and a successful employment outcome.

*Open communication between education, DVR staff, the youth, and his or her family members will help to ensure a comprehensive and collaborative approach to transition services that fully address each youth's needs, which may also require coordination with services available from other community organizations.*

## **15.7 SCHOOL RECORDS**

Education professionals have a wealth of information about a student's impairment and functional limitations, written from an academic perspective, which can hold relevance when considering vocational functional limitations for DVR eligibility and comprehensive assessment.

DVR staff, with a signed release of information provided by the student or youth, shall obtain all appropriate school records including medical, psychological, vocational, educational, recreational and other informational records relating to the student or youth's disability, impediments to employment and rehabilitation needs. These records are provided by the local school agency at no cost to DVR.

Whenever possible, and prior to the purchase of additional assessment, educational records shall be utilized by the DVR Counselor to determine eligibility and complete the comprehensive assessment.

DVR Counselors are responsible for maintaining familiarity with the tools utilized by local education partners and these shall be used to gather the most comprehensive body of evidence available to support eligibility for DVR, the comprehensive assessment, the development of the IPE, and the entire vocational rehabilitation process.

Students receiving services under IDEA must have an IEP. The IEP and other documents contained within the special education file (most notably the most recent triennial report) will provide valuable information to the DVR Counselor in preparation for eligibility determination, severity of disability designation, and the comprehensive assessment and vocational goal development process. DVR staff shall obtain and use these documents in the eligibility determination and vocational planning process.

Education records are not always contained within the official special education file. Documents beneficial to the DVR process may also be located in files maintained by non-classroom education staff. DVR staff shall consult with educators on a case-by-case basis regarding the existence of relevant documents and how these documents can be obtained.

Signatures on education records are unlikely. In place of actual signatures, the DVR Counselor shall accept documents which contain the names and credentials of the Special Education Team members who participated in IEP meetings or who administered educational assessments. These records from educators responsible for the public education of students with disabilities shall be considered to be records from qualified personnel.

*For DVR eligibility and IPE development, types of information requested from a local education partner **may** include:*

1. *Special Education Files*
  - *Individualized Education Program (IEP)*
  - *Supporting assessment summaries and scores*
  - *Supplemental plans including:*
  - *Communication Plan*
  - *Behavior Support Plan*
  - *Literacy Modality Plan*
  - *Health Plan*
  - *Assistive Technology Plan*
2. *Teacher's Working File*
  - *Student work samples*
  - *Transition-focused assessment*
  - *Work experience information*
  - *Sample resume*
  - *Interest inventories*
3. *Related Services Provider Files*
  - *Psychologist*
  - *Therapists including but not limited to: Occupational, Physical, Speech and Health (Nurse)*
4. *Student Portfolio/Career Center Files/College-in-Colorado Profiles/Naviance Profiles*
  - *Demographic Information*
  - *Transition focused assessments*
  - *Work experience information*
  - *Sample resume*
5. *Summary of Performance (SOP)*
  - *The SOP is a current compilation of information regarding the student, including: life goals, preferences and interests, functional and academic strengths and needs, needed accommodations, strategies for success, etc. written by education received by special education students upon exiting.*
6. *Individual Career and Academic Plan (ICAP)*
  - *The ICAP is created for all students and includes their efforts in exploring careers, academic progress, experiences in contextual and service learning, records of post high school linkages made, other data reflecting student's progress toward postsecondary and workforce readiness for all students grades 9 – 12*

### **15.7.1 Education Designations**

Referrals to DVR from school systems are usually students who receive services under IDEA and therefore have a categorical special education disability designation. These designations align with corresponding federal terms and requirements and/or terminology used in the field. An eligibility criterion for each designation is determined by members of a multidisciplinary education team of qualified personnel with appropriate professional credentials. Education officials responsible for the public education of students with disabilities are considered by DVR to be qualified personnel for the purpose of the first DVR eligibility criterion (determination of a physical or mental impairment).

The twelve (12) educational disability designations determined and used by the public secondary education system are:

- hearing impairment, including deafness
- intellectual disability
- speech or language impairment
- visual impairment, including blindness
- multiple disabilities
- deaf-blindness
- autism spectrum disorder (ASD)
- orthopedic impairment
- other health impaired
- traumatic brain injury (TBI)
- serious emotional disability (ED)
- specific learning disability (SLD)

Students and youth not receiving services under IDEA may also be appropriate for referral to DVR. Students and youth with disabilities who are not recipients of special education services could be referred from related education providers including school administrators, counselors, therapists, nurses, general education teachers, and others. These students and youth may or may not have a documented disability, they may or may not have a Section 504 Plan (Section 504 of the Rehabilitation Act of 1973) in place, and their disability may not present a barrier in the academic environment, but may present impediments to employment.

### **15.8 IEP/IPE PLANNING AND COORDINATION**

DVR staff, at the request of and in cooperation with education staff, shall participate in the planning process that is designed to facilitate the development and completion of the Individualized Education Program (IEP). The DVR Counselor shall review and consider a student's IEP during the development of the individual's IPE. Services reflected on the

IEP may or may not need to be included on the IPE, depending upon the employment goal and individual situation of each student but can serve as a vital starting point when providing pre-employment transition services. If a student is still enrolled in the school system and an IPE is developed and approved, there will be two active plans for the client, each reflecting coordinated goals and a range of services for a period of time. Collaborating with education to align the IPE and IEP can contribute in a positive manner for the student to gain basic workplace skills, knowledge of specific occupational skills, and an understanding of different industries in order to make informed career choices.

The IPE shall be developed and approved by the DVR Counselor as early as possible during the transition process but no later than the point at which each student, determined to be eligible for vocational rehabilitation services, leaves the school setting. This applies even when DVR is operating under an order of selection for those students who can be served.

### **15.9 SALE/TRANSFER OF ASSISTIVE TECHNOLOGY**

Situations will arise in which an assistive technology good or device used by a student for educational purposes will have application in the employment realm. Various considerations for the possible sale/transfer of ownership of an assistive device that was used during school enrollment for a transitioning youth may be found in the state-level *CDE/DVR Cooperative Services Agreement*. When transfer or sale of assistive technology is necessary, this document shall be consulted. The Agreement outlines specific procedures for the transfer and sale of assistive technology from the local education agency to DVR.

### **15.10 COORDINATION REGARDING SUBMINIMUM WAGE**

Section 511 of WIOA is intended to place limits on the payment of subminimum wage to individuals with disabilities, using special wage certificates under Section 14(c) of the Fair Labor Standards Act (FLSA). The role of CDE and local education agencies in implementing these limits is further outlined in chapter 18 of the policy manual and identified in the *CDE/DVR Cooperative Services Agreement*.

## ***Chapter Sixteen - Self-Employment***

### **The Regulations**

**Section 361.48 Scope of vocational rehabilitation services for individuals with disabilities.**

**(b) Services for individuals who have applied for or been determined eligible for vocational rehabilitation services.**

**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, advancing in, or regaining an employment outcome that is consistent with the individuals strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice:**

**(19) 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.**

### **16.1 SELF-EMPLOYMENT PROGRAM CONSIDERATIONS**

Self-employment includes all employment in which the individual or the entity owned by the individual is responsible for paying for the employer and employee portion of his or her own social security taxes, insurance, licenses, and other employee benefits and may be a sole proprietorship, partnership, or corporation. DVR defines persons desiring self-employment as entrepreneurs and adopts the Small Business Administration (SBA) entrepreneur definition -- one who assumes the financial risk of the initiation, operation and management of a given business or undertaking.

Individuals involved in the self-employment program are subject to all relevant parameters of vocational rehabilitation discussed elsewhere throughout this Service Delivery Policy.

Self-employment may be considered viable when the individual possesses the skills and experience pertinent to the business concept. Training within a self-employment plan is considered on a case-by-case basis based on industry standards within the chosen field.

Training may be necessary within a self-employment plan:

- To develop skills specific to business operations (e.g. basic bookkeeping or marketing);
- To obtain necessary certifications or, licensures; or

- To obtain a necessary academic degree or vocational credential when the industry standard is self-employment (e.g. cosmetology, real estate agent, etc.).

Self-employment is typically not considered when the individual is entering a field in which he or she does not have previous experience and wage employment is a feasible option to gain experience and build expertise in the field. Exceptions may be considered when self-employment is the most appropriate option to accommodate disability related concerns.

### **16.1.1 Ownership**

The client shall maintain majority ownership and substantial participation in core business functions to be considered for self-employment. In the case of a partnership or corporation, the individual receiving DVR services shall be the controlling partner or shareholder at 51% or better. The case file shall clearly demonstrate the individual's ownership and substantial participation in core business functions.

### **16.1.2 Parameters**

Business ventures shall be for-profit and comply with all relevant state, federal, and local laws and regulations. Bankruptcy or other legal proceedings that directly impact business planning shall be resolved by the individual prior to engaging in self-employment. The DVR self-employment program excludes:

- Passive activity in which the business owner does not materially or physically participate;
- Highly speculative businesses, such as those requiring a patent that has not yet been obtained;
- Illicit, or sexually explicit businesses;
- Multi-level marketing or pyramid models;
- Hobby businesses;
- Businesses engaged in any aspect of the marijuana industry;
- Non-profit organizations; and
- Other businesses determined by the Director to be inconsistent with the values and sensibilities of the State.

For the purposes of owning and operating a business, DVR shall does not:

- Purchase real estate or land;
- Erect or modify the structure of buildings, including homes;
- Purchase motorized vehicles licensed to operate on public thoroughfares;

- Pay for normal living expenses;
- Pay wages for permanent full-time or part-time employees of the business;
- Purchase firearms or ammunition.

*Individuals wishing to explore nonprofit development may receive services to achieve an employment goal within a nonprofit setting – though not as part of the DVR self-employment program. As part of vocational goal planning, clients may be assisted with referral to nonprofit resources such as the Colorado Nonprofit Association (CANPO) and, when appropriate, training services such as grant writing courses or education in non-profit management.*

*Hobby businesses are those which do not substantially contribute to the individual's personal income. Income which is sufficient to meet the needs of the individual, such as adequately supplementing disability benefits, may be considered work activity. To consider whether a business concept reflects a hobby business or work activity explore a) whether there is an intention to generate profit or income; b) the continuity or regularity of the activity or transactions; c) whether the activities are a regular occupation or profession; and d) whether the individual presents him or herself to others as selling the goods or services.*

### **16.1.3 Supported Self-Employment**

Supported self-employment provides the opportunity for individuals with most significant disabilities to own a business with appropriate resources and supports. For those who need ongoing support to perform the functions and operation of their businesses, supported self-employment may be a viable option to meet the individual's employment needs. An individual may be considered for supported self-employment services when:

- The VR counselor and the individual have identified supported self-employment as the appropriate employment outcome;
- Considerable assistance is needed to develop an individualized, profitable, and sustainable microenterprise;
- The individual will perform the essential tasks of the business concept, with or without accommodations;
- A self-employment outcome can be maintained with necessary ongoing and extended supports in place; and
- Another individual, organization, or resource has been identified to provide extended services after DVR funded services are complete.

Extended services are not time limited and may be needed for the life of the business. DVR may only fund extended services for youth age 24 or younger when no other

funding source is available. In these cases, DVR funding of extended services shall be limited to a period of 4 years and not extend beyond the youth's 25<sup>th</sup> birthday. Extended services may include:

- On-the-job support;
- Ongoing case management;
- Peer support;
- Natural support; and
- Ongoing paid professional services for the business.

Necessary extended services shall be identified using the agency approved form and updated as needed throughout the VR case.

Supported self-employment requires a team approach for planning and ongoing support. The business or support team shall explore and determine the feasibility of the proposed business and assist the individual to develop his or her business plan, launch the business, and address the individual's extended support needs. The business team membership is based on the support needs of the individual and consideration should be given to include:

- Informal supports, such as family members and/or friends;
- Formal supports, such as legal guardians, provider agencies, Community Work Incentives Coordinator, and other appropriate State agencies;
- Community Centered Board staff (if applicable);
- Community Mental Health Center staff (if applicable);
- Community experts relevant to the business, such as an accountant or attorney; and
- Community business mentor operating similar business concept.

## **16.2 REHABILITATION COUNSELORS FOR ENTREPRENEURSHIP**

Rehabilitation Counselors for Entrepreneurship (RCE) have specialized skills and knowledge in the area of self-employment. RCEs receive additional training to assist DVR Counselors through the self-employment process and provide consultation to individuals considering self-employment. The Counselor and RCE work closely with the individual to determine whether self-employment is a reasonable outcome to pursue.

## **16.3 SELF-EMPLOYMENT REVIEW TEAM (SERT)**

The self-employment review team (SERT) consists of Counselors and other DVR staff who have been trained or have experience in DVR self-employment. The SERT reviews

business plans and submits business plan feedback to the referring RCE. The SERT is available for consultation on business plan review results.

**16.4 TIERS AND FUNDING FOR SELF-EMPLOYMENT**

DVR shall not be the sole funding source for any self-employment endeavor. Individuals pursuing a self-employment outcome shall contribute toward the cost of their business venture in cash or in-kind contribution in the amount identified in the schedule below. The individual’s contribution may be provided from personal resources; property owned by the individual that is critical to business operation; professional or licensure fees paid by the individual; loans from banks or micro-lender organizations; or funds derived from social security work incentives (e.g. Plan for Achieving Self-Sufficiency (PASS)). To determine the value of an in-kind contribution (i.e., personal property critical to the business) the individual shall research and document the fair market valuation of assets, which shall be confirmed by the RCE.

Given the entrepreneurial nature of the self-employment program, the client contribution is required regardless of the individual’s Financial Need Analysis or social security benefit status. To the extent necessary and feasible, DVR shall assist the individual to identify potential funding sources for business start-up or expansion.

In determining the applicable funding tier, only startup costs are considered. Startup costs do not include necessary business management and/or vocational training, consultation or assistive technology needed to accommodate a disability.

Tier Level	Startup Costs	Maximum DVR Contribution	Required Client Contribution	Minimum Review Criteria
1	\$3000 or less	85%; up to \$2550	15%; up to \$450	Client, RCE, and Regional RCE II
2	\$3000.01 - \$6500	85% of first \$3000; 70% >\$3000; total DVR contribution up to \$5000	15% of first \$3000; 30% > \$3000; total client contribution up to \$1500	SERT, Client, and RCE
3	>\$6500	85% of first \$3000; 70% of \$3000.01 - \$6500; 50% of \$6500.01 - \$21,500; total DVR contribution up to \$12,5000	15% of first \$3000; 30% of \$3000.01 - \$6500; 50% of \$6500.01 - \$21,500; total client contribution up to \$9000	SERT, Client, and RCE; anything over \$12,500 requires District Supervisor and Regional Manager

#### **16.4.1 Use of Plans for Achieving Self-Support (PASS)**

Individuals receiving SSA benefits may consider a PASS to obtain financial assistance with startup costs. PASS may be able fund business startup costs not covered by DVR, such as the purchase of a vehicle or similar expenses. There are experts with the Social Security Administration who are available to assist in the writing of a PASS Plan or to answer technical questions. They may be reached by calling 1-800-772-1213. Additionally, PASS Cadre consultation may be available through local SSA offices.

#### **16.5 THE SELF-EMPLOYMENT PROCESS**

The rehabilitation counselor shall fully inform the individual interested in self-employment of the role of DVR and the self-employment process by reviewing all relevant documents which describe the guidelines of the self-employment program and funding tiers and completing the entrepreneurial profile, checklist, and questionnaire. These documents shall be used to explore whether a self-employment outcome aligns with the individual's strengths, resources, concerns, priorities, abilities, capabilities, interests, and informed choice, as well as whether the initial business concept warrants further development. This information shall also be considered by the counselor, individual, and RCE to determine if transferring the individual's case to the RCE is appropriate.

If self-employment is not determined to be viable due to either the nature of the business concept or lack of alignment with the individual's strengths, resources, concerns, priorities, abilities, capabilities, interests, and informed choice, the counselor will resume comprehensive assessment activities with the individual to determine an alternative employment outcome.

#### **16.5.1 Self-Employment Comprehensive Assessment**

Individuals continuing with further exploration of a self-employment outcome shall work with the counselor or RCE to complete the comprehensive assessment. Comprehensive assessment activities for an eligible individual desiring self-employment as an employment outcome include technical assistance and other consultation services to conduct market analyses and develop the business plan. A feasibility study and other entrepreneurial assessments may be utilized to support the documentation of the individualized analysis of the comprehensive assessment. All support and assistance necessary to develop a business plan shall be outlined in a Business Exploration Agreement (BEA), including concurrent services, such as physical or mental restoration, short-term training, or other supportive services that are required for the individual to develop his or her business plan. The BEA shall identify necessary services, service providers, funding sources, timeframes for completion of each service, and

responsibilities of both the individual and DVR. The BEA shall address how progress will be monitored toward completion of the BEA. Insufficient progress toward the completion of services outlined in the BEA may result in further review or possible termination of the BEA.

### **16.5.2 Business Plans**

The business plan describes the proposed or existing business venture and is the blueprint of the business concept itself. The business plan is developed after thorough research of the industry, market, product, financial situation, and overall proposed organization and provides an organized system for researching the feasibility of the business concept. A written business plan shall be developed for all self-employment outcomes. The size and scope of the plan is determined by the RCE and is relative to the business type and other individual factors.

For a Tier 1 business, a one-page business plan is sufficient and must include:

- Brief business description;
- Estimated startup costs;
- Known competitors within the market;
- Anticipated customers;
- Marketing plan; and
- Brief financial/revenue forecast.

A reduced scope business plan is necessary for a business funded at the Tier 2 level. A reduced scope business plan is considered for occupations such as a real estate agent, as the connection to a parent company reduces start-up costs and complexity. A reduced scope business plan must include:

- Business Feasibility Worksheet;
- Self-Employment Questionnaire;
- Business operations startup;
- Financial projections (3 years); and
- Estimated startup costs.

A comprehensive business plan is required for any business funded at the Tier 3 level. A comprehensive business plan must include:

- Executive summary;
- Business description;
- Competitive survey;
- Market survey;
- Customer survey;

- Marketing plan;
- Operations plan (includes legal, insurance, taxes, inventory, zoning, licensing, production expenses, and pricing strategy, etc.);
- Estimated startup costs;
- Financial projections (3 years);
- Backup plans; and
- Accounting procedures.

As necessary, DVR shall provide or direct clients pursuing self-employment to resources that provide technical assistance and other consultation services to conduct market analyses and develop business plans.

#### **16.5.2(a) Special Considerations for Independent or Subcontractors**

Fields in which it is the industry standard to hire independent or subcontractors may be considered for a self-employment outcome, including many positions within the “gig economy” (e.g., Uber, Lyft, wag.com, etc.). Positions of this nature result in earnings reported through a 1099 Form rather than a W-2. These positions often require an abbreviated self-employment process due to limited risk and start-up requirements. Other independent or subcontract work, including real estate agents, cosmetologists, estheticians, lawn care, etc. requires a more comprehensive approach to self-employment. Counselors considering supporting an IPE to pursue such employment shall consult with an RCE to determine whether the employment outcome is appropriately served through the self-employment program and the documentation required.

#### **16.5.2(b) Special Considerations for Established Businesses**

Any business operating for less than 12 months, shall be considered a new business for purposes of the self-employment program. When an individual has an established business that has been in operation for at least 12 months and is seeking DVR support to address disability related barriers impacting the business’ stability or growth, the counselor shall consult with an RCE to determine the best course of action for the success of the individual, regardless of the nature of supports requested. The individual shall provide documentation to allow the RCE to evaluate the current performance of the business, including profit and loss statements for the past 12 months and all Schedule C tax forms for up to 3 years. Based on this information and consultation with the individual, the RCE will advise the counselor of the ongoing viability of the business and determine whether transfer of the individual’s case to the self-employment program is warranted.

Self-employment services are not available to solely support the expansion of a currently successful business. Rather self-employment services may be considered when the

current stability or performance of the business is limited due to disability related barriers, which may be addressed by the self-employment program.

### **16.5.2(C) SPECIAL CONSIDERATIONS FOR SELF-EMPLOYMENT IN AGRICULTURE**

Individuals operating farms or ranches may be considered for self-employment. Because farms and ranches often have no net profit as earnings are generally put back into ongoing business operations, the counselor shall consult with an RCE for guidance in completing the Financial Need Analysis and criteria for monitoring progress toward case closure.

#### **16.5.3 Business Plan Approval**

Each business plan shall be reviewed at the appropriate review level to determine if all the Business Plan components have been addressed and evaluate the continued feasibility of the business. Minimum criteria to be considered include:

- The business' potential profitability as reflected in the business plan's financial forecast
- Startup costs
- Availability of financial resources
- The client's ability to effectively manage the business as it is designed

### **16.6 SELF-EMPLOYMENT SERVICES**

When the DVR Counselor and the individual agree to a self-employment outcome, necessary and appropriate self-employment services will be identified and included on the Individualized Plan for Employment to assist the individual in achieving his or her outcome.

#### **16.6.1 Self-Employment Licenses, Tools, Equipment, Initial Stocks, and Supplies**

Self-employment goods shall be provided only as necessary relative to the business plan. Self-employment equipment refers to non-adaptive equipment normally required by businesses in the chosen field. Initial stocks and supplies are limited to those necessary for the initial establishment of the business and shall not exceed projected sales for the first three months. Self-employment licenses include initial licenses required for the individual to perform business functions as identified on the business plan.

#### **16.6.2 Self-Employment Training Services**

Specific entrepreneurial training, such as that offered by the Small Business Association (SBA) and Small Business Development Center (SBDC), to develop general skills

necessary for successful self-employment. Training may include a variety of business skills, such as basic accounting software, marketing, and networking.

Academic or vocational training necessary to work in the identified field is typically limited to those industries in which self-employment is the industry standard (e.g., cosmetology, real estate, etc.). The policy for DVR assistance with academic and vocational training is found in Chapter Twelve, Vocational Rehabilitation Services.

### **16.6.3 Self-Employment Professional Services and Costs**

Professional services necessary to assist with the start-up of the business, which may include marketing, accounting, and legal services, may not exceed three months in duration and are intended to support the initial set-up only. Professional services also include operational costs during the initial establishment period, such as website hosting and similar expenses. Operational costs shall not exceed three months in duration without supervisory approval.

### **16.6.4 Self-Employment Consulting Services**

Referral and coordination with small business consulting resources, as necessary. Includes specialized coaching intended to provide technical assistance and guidance during start-up or existing small businesses on areas such as: financial forecasts; marketing; accounting; and goal setting to ensure sustainability and profitability of the business. Self-employment consulting may also include coordination and referral for small business loans, as appropriate.

## **16.7 INDIVIDUALIZED PLAN FOR EMPLOYMENT**

Following approval of the relevant business plan, an Individualized Plan for Employment (IPE) shall be developed consistent with all requirements of Chapter 11. The IPE shall be identified as a self-employment plan and include:

1. The specific employment goal identified in the business plan, consistent with the title found in the Standard Occupational Classification (SOC) system;
2. The objectives necessary for the individual to attain the planned self-employment outcome, consistent with the assessment of vocational rehabilitation needs and the individual's informed choice;
3. The specific vocational rehabilitation goods and services necessary to achieve the planned self-employment outcome, including (as applicable):
  - A. Training needed to equip the client with business management and operation skills
  - B. Assistive technology or other accommodations needed for management and operation of the business

### C. Supportive services to start the business

4. Timelines including the projected dates for the initiation and the anticipated duration of each vocational rehabilitation service and a projected time frame for the achievement of the self-employment outcome.
5. Objective criteria, procedures, and schedules to be used for periodic evaluation and monitoring of progress toward the self-employment outcome and successful operation of the business to support this outcome.
6. Provider(s) as described in the business start-up costs and those addressing disability related service needs, consistent with the individual's informed choice.
7. Necessary start-up expenses identified in the business plan and in accordance with the appropriate funding tier.
8. The plan to monitor and evaluate the success of the business through monthly reviews and financial reports with attention paid to marketing activities and cash flow (such as Business checkbook register, Profit and Loss Statements, Monthly Balance statements, QuickBooks statements, etc.)
9. Closure criteria to include an agreed upon income level (net profit/breakeven) consistent with financial projections submitted with the business plan and including at least one quarterly/annual tax submission to the IRS
10. The client responsibility that the individual will file all relevant state, local, sales, and self-employment taxes.

#### **16.7.1 IPE Evaluation Criteria**

Evaluation criteria for IPE for self-employment shall measure progress toward and completion of required steps in the business development process and assure adequate business growth. Criteria shall assure the appropriate results are achieved based on the client's needs:

- That the individual possesses adequate skills to manage his or her own business.
- That the individual has sufficient technical skills to run the business.
- That the individual has developed an effective network of professional advisors, which may include an attorney, CPA, and business mentor.
- That the individual has developed and is implementing a sound financial plan to operate the business and sustain long-term viability.
- That all necessary accommodations are in place to address any disability-related needs.
- That the business is generating adequate revenue and planned for income growth to cover all business operating costs and ongoing accommodation costs.
- That clearly defines when the individual shall assume full responsibility for ongoing business management and continued growth without further vocational

rehabilitation services. This criterion shall be described as a level of business performance.

### **16.8 MONITORING THE SELF-EMPLOYMENT IPE**

The evaluation criteria to measure the financial progress of the business shall be through the completion of one or more of the followings reports: Profit and Loss statement, monthly balance statement, or monthly QuickBooks statement. These documents are a means by which both the individual and the counselor shall be able to determine adequate business growth. One of the monthly documents described above shall be reviewed and analyzed in comparison with the Financial Forecast spreadsheet. The individual and counselor may then be able to make appropriate business decisions to improve progress, if necessary.

Once all start-up inventory and supplies have been purchased and the business is meeting its operating expenses (i.e., “break-even point”), the RCE shall continue to provide technical assistance and monitor the business as it continues to build the monthly revenue necessary to reach the agreed upon income goal. During the monitoring period and until successful case closure, the services shall be limited to necessary and planned disability-related services.

### **16.9 SUCCESSFUL CASE CLOSURE**

There is no standard minimum level of earnings or hours worked that must be met to achieve a successful closure. Rather, these criteria are established on a case-by-case basis and documented on the IPE. Counselors shall establish these criteria with the individual and monitor progress throughout the rehabilitation process. To determine whether the individual has achieved a successful self-employment case is ready to be closed as successful, the counselor shall confirm:

1. The self-employment outcome is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;
2. The self-employment outcome is in the most integrated setting possible;
3. The individual has maintained the self-employment outcome and the agreed upon income goal for a period of at least 90 days (For best practice, also evaluate whether the individual is able to put money back into the business to maintain ongoing business expenses);
4. Both the individual and the counselor consider the self-employment outcome to be satisfactory and agree that the individual is performing well in the business;

5. Documentation in the case record shall demonstrate that vocational services were provided and the client has agreed that no further vocational services are necessary.

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## ***Chapter Seventeen - Closure***

### **The Regulations**

#### **361.43 Procedures for 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 plan for employment is no longer eligible for services, the State unit must—**

- (a) Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual’s representative;**
- (b) 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 . . .**
- (c) Provide the individual with a description of services available from a client assistance program. . .**
- (d) Refer the individual—**
  - (1) To other programs that . . . can address the individual’s training or employment-related needs; or**
  - (2) To Federal, State, or local programs or service providers, including, as appropriate, independent living programs and extended employment providers, best suited to meet their needs, if the ineligibility determination is based on a finding that the individual has chosen not to pursue, or is incapable of achieving, an employment outcome as defined in § 361.5(c)(15).**
- (e) Review within 12 months and annually thereafter . . . 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.**

#### **Section 361.44 Closure without eligibility determination.**

**The designated 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.**

### **Section 361.47 Record of Services**

**(a) The designated State unit must maintain for each applicant and eligible individual, documentation a record of services that includes . . .**

**(2) If an applicant or eligible individual receiving services under an individualized plan for employment has been determined to be ineligible, documentation supporting that determination in accordance with the requirements under section 361.43.**

**(3) Documentation that describes the justification that describes closing an applicant's or eligible individual's record of services if that closure is based on reasons other than ineligibility, including, as appropriate, documentation indicating that the State unit has satisfied the requirements in section 361.44.**

**Section 361.56 Requirements for closing the record of services of an individual who has achieved an employment outcome.**

**The record of services of an individual who has achieved an employment outcome may be closed only if all of the following requirements are met:**

**(a) Employment outcome achieved. The individual has achieved the employment outcome that is described in the individual's individualized plan for employment in accordance with section 361.46(a)(1) and is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.**

**(b) Employment outcome maintained. The individual has maintained the employment outcome for an appropriate period of time, but not less than 90 days, necessary to ensure the stability of the employment outcome, and the individual no longer needs vocational rehabilitation services.**

**(c) Satisfactory outcome. At the end of the appropriate period under paragraph (b) of this section, the individual and the qualified rehabilitation counselor employed by the designated State unit consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment.**

**(d) Post-employment services. The individual is informed through appropriate modes of communication of the availability of post-employment services.**

### **17.1 CONDITIONS FOR CLOSURE**

Closure shall occur at any time in the vocational rehabilitation process when it has been determined that one of the following has occurred:

1. The individual has achieved a competitive integrated employment outcome consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice after the provision of necessary and appropriate planned services under an IPE.

2. The individual is not eligible or is no longer eligible.
3. Sufficient progress toward achieving an employment goal, as outlined within the IPE, is not occurring.
4. Continued services are not appropriate or the individual is not available for other reasons. The determination of whether continued services are appropriate is made by the DVR Counselor, in consultation with the client to the extent feasible, based on the individual circumstances of the applicant or client.

The reason and corresponding rationale for any closure shall be documented in the individual's client record. Closure documentation shall include the individual's employment status, when known.

## **17.2 CRITERIA FOR A SUCCESSFUL VOCATIONAL REHABILITATION CLOSURE**

The record of services of an individual who has achieved an employment outcome may be closed only if all of the following requirements are met:

### **17.2.1 Employment Outcome Achieved**

- A. The individual has achieved the employment outcome that is described in the IPE or IPE amendments.
- B. The employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- C. The client record shall contain documentation that demonstrates the vocational rehabilitation services provided under the individual's IPE and supplements and amendments contributed to the achievement and/or maintenance of the employment outcome.

### **17.2.2 Employment Outcome Maintained**

1. The individual has maintained the employment outcome for an appropriate period of time, but not less than 90 days, necessary to ensure the stability of the employment outcome.
  - a. In the case of supported employment, the individual has maintained the employment outcome and achieved stability in the work setting for at least 90 days after transitioning to extended services.
2. The individual no longer needs vocational rehabilitation services.

The DVR Counselor, staff person, and/or appropriate service provider shall contact the individual and, when appropriate, the employer, at least once per month to assess job stability and assure that the employment outcome is maintained for the minimum time required of 90 days for all successful employment outcomes. The client record shall

contain documentation of the person(s) contacted as well as the content and outcome of each contact.

### **17.2.3 Employment Outcome Satisfactory**

At the end of the appropriate period, which shall be no less than 90 days, the individual and, if appropriate the individual's authorized representative, and the DVR Counselor shall consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment.

### **17.2.4 Compensation Verified**

There shall be verification in the client record that the individual is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals. Verification may include the participant's verbal/written confirmation, a copy of a job announcement that includes wage information, written statement by a job placement specialist or other provider, employer verification or other type of verification. Self-employment requires that the income goal identified in the IPE has been met.

*Certain employment outcomes (i.e. ranch hand, nanny) have compensation packages that include salary, plus room and board, the total of which meets minimum requirements for competitive wage.*

### **17.2.5 Individual Informed of Post-Employment Services**

The individual and, if appropriate the individual's authorized representative, shall be informed through appropriate modes of communication of the availability of post-employment services.

### **17.2.6 Ticket to Work Considerations**

Ticket to Work participants shall be informed, upon client record closure, about the resources and assistance available by utilizing an Employment Network (EN) and that Ticket assignment to an EN shall occur within 90 days in order to maintain Continuing Disability Review (CDR) protection. A list of available EN's in Colorado and/or contact information for Maximus shall be provided to all beneficiaries closed as successfully employed.

### **17.2.7 Supported Employment Considerations**

A supported employment outcome shall meet all of the criteria for a successful vocational rehabilitation closure. Closure for individuals with most significant disabilities

successfully working in supported employment settings shall meet additional criteria identified and agreed upon in the IPE Supplement for Supported Employment.

Documentation in the client record shall provide evidence that the individual is:

- A. Performing individualized or customized competitive integrated employment; and,
- B. Working the number of hours identified as his or her weekly work goal,

### **17.2.8 Self-Employment Considerations**

A self-employment outcome requires that the business development results identified and agreed upon in the IPE for Self-Employment shall be achieved prior to closure of the client record. Documentation in the client record shall provide evidence that the following closure criteria have been met:

- A. The business is operational and meeting all federal, state and local laws governing the operation of the business including maintaining adequate insurance coverage for business requirements.
- B. The business is generating sufficient income to cover all required business expenses, associated impairment-related expenses, if applicable, and meet the agreed upon income goal.
- C. The individual and the DVR Counselor agree that the individual's technical and managerial skills are adequate for on-going business management and continued growth without further vocational rehabilitation services.

### **17.2.9 Considerations for Contact and Successful Closure**

In the event that the Counselor is unable to reach the participant directly, the client record shall document that the Counselor made multiple attempts of contact using a variety of times and methods. Once current employment has been verified and documented, the Counselor can proceed with sending out a closure letter that provides information about the availability of Post-Employment Services and the client's appeal rights.

### **17.2.10 Temporary and Seasonal Employment**

Determining whether temporary or seasonal employment is a successful employment outcome may include consideration of the following:

- requirements for successful vocational rehabilitation closure have been met
- job is reasonably expected to continue
- employment stability measured by whether there is a need for further VR services
- client and Counselor agree outcome is satisfactory based on informed choice

- consistency of the outcome within the standards of the industry documented in case client record
- consultation with Supervisor I

### **17.3 INELIGIBILITY CLOSURE**

When the DVR Counselor determines that an applicant is ineligible or that a previously determined eligible individual is no longer eligible for vocational rehabilitation services, the client record shall include documentation specifying the reasons for this determination. An ineligibility determination can be made only after full consultation with the individual or, when appropriate, his or her authorized representative or after giving clear opportunity for such consultation. This consultation, or the opportunity for it, shall be documented in the client record.

Each individual determined ineligible shall be referred to:

- Other training or employment-related programs in the statewide workforce development system which can be of assistance to him or her in preparing for, securing, retaining, advancing in, or regaining employment; or
- If the determination is based on the severity of the individual's impairment or a finding that the individual chooses not to pursue competitive integrated employment, other programs best suited to meet his or her rehabilitation needs, such as independent living programs and extended employment providers.

#### **17.3.1 Determination of Ineligibility and Notification**

Documentation that one or more of the eligibility criteria are not, or are no longer, met shall be appropriately recorded in AWARE.

The DVR Counselor shall provide the individual with written notification, signed and dated, and through appropriate modes of communication, of the ineligibility closure action which includes:

1. The reason for closure;
2. Information about the individual's appeal rights;
3. A description of the resources available from the Client Assistance Program and how it can be contacted; and
4. When the reason for closure is due to the severity of the individual's impairment, that the ineligibility decision will be reviewed within 12 months, unless the individual refuses, is no longer present in Colorado, DVR is unable to locate him or her, or the impairment is rapidly progressive or terminal.

### **17.3.2 Ineligibility Due To the Severity of the Individual's Impairment(s)**

An ineligibility decision due to the severity of an individual's impairment(s) can only be made when the client record contains clear and convincing evidence that the applicant or client is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome. Clear and convincing means that there is a high degree of certainty before it can be concluded that an individual is incapable of benefiting from services in terms of an employment outcome. The term *clear* means unequivocal. 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 shall include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings.

The DVR Counselor shall provide an opportunity for full consultation with the individual or, as appropriate with the individual's representative.

The DVR Counselor shall review the ineligibility decision within twelve (12) months of closure and annually thereafter if requested by the individual or his or her authorized representative, unless the individual refuses the review, is no longer present in the State, his or her whereabouts are unknown or the individual's medical condition is rapidly progressive or terminal. The review(s) shall include consideration of the possibility of supported employment service provision as a means for achieving an employment outcome. The results of all annual reviews shall be documented in the client record.

### **17.4 OTHER REASONS FOR CLOSURE**

In addition to closure due to a successful employment outcome or ineligibility, the DVR Counselor may close a client record for an applicant or client for any of the following reasons:

1. All other reasons: Used only when the reason for closure is not covered by any of the available options.
2. Death
3. Employment in Non-integrated Setting: Used when an individual who received services was placed in a non-integrated employment setting for a public or private nonprofit agency or organization that provides compensation with the Fair Labor Standards Act. Do not use this reason for a client who is working in an integrated setting, earning subminimum wage (see "Subminimum Wage Employment").

- Additional requirements apply when an individual chooses to work in a non-integrated setting. These requirements are described in section 17.4.1 and, if the individual is also earning a subminimum wage, chapter 18.
4. Extended Services Funding Not Available (after IPE): Used when an individual has received VR services, but requires long term extended services for which no long term source of funding is available.
  5. Extended Services Funding Not Available (before IPE): Used when an individual would have benefitted from the provision of supported employment services, but was determined ineligible because a long term source of extended services is not available, and is not anticipated to be available. This reason is used at the time of initial eligibility determination only.
  6. Foster Care: Used when the individual is in the foster care system and has moved from the area as part of such a program or system (youth only).
  7. Health or Medical Issue: Used when the individual is receiving medical treatment that is expected to last longer than 90 days and precludes entry into unsubsidized employment or continued participation in the program.
  8. Individual in institution other than a prison or jail: Used when an individual has entered an institution, other than a prison or jail, and will be unavailable to participate in a VR program for an indefinite or considerable period of time. This category of institution includes hospitals, nursing homes, treatment centers, etc.
  9. Individual incarcerated in prison or jail: Used when an individual will be unavailable to participate in a VR program for longer than 60 days because he or she is incarcerated in a prison, jail, or other criminal correction facility.
  10. Ineligible – after eligibility determination: Used when an individual was determined eligible, but is later determined to not have met eligibility criteria. Use this selection when an individual makes an informed decision to pursue employment that does not meet the definition of competitive integrated employment.
  11. Ineligible – disability too significant to benefit: Used when an individual whose mental and/or physical disability and resulting functional limitations are so significant that the individual cannot benefit from VR services. Also use this code for eligible individuals who later acquire additional disabilities and/or functional limitations that are so significant that the individual cannot continue to benefit from VR services.
  12. Ineligible – does not require VR services: Used when an individual does not require VR services to prepare for, enter into, engage in, or retain gainful employment consistent with his or her strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

13. Ineligible – no impediment to employment: Used when an individual is not eligible for VR services because his or her physical or mental impairment does not constitute a substantial impediment to employment.
14. Lack of sufficient progress toward employment: Used when an individual is not making progress toward achieving employment or is failing to reasonably meet the objectives and requirements of his/her Individualized Plan for Employment. The Counselor shall work with the individual to explore and resolve all barriers to progress and shall close the case upon determination that forward progress toward employment is not possible or likely to resume.
15. No longer interested in receiving services or further services: Used when an individual actively chooses not to participate or continue in his or her VR program at this time. Also use this code when an individual's actions make it impossible to begin or continue a VR program, such as repeated failures to keep appointments or the individual declines to participate in appropriate and necessary assessments to determine eligibility and priority for services.
16. Reservist called to active duty: Used when an individual is a member of the National Guard or other reserve military unit of the armed forces and is called to active duty for at least 90 days.
17. Safety or policy non-compliance: Used when an individual threatens or harms VR staff or has repeatedly or severely violated a DVR safety or service delivery policy. Also used when substantiated fraud on the part of a client has occurred. Closures for this reason are only to occur after consultation with a Supervisor.
18. Subminimum Wage Employment: Used when an eligible individual chooses to work in integrated setting earning less than the minimum wage. Additional requirements apply when an individual chooses subminimum wage employment. These requirements are described in section 17.4.1 and chapter 18.
19. Transferred/Referred to Another Agency: Used when an individual needs services that are more appropriately obtained elsewhere. Transfer to the other agency indicates that appropriate referral information is forwarded to the other agency so the agency may provide services more effectively. Include individuals transferred to other state's VR agencies.
20. Unable to locate or contact: Used when DVR staff have made maximum efforts to contact and re-engage the client without success. It is expected that staff shall make a minimum of three (3) attempts to contact the client within a period of ninety (90) days (sixty (60) days for an individual in application status) utilizing all available methods, which may include last known phone number, last known e-mail and last known physical address, prior to closing the case. Additional attempts to contact the client may be extended beyond the ninety (90) day time

period when deemed appropriate by the DVR Counselor given the individual circumstances of the applicant or client.

#### **17.4.1 Semi-annual and Annual Review and Re-evaluation**

For any applicant or eligible individual employed at the time of case closure in employment that does not meet the criteria of competitive integrated employment, DVR shall conduct a review and re-evaluation with the individual semi-annually for the first two years and annually thereafter for the duration of the individual's employment. The review and re-evaluation shall be completed when either of the following criteria apply:

- a. The individual has achieved employment in which he or she is compensated in accordance with section 14(c) of the Fair Labor Standards Act; or
- b. The individual is working in extended employment, which means working in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act.

The review and re-evaluation is used to determine the individual's interests, priorities, and needs with respect to competitive integrated employment and/or training for competitive integrated employment. The re-evaluation shall reflect maximum efforts to assist the individual in moving into competitive integrated employment, including identifying and providing vocational rehabilitation services, reasonable accommodations, and other necessary support services. Input from the individual and his/her authorized representative, when appropriate, shall be incorporated into the review. A written acknowledgement of the review and its outcome shall be signed and dated by the individual using the agency approved form. In the event DVR is unable to obtain signed acknowledgment of the review and re-evaluation, DVR's efforts shall be clearly documented in the individual's service record.

*The semi-annual and annual review required for individuals whose employment does not meet the criteria for competitive integrated employment differs from the reviews associated with Section 511 of the Rehabilitation Act of 1973, as amended - Limitations on the Use of Subminimum Wage (see Chapter 18). For applicants and eligible individuals compensated at subminimum wage, both requirements will apply. DVR may seek to align the timelines for the reviews to the greatest extent possible. However, the review must then satisfy the requirements of both the semi-annual/annual review and re-evaluation, as well as the Section 511 review.*

#### **17.4.2 Order of Selection Wait List**

Closure from an order of selection wait list is appropriate if the individual expresses that he or she is no longer interested in or available to receive services; if he or she cannot be contacted or located or has moved; or if information has been obtained that supports a determination that the individual is no longer eligible for vocational rehabilitation services. The individual shall be afforded an opportunity to participate in the closure decision, unless he or she refuses it or cannot be located. The individual shall be informed of the closure action, in writing, and through appropriate modes of communication, including the reason for closure, the right to an informal review, mediation and formal appeal of the closure decision and how an informal review, mediation and formal appeal may be initiated. Referrals shall be made to other training or employment-related programs in the statewide workforce development system that can be of assistance to the individual in preparing for, securing, retaining, advancing in, or regaining employment.

#### **17.5 RETENTION OF CLIENT RECORDS**

Client records in hard copy and/or electronic formats shall be maintained for five (5) years after closure. These client records shall be stored in secure locations to ensure protection of participant information.

At the beginning of each state fiscal year, client records shall be destroyed in a secure manner according to the above timeline. Client record documentation maintained in the AWARE case management system shall be managed at the state level.

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## *Chapter Eighteen - Limitations on the Use of Subminimum Wage*

### The Act

**(a)(2) No entity . . . may compensate an individual with a disability who is age 24 or younger at a wage . . . that is less than the Federal minimum wage unless . . . The individual, before beginning work that is compensated at a subminimum wage, has completed, and produces documentation indicating completion of, each of the following actions:**

**(A) The individual has received pre-employment transition services**

**(B) The individual has applied for vocational rehabilitation services under title I, with the result that—**

**(i) (I) The individual has been found ineligible for such services;**

**(II)(aa) the individual has been determined to be eligible for vocational rehabilitation services;**

**(bb) the individual has an individualized plan for employment;**

**(cc) the individual has been working toward an employment outcome specified in such individualized plan for employment, with appropriate supports and services, including supported employment services, for a reasonable period of time without success; and**

**(dd) the individual's vocational rehabilitation case is closed; and**

**(ii) (I) the individual has been provided career counseling, and information and referral to Federal and State programs and other resources . . . that offer employment-related services and supports designed to enable the individual to explore, discover, experience, and attain competitive integrated employment: and**

**(II) such counseling and information and referrals are not for employment compensated at a subminimum wage . . . provided by an entity described in this subsection, and such employment-related services are not compensated at subminimum wage and do not directly result in employment compensated at subminimum wage provided by an entity described in this subsection.**

**(c)(1) The entity . . . may not continue to employ an individual, regardless of age at a subminimum wage unless, after the individual begins work at that wage . . . the individual . . . –**

**(A) is provided by the designated State unit career counseling, and information and referrals . . .**

**(B) is informed by the employer of self-advocacy, self-determination, and peer mentoring training opportunities available . . .**

## **The Regulations**

### **34 CFR Section 397.1 Purpose**

**(a) The purpose of this part is to set forth requirements the designated State units and State and local educational agencies must satisfy to ensure that individuals with disabilities, especially youth with disabilities, have meaningful opportunity to prepare for, obtain, maintain, advance in, or regain competitive integrated employment, including supported or customized employment.**

### **34 CFR Section 361.22 Coordination with education officials.**

**(b) Formal interagency agreement.**

**(5) Coordination necessary to satisfy documentation requirements set forth in 34 CFR 397 with regard to students and youth seeking subminimum wage employment; and**

**(6) Assurance that, in accordance with 34 CFR 397.31, neither the State educational agency nor the local educational agency will enter into a contract or other arrangement with an entity . . . for the purpose of operating a program under which a youth with a disability is engaged in work compensated at a subminimum wage.**

## **18.1 YOUTH SEEKING SUBMINIMUM WAGE EMPLOYMENT**

Prior to obtaining employment compensated at subminimum wage, youth 24 years old or younger must participate in certain vocational rehabilitation services and provide verification of having completed these services to their prospective employer. Upon learning a youth is seeking subminimum wage employment, DVR will ensure the youth is able to complete and provide documentation of required services. DVR may learn of a youth seeking subminimum wage employment from any number of sources, including the prospective employer and through the coordination of transition services with the Administrative Unit or Community Centered Board.

For each youth pursuing subminimum wage employment, DVR will accept the youth's application and ensure the youth has completed transition services, including pre-employment transition services in the case of a student with a disability. The DVR Counselor will engage in the vocational rehabilitation process with each applicant consistent with requirements identified throughout the DVR Service Delivery Policy. Prior to seeking subminimum wage employment, a youth will either be determined ineligible for VR services due to the severity of his or her disability, or be determined eligible and be unsuccessful in obtaining a competitive integrated employment outcome, including supported employment or customized employment, after the provision of services under an IPE for a reasonable period of time. The determination of a reasonable

period of time will vary for each youth based on the individual's disability and vocational needs, including supported employment, and the anticipated length of time to achieve the employment outcome identified on the IPE.

At the time of closure for either of these reasons, DVR will provide career counseling, along with information and referral services to other programs that offer employment-related services and supports designed to enable the youth to explore, discover, experience, and attain competitive integrated employment, and facilitate informed choice and decision-making by the youth, or his or her authorized representative as appropriate. If this has not yet occurred at the time of closure, it will be provided within 30 days of the youth's VR case being closed. These services shall not be provided by an entity holding a special wage certificate to employ individuals at subminimum wage.

If a youth refuses to participate in any of the required activities, DVR will ensure the youth understands he or she will not be able to pursue subminimum wage employment.

#### **18.1.1 Semi-annual and Annual Review Requirements**

For youth served under the provisions of 18.1 and newly hired into subminimum wage employment, DVR must review and provide career counseling and information and referral services, once every six months for the first year of the individual's subminimum wage employment and annually thereafter for the duration of the employment in which the individual is earning a subminimum wage.

#### **18.1.2 Documentation Requirements**

All case management activities and services provided to youth seeking subminimum wage employment will be documented and maintained in the youth's service record with DVR. In addition, DVR will provide the youth with documentation of all required activities utilizing the agency-approved form, including the required coversheet itemizing each of the documents provided to the youth, within 45 days of the DVR case closure, and/or at completion of each required review. If additional time is needed due to extenuating circumstances beyond DVR's control, the documentation shall be provided within 90 days.

If a youth refuses to participate in any of the required activities, DVR will document this on the agency-approved form and provide to the youth within 10 days of the youth's refusal.

Documentation will be completed and provided to the youth by DVR not only for the initial provision of required services, but for each subsequent review. DVR will maintain copies of all required documentation provided to each youth.

## **18.2 INDIVIDUALS EMPLOYED AT SUBMINIMUM WAGE REGARDLESS OF AGE**

Regardless of age, all individuals working in employment for which they are earning a subminimum wage must receive career counseling and information and referral services provided by DVR within 30 days of DVR becoming aware of the individual's employment status. An individual may become known to DVR through any number of sources, including through the VR process, self-referral, or referral by the Client Assistance Program, another agency, or the entity employing the individual. DVR is under no obligation to actively recruit or solicit individuals employed at subminimum wage, however DVR staff will be mindful of situations in which they learn an individual is employed at subminimum wage and ensure appropriate follow-up occurs.

DVR will provide career counseling and information and referral services to each individual in subminimum wage employment. These services must be provided in a manner that is understandable to the individual with a disability and which facilitates informed choice and independent decision-making regarding opportunities for competitive integrated employment and career advancement, particularly with respect to supported employment, including customized employment. These services may include benefits counseling. These services shall not be provided by an entity holding a special wage certificate to employ individuals at subminimum wage. An individual working in subminimum wage will be informed of the vocational rehabilitation process and services available, but is not required to apply for services and may receive the required career counseling and information and referral services without having an open case.

If an individual refuses to participate in any of the required activities, DVR will ensure the individual understands he or she will not be able to maintain employment compensated at a subminimum wage.

### **18.2.1 Semi-annual and Annual Review Requirements**

For individuals known to DVR who are hired into subminimum wage employment on or after July 22, 2016, DVR must review and provide career counseling, along with information and referral services, once every six months for the first year of the individual's subminimum wage employment and annually thereafter for the duration of the subminimum wage employment.

For individuals employed in subminimum wage employment prior to July 22, 2016, DVR must review and provide career counseling, along with information and referral services once every year from the date the individual becomes known to DVR for the duration of the employment in which the individual is earning a subminimum wage.

### **18.2.2 Entities with fewer than 15 employees**

Entities compensating employees at subminimum wages must ensure these employees receive information about local self-advocacy, self-determination, and peer mentoring training opportunities every six months during the first year of employment and annually thereafter. Entities with fewer than 15 employees may satisfy this requirement by referring the individuals earning subminimum wages to DVR for the provision of these services. DVR shall provide this information to individuals referred for this purpose within 30 days of the referral from the entity employing the individual. This information shall not be provided by an entity holding a special wage certificate to employ individuals at subminimum wage.

### **18.2.3 Documentation Requirements**

If the individual has participated in the VR process, all case management activities and services provided to the applicant or client will be documented and maintained in the individual's service record with DVR. Regardless of whether the individual has applied for VR services, DVR will provide the individual with documentation of all required activities utilizing the agency-approved form, within 45 days of completion of the required review activities. If additional time is needed due to extenuating circumstances beyond DVR's control, the documentation shall be provided within 90 days.

If an individual refuses to participate in any of the required activities, DVR will document this on the agency-approved form and provide to the individual within 10 days of his or her refusal.

DVR will maintain copies of all required documentation provided to each individual.

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## ***Appendix A: Division of Vocational Rehabilitation (DVR) Definitions***

### **Academic Training Services**

Training provided to develop academic and reasoning abilities, as well as skills for a specific occupation, typically leading to certificates or degrees at the associate's level or higher.

### **Applicant**

An individual who submits an application for vocational rehabilitation services in accordance with section 5.2 of the DVR Policy Manual.

### **Appropriate Modes of Communication**

Presenting information in the manner necessary to enable an individual with a disability to comprehend and respond. Appropriate modes of communication include, but are not limited to, use of interpreters, open and closed caption videos, specialized telecommunications services and audio recordings, Braille and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations and simple language materials.

### **Appropriate Vocational Rehabilitation Services and Goods**

Each vocational rehabilitation service and good must be suitable and of sufficient quality to meet the individual's particular needs and circumstances. To be considered appropriate, the access or use of a service or good shall not require sacrifices or adjustments that would not be reasonably expected of an individual who does not have a disability.

### **Assistive Technology Device (Adaptive Aid)**

Any item, piece of equipment, or product system whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of an individual with a disability.

### **Assistive Technology Evaluation**

An evaluation of the assistive technology needs of an individual with a disability, including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services to the individual in his or her customary environment.,

### **Assistive Technology Service**

Any service which directly assists individuals with disabilities in the selection, acquisition, or use of an assistive technology device, including assistive technology evaluations; purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by an individual with a disability; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, replacing, or donating assistive technology devices; coordinating and using other necessary therapies, interventions, or services with assistive technology devices, such as those associated with education and rehabilitation plans and programs; training or technical assistance to the individual, family members, guardians, advocates or authorized representatives; and, training or technical assistance for professionals, employers and others who are substantially involved in the major life functions of the individual to the extent necessary to support the achievement of an employment outcome by an individual with a disability.

### **Attendant Factors**

Circumstances that directly interact with the impairment to negatively affect employability.

### **Authorized Representative**

Any representative chosen by the applicant or eligible individual, as appropriate, including a parent, guardian, family member, advocate or other person authorized by the applicant or recipient of services, or other person appointed by a court to represent the individual. Although an individual may choose to involve more than one person to assist with representation of his or her interests in pursuing vocational rehabilitation services, individuals appointed by a court must be considered the primary authorized representative.

### **Auxiliary Aids**

A wide range of services and devices that enable individuals with impaired sensory, cognitive, manual, or speaking skills to have an equal opportunity to participate. Examples may include, for individuals with hearing impairments: qualified interpreters, transcription services, closed caption decoders and videotext displays; for individuals with visual impairments: qualified readers, taped texts, materials in Braille and audio recordings; for individuals with speech impairments: TDDs, speech synthesizers and communication boards.

## **AWARE**

Accessible Web-based Activity and Reporting Environment. The Division of Vocational Rehabilitation's electronic case management system. All information contained in this system is also considered part of the client record.

## **Clear and Convincing Evidence**

A high degree of certainty 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. 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.

## **Client**

An applicant for vocational rehabilitation services who meets the eligibility requirements of section 6.1 of the DVR Policy Manual.

## **Client Record**

A record maintained by the Division of Vocational Rehabilitation for each applicant and client which documents all of the interactions with the applicant or client, or authorized representative if applicable, and contains all required documentation of the provision of vocational rehabilitation services authorized under the Rehabilitation Act of 1973, as amended. DVR client records include both printed material and information contained in AWARE (DVR's electronic case management system).

## **Community-Based Services**

Services provided in realistic life settings as applicable for the specific service, such as realistic work settings, an applicant's or client's home or community environment, etc.

## **Community Rehabilitation Program**

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

psychiatric, psychological, social, and vocational services that are provided under one management; testing, fitting, or training in the use of prosthetic and orthotic devices; recreational therapy; physical and occupational therapy; speech, language, and hearing therapy; psychiatric, psychological, and social services, including positive behavior management; assessment for determining eligibility and vocational rehabilitation needs; rehabilitation technology; job development, placement, and retention services; evaluation or control of specific disabilities; orientation and mobility services for individuals who are blind; extended employment; psychosocial rehabilitation services; supported employment services and extended services; customized employment; services to family members if necessary to enable the applicant or client to achieve an employment outcome; personal assistance services; or other similar services.

### **Comparable Services and Benefits**

Services and benefits, including accommodations and auxiliary aids and services, 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 ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment; commensurate to the services that the individual would otherwise receive from DVR. Awards and scholarships based on merit are not considered comparable services and benefits.

### **Competitive Integrated Employment**

Full or part time work, including self-employment, in an integrated setting, for which the individual is compensated at a rate that is not less than the rate required under applicable Federal or State minimum wage law for the place of employment; is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities for the same or similar jobs and who have similar training, experience, and skills; and is eligible for the level of benefits provided to other employees. In the case of an individual who is self-employed, the employment yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations.

### **Comprehensive Assessment**

Gathering information needed to determine a suitable employment outcome and the nature and scope of vocational rehabilitation services necessary to achieve the identified employment outcome. The comprehensive assessment must determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the eligible individual, including his or her need for supported employment.

**Strengths:** Positive attributes and natural advantages, personal assets, and talents.

**Resources:** Support systems that can be drawn upon when needed. This includes emotional, financial, and other types of support the individual will need to achieve his or her employment outcome.

**Priorities:** Work and personal factors of primary importance to the individual, earnings, and other requirements.

**Concerns:** Types of aid and support needed for engaging in work, matters creating stress for the individual, financial concerns and other factors that are critical to successful participation.

**Abilities:** Aptitudes, areas of competence, natural or acquired skills and knowledge, tasks or activities the individual can perform adequately.

**Capabilities:** Capacities for skill development, learning abilities.

**Interests:** Work preferences, activities that the individual is attracted to, and the results of interest inventories or other measures to identify preferences that result in identification of a suitable employment goal.

**Informed Choice:** A choice that is based on a clear appreciation and understanding of the facts, options, implications, and future consequences, both positive and negative, of a decision or action.

### **Core Vocational Rehabilitation Services**

Goods and services provided to individuals that are designed to address specifically identified vocational rehabilitation service needs.

### **Customized Employment**

Competitive integrated employment, for an individual with a significant disability that is based on an individualized determination of the unique strengths, needs, and interests of the individual with a significant disability; is designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer; and is carried out through flexible strategies, such as customizing a job description based on current employer needs or on previously unidentified and unmet employer needs; developing a set of job duties, a work schedule and job arrangement, and specifics of supervision, and determining a job location; using a professional representative chosen by the individual, or if elected, self-representation, to work with an employer to facilitate placement; and providing services and supports at the job location.

### **DVR Instructor**

Orientation and Mobility Instructor or Rehabilitation Teacher employed by the Division of Vocational Rehabilitation.

### **Emergency Condition**

A situation which creates a threat to the health or safety of an applicant or client.

### **Employment Outcome**

A goal of entering, advancing in, or retaining full or part-time competitive integrated employment (including customized employment, self-employment, telecommuting, business ownership, or supported employment) that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

*Note: An uncompensated employment goal of Homemaker or Unpaid Family Worker identified on an IPE approved prior to September 18, 2016 and achieved prior to June 30, 2017 is considered an employment outcome.*

### **Equipment**

Tangible personal property that has a useful life of more than one year and an acquisition cost of \$5,000 or more, which is not a permanent part of a building and does not lose its identity through incorporation into a more complex unit.

### **Extended Employment**

Work in a non-integrated or sheltered setting for a public or private non-profit agency which provides compensation in accordance with the Fair Labor Standards Act (FLSA).

### **Extended Services**

Ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment and that are made available to assist a client in maintaining supported employment based on his or her needs, as specified in the IPE; provided by a State agency, a private non-profit organization, employer or any other appropriate resource after transition from support provided by DVR; or for a youth with a most significant disability, provided by DVR for a period not to exceed four years or such a time that the youth reaches age 25.

### **Extreme Medical Risk**

Probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

### **Family Member (for purposes of services to family members)**

A relative, guardian, or other person who lives in the same household as the applicant or eligible individual, and who has a substantial interest in the wellbeing of that individual and whose receipt of vocational rehabilitation services is necessary to enable the applicant or the client to achieve an employment outcome.

### **Family Unit (applies to financial needs analysis)**

The family unit consists of the applicant or client, the spouse of the individual and any other persons whom the individual claims as a dependent for income tax purposes.

1. When the individual is dependent upon his/her parents, the parents and persons for whom the parents are financially responsible shall be considered part of the family unit.
2. An individual who is living with his/her parents is considered a dependent unless the parents have not claimed the individual as a dependent for income tax purposes for the tax year previous to the financial need determination and do not intend to claim the individual as a dependent in current and future years.
3. When there is a clear indication that the individual is not receiving financial support they may be considered their own family unit, regardless of dependent status for income tax purposes.

### **Functional Capacity Area**

Set of life activities or skills in which the ability to function is significant to successful independence and/or employment. Eight such areas have been identified for purposes of severity of disability: mobility, motor skills, interpersonal skills, communication, work tolerance, work skills, self-care and self-direction.

### **Functional Limitation**

A substantial impairment in an individual's ability to perform an action or activity in the condition, manner, or duration of a required major life activity.

### **Goods**

Commodities, including digital files or downloads, obtained from vendors, or via comparable benefits, that have been determined necessary and appropriate for participation with the Division of Vocational Rehabilitation or for the attainment of an employment outcome.

### **Individual with a Disability**

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

For purposes of Severity of Disability, an individual whose impairment constitutes or results in a substantial impediment to employment and who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

### **Individual with a Most Significant Disability**

An individual with a most significant disability has a severe physical or mental impairment that seriously limits three or more functional capacity areas (mobility, motor skills, interpersonal skills, communication, work tolerance, work skills, self-care and self-direction) in terms of an employment outcome; and, whose successful vocational rehabilitation can be expected to require the provision of two or more core vocational rehabilitation services for at least five months.

### **Individual with a Significant Disability**

An individual with a significant disability has a severe physical or mental impairment(s) that seriously limits one or two functional capacity areas and who otherwise meets the same criteria as for a most significant disability. An individual who is determined to be eligible for SSI/SSDI on the basis of his or her own disability is presumed to have a significant disability.

### **Informed Choice**

A choice that is based on a clear appreciation and understanding of the facts, options, implications, and future consequences, both positive and negative, of a decision or action.

### **Integrated Settings**

#### **Integrated Service Setting**

A setting typically found in the community in which the individual with a disability interacts with persons, other than service provider(s), who do not have disabilities.

#### **Integrated Work Setting**

An employment setting typically found in the community in which the individual with a disability interacts with other employees within the particular work unit and the entire work site and, as appropriate to the work performed, other persons (e.g. customers and vendors) who do not have disabilities (not including supervisory personnel or service

provider(s)), for the purposes of performing his or her job duties, to the same extent as persons who do not have disabilities in comparable positions; and presents opportunities for advancements that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

### **Interpreter Services**

Translation of expressive and receptive language through oral, manual or written communication techniques.

### **Job Coaching**

Training provided by an individual, other than the employer (unless under a program of natural supports in a supported employment placement), to a client after he/she has been placed in a paid employment situation. Job coaching services include job skill training at the work site, work site orientation, monitoring of the individual at the job site to assess employment stability and coordination or provision of specific services at or away from the work site to maintain employment stability.

### **Job Seeking Skills Training**

Training to teach clients how to conduct job searches, prepare resumes, complete applications, and to interview effectively. The provision of job seeking skills training is intended to enable the individual to conduct an independent job search.

### **Job Shadowing**

A community-based situational assessment provided in a real work setting where the individual observes and possibly assists in the performance of a specific job so that the individual has a sufficient understanding of job requirements to assist with making an informed choice among potential employment outcomes.

### **Job Site Evaluation**

A limited situational assessment (up to three hours) which consists of observing an individual with a disability on a specific job to determine if the job and/or work setting is appropriate for the individual and/or to determine accommodations that may be needed.

### **Job Site Modification**

Modification or adaptation to a workstation and/or job site to enable the individual with a disability to access necessary tools, equipment, and materials for the performance of job tasks and/or to improve his/her ability to perform required job tasks.

### **Job Stability**

When an employed individual is reasonably expected to continue to perform all job duties acceptably, without the provision of further vocational rehabilitation services.

### **Maintenance**

Monetary support provided to an individual for 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 vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an Individualized Plan for Employment.

### **Mediation**

The act or process of using an independent third party (a qualified and impartial mediator) 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.

### **Mental Impairment**

Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

### **Necessary Vocational Rehabilitation Goods and Services**

Goods and services which are essential to assess an individual's eligibility and severity of disability, to establish his or her vocational rehabilitation needs and to assist the individual in preparing for, securing, retaining or regaining an employment outcome.

### **Note-taking Services**

Services which accurately record the content of verbal material presented by an instructor, evaluator or employer for an individual who is unable to hear or comprehend verbal communication.

### **Ongoing Support Services**

Supported employment services that are needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability in supported employment; are identified based on the individual's need as specified in the IPE; are furnished by DVR unit from the time of job placement until transition to extended services, unless post-employment services are provided following transition; 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.

### **On-the-Job Training (OJT)**

Job skill training provided at the work site by the employer after placement in a paid employment situation has been secured with the clear expectation that employment in the same or a similar job for the employer will continue for the individual with a disability if training is successful.

### **Orientation and Mobility Evaluation**

Personal adjustment evaluation for persons who are visually impaired to determine his/her independent travel skills and needs.

### **Orientation and Mobility Training**

Personal adjustment training provided to persons who are blind and visually impaired to teach independent travel skills.

### **Personal Adjustment Evaluation**

An individualized and systematic process to evaluate an individual's skills, behaviors, and needs in the areas of personal functioning, homemaking, orientation and mobility, adaptive communication, assistive technology, daily living skills, and, if applicable, low vision.

### **Personal Adjustment Training**

Training provided to help individuals develop compensatory skills and/or to adjust behavior in the areas of independent living, personal functioning, homemaking, orientation and mobility, adaptive communication, assistive technology, daily living skills, and, if applicable, low vision.

### **Personal Assistance Services**

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 Impairment**

Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine

### **Physical and Mental Restoration Services**

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, including diagnosis and treatment for mental or emotional disorders; and other medical or medically related rehabilitation services.

### **Post-Employment Services**

One or more vocational rehabilitation services 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, interests and informed choice. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and duration.

### **Pre-Employment Transition Services**

A subset of transition services provided to students with disabilities, which must fit into one of the following categories: job exploration counseling; work-based learning experiences; counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education; and instruction in self-advocacy.

### **Provider**

The individual and/or organization which will render a necessary good or service.

### **Reader Services**

Verbal communication of printed text for an individual unable to read or comprehend typical written or printed materials.

### **Realistic Work Setting**

For purposes of providing trial work experiences to establish eligibility, a realistic work setting is one that is compatible with the individual's specific limitations and vocational rehabilitation needs and that provides a suitable environment that enables the individual to demonstrate and/or develop his/her abilities, capabilities and capacities to perform work in an integrated setting.

### **Recipient of Services**

Any applicant or eligible individual receiving vocational rehabilitation services, or any potentially eligible student with a disability receiving pre-employment transition services.

### **Rehabilitation Engineering**

Original design, development, adaptation, testing, evaluation, application, and distribution of technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

### **Rehabilitation Teaching**

Personal Adjustment Training provided to persons who are blind or visually impaired to identify and/or overcome or circumvent the barriers to communication, home and personal management, and may include independent mobility. Rehabilitation Teaching may include counseling and guidance to enhance an individual's adjustment to his or her blindness, self-reliance and independent decision-making.

### **Rehabilitation Teaching Evaluation**

Personal Adjustment Evaluation for a person who is blind or visually impaired to identify his/her skills and needs in the areas of communication, home and personal management, adjustment to blindness, independent decision-making, and independent mobility.

### **Rehabilitation Technology Evaluation**

An assessment to identify the assistive technology devices, assistive services, and/or rehabilitation engineering services, which are necessary for the individual to participate in his/her vocational rehabilitation evaluation and Individualized Employment Plan.

### **Rehabilitation Technology Services**

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.

### **Relocation Expenses**

Financial support to cover those expenses of an individual with a disability and/or his or her family when it is necessary to relocate the individual to enable him or her to participate in a vocational rehabilitation program and attain an employment outcome.

### **Residential Modification**

Structural modifications or adaptations to an individual's residence to enable access to and independent function in the residence to the degree necessary for the individual to attain his or her employment outcome.

### **Self-Employment**

An employment outcome where the individual or the entity owned by the individual is responsible for paying for the employer and employee portion of his/her own social security taxes, income taxes, insurance, licenses and other employee benefits. Self-Employment may be a sole proprietorship or corporation.

### **Self-Employment Program Definitions**

**Breakeven:** When a business' net sales are sufficient to pay all business expenses on a monthly basis and no additional money is required.

**Business Acumen:** A person's knowledge, skills and understanding of owning and operating a business. This is primarily obtained through education and experience.

**Business Concept:** The overall description of what a business is going to be, how it is going to operate and how much it is expected to earn. For example, "Fun and Games" will be a family entertainment center offering games and entertainment the whole family can participate in, such as ping pong, skee-ball, bumper pool, skill games, etc. We will operate from 5:00 p.m. to 10:00 p.m., 7 nights a week, and charge a \$5.00 cover per person to generate revenue. We anticipate an average of 100 people Sunday through Thursday and 300 people on Friday and Saturday for a gross income of \$5,000 per week. Our overhead including labor will be \$3200 per week, leaving a gross profit of \$1800 per week or \$93,600 per year..."

**Business Exploration Agreement:** An agreement outlining activities necessary for completion of a business plan, written and signed by the Rehabilitation Counselor for Entrepreneurship (RCE) and client.

**Business Plan, Abbreviated:** A less comprehensive plan written for businesses which operate as a subcontractor with other businesses and have limited overhead and marketing responsibilities.

**Business Plan, Comprehensive:** A complete plan written for normal retail businesses selling products and services to the general public. This plan will include an Executive Summary outlining the owner's qualifications to run the business, Business Concept, Pricing Strategy based on the Product and Service Cost Analysis, Competitive Surveys, Customer Surveys, Marketing and Advertising Plan, Start-up Cost Spreadsheet, Financial Projections, Back-up Plans, Legal Requirements, Insurance Requirements and Costs and Accounting Procedures.

**Entrepreneurial Profile:** A summary completed by the originating Rehabilitation Counselor demonstrating the suitability of the self-employment goal from the perspective of the client's disability and personal characteristics.

**Fair Market Value:** A term normally applied to existing assets, such as equipment and inventory, indicating what the worth would be if these assets were liquidated or sold in today's market (e.g. Blue Book value on a vehicle).

**Financial Forecast (Pro Forma):** A projection or prediction of future sales, costs and profits of a particular business used to project potential success and to establish goals and guidelines for future planning.

**Franchising:** A continuing relationship in which the franchiser provides a licensed privilege to the franchisee to do business, and offers assistance in organizing, training, merchandising, marketing and managing in return for a consideration of profits. Franchising is a form of business by which the owner (franchiser) of a product, service or method obtains distribution through affiliated dealers (franchisees). The product, method or service being marketed is usually identified by the franchiser's brand name and the holder of the privilege (franchisee) is often given exclusive access to a defined geographical area.

**Lease:** A contract between the owner (lessor) and the tenant (lessee) stating the conditions under which the tenant may occupy or use real estate or equipment. Terms usually include a specific period of time at a predetermined rate.

**Milestone:** Date-driven goals set based on the financial forecast to assist the business operator in measuring projected progress of the business and alert the owner if goals are not being met (e.g. "The business will be netting \$1,000 a month in profit by May 15, 2013").

**Net Profit:** Profit that is produced after all expenses and overhead are paid.

**Non-Profit:** An organization or company established for charitable, educational or humanitarian purposes and not for making money.

**Product and Service Cost Analysis:** A process a business must go through for each of its products and services to determine how much it costs to produce and provide the various products and services it offers. This calculation is accomplished by listing the cost of every item that goes into the product or service, including labor costs based on the amount it would take to hire someone to do the same work, and labor overhead. This amount is used to determine how much the product or service must be sold for to guarantee a profit level sufficient to support the goals of the business.

**Profit/Loss:** Profit and loss are terms applied to the accounting spreadsheet that calculates all revenues (sales) and expenses. Subtracting expenses from revenues determines if the business has a net profit or loss. If expenses exceed revenues, is the business has a loss. If revenues exceed expenses, is the business earns a profit.

**Self-Employment:** When an employed person is responsible for withholding and paying their own income tax, Workers Compensation costs, benefits, etc. If an employer pays an employee and deducts the above items from the paycheck, the recipient of the paycheck is not considered to be self-employed.

**Self-Employment Progress Report:** A monthly report of profit and loss submitted by the self-employed client to the Rehabilitation Counselor for Entrepreneurship.

**Self-Employment Questionnaire:** A preliminary questionnaire designed to acquaint the RCE with the client and the Business Concept to assist in assessing viability and planning for a Business Plan.

**Start-Up Costs:** All costs involved in opening a business, including equipment, inventory, rent and utilities (if applicable), advertising, insurance, legal fees, supplies not related directly to resale, such as cleaning materials and office supplies, etc. These are costs projected to be incurred until the business can reach a breakeven level.

**Subcontract:** A subordinate contract under which the supply of materials, services, or labor is let out to someone other than a party of the main contract.

**Viability/Feasibility:** When a business venture can generate sufficient profit to meet the agreed upon income goal of the DVR client. The initial determination of viability is made based on the financial projections and the customer's ability to operate the business with or without support in a profitable manner.

### **Serious Limitation**

A reduction in functioning, due to a severe impairment, to the degree that the individual requires goods and services or special working conditions over an extended period of time, such as job re-engineering, assistive technology, substantial on-the-job support or

intensive supervision, not typically provided for other individuals in order to prepare for, enter, engage in or retain employment in previous jobs, usual line of work and/or occupations usually available to people of equivalent age, education and capacities who do not have disabilities. External factors, such as geographic location, availability of public transportation, lack of financial resources or training, are not considered when determining whether or not a limitation meets the criteria for “serious.”

### **Service**

The furnishing of labor, time or effort on behalf of an applicant or client to assess eligibility and vocational rehabilitation needs, to accommodate barriers to employment and to enable the individual to achieve his or her planned employment outcome.

### **Service Animal**

Service animal are dogs or miniature horses that are individually trained to do work or perform tasks for people with disabilities, such as guiding an individual who is blind, alerting an individual who is deaf, pulling a wheelchair, alerting and assisting an individual having a seizure, reminding an individual with mental illness to take prescribed medications, and calming an individual with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, etc. Service animals are not pets and the work or task must be directly related to the individual’s disability. An animal whose sole function is to provide comfort or emotional support does not qualify as a service animal.

### **Severe Impairment**

A physical or mental impairment is determined to be severe if one or more physical or mental impairments exist 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 illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, intellectual disability, specific learning disability, end-stage renal disease or another disability or combination of disabilities determined on the basis of an assessment.

### **Situational Assessment**

A type of vocational evaluation conducted to assess work behaviors, interpersonal skills and job-related skill levels for purposes of establishing eligibility or developing the Individualized Employment Plan. Situational assessments may take place in community-based settings, including real life work and transitional employment settings, or in facility-based settings, such as community rehabilitation program facilities.

### **Student with a Disability**

An individual with a disability in a secondary, postsecondary, or other recognized education program who is between the ages of 15 and 21, is eligible for, and receiving, special education or related services under an Individualized Education Program (IEP) or is a student with a disability for purposes of Section 504.

### **Substantial Impediment to Employment**

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

### **Supported Employment**

Competitive integrated employment, including customized employment, that is individualized and customized, consistent with the unique strengths, abilities, interests, and informed choice of the individual, including ongoing support services for individuals with the most significant disabilities.

### **Supported Employment Services**

Ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment that are –

1. Organized and made available to assist a client achieve competitive integrated employment;
2. Based on a determination of the needs of a client, as specified in an IPE;
3. Provided by DVR for a period of time not to exceed 24 months, unless under special circumstances the client and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the IPE;
4. Provided 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.

### **Supportive Services**

May include maintenance, transportation, services to family members and personal assistance services provided only to enable the individual to participate in and benefit from other necessary services and goods.

### **Transition Services**

A coordinated set of activities for a youth designed within an outcome oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, competitive 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 youth's needs, taking into account the youth'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 achievement of the employment outcome identified in the youth's Individualized Plan for Employment. Transition services include outreach to and engagement of the parents, or, as appropriate, the representative of such a student or youth with a disability.

### **Transportation**

Travel and related expenses that are necessary to enable an applicant or client to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

### **Trial Work Experiences**

An individualized program of vocational rehabilitation services provided to an applicant or client in realistic work settings to enable the individual to demonstrate and/or develop his/her abilities, capabilities and capacity to perform in work situations. Such services are provided to individuals' whose eligibility or continuing eligibility is questioned due to the severity of his/her disability.

### **Urgent Vocational Rehabilitation Need**

A vocational rehabilitation need that requires immediate provision of a good or service to:

- a. Avoid impending extreme medical risk to the individual,
- b. Save an existing job placement when employment is no longer stable, or
- c. Enable the individual to participate in other goods and/or services that have already been initiated or that are planned to be initiated within two (2) weeks from the date the urgent need is identified.

### **Vehicle Modification**

Structural modifications or adaptations to a motorized vehicle to enable an individual with a disability access to and operation of the vehicle when necessary for the individual to obtain his/her employment goal.

## **Vendor**

A provider to whom DVR can pay for a particular good or service.

## **Vocational Evaluation**

An individualized and systematic process in which an applicant or client, in partnership with the evaluator, learns to identify his or her strengths, resources, abilities, capabilities, interests and viable employment options in order to develop employment goals and objectives. A variety of testing and assessment strategies may be used, including a standardized vocational assessment, situational assessments, community-based job tryouts, job shadowing, work experiences, etc.

## **Vocational Training**

Training typically provided through community colleges, vocational schools and technical institutes and other certification programs to enable clients to develop the skills necessary to perform the tasks of a specific job.

## **Weekly Work Goal**

An estimate of the number of hours per week which the client with a most significant disability can work to achieve the identified employment outcome within twenty-four (24) months. The weekly work goal must be consistent with the client's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

## **Work Adjustment Training**

Training provided to help individuals with disabilities adjust behavior and/or develop compensatory skills in vocational areas, such as peer work relationships, supervisory work relationships, general work behaviors and expectations and work habits. Work adjustment training includes training to improve a client's interpersonal skills to the degree necessary to engage in employment, and shall take place in integrated settings to the maximum extent possible.

## **Work Experience**

A community-based situational assessment provided in a real life work setting for the limited purposes of exposing an individual with a disability to the world of work and what is required to maintain successful employment. Work experience is not typically intended to result in permanent employment in the job setting.

**Youth with a Disability**

An individual with a disability who is not younger than 14 years old and is not older than 24 years old.

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## ***Appendix B: SSDI and SSI General Information***

### **Social Security Title II and SSDI**

Title II of the Social Security Act pertains to Federal Old-Age, Survivors, Family, and Disability Insurance benefits. To be eligible for Social Security Disability benefits, an individual must be disabled (unable to engage in substantial gainful activity), earned a minimum number of credits from work covered under Social Security and apply for benefits. Social Security Disability Insurance (SSDI) is financed with Social Security taxes paid by workers, employers and self-employed persons. To be eligible for a Social Security benefit, the worker must earn sufficient credits based on taxable work to be "insured" for Social Security purposes. The amount of the monthly disability benefit is based on the Social Security earnings record of the insured worker. Most beneficiaries of SSDI receive health insurance coverage from Medicare as long as they are SSDI beneficiaries.

Under the Social Security Disability Insurance (SSDI) program, there are three basic categories of individuals who can qualify for benefits on the basis of disability (and who would be presumptively eligible for DVR services):

1. An insured worker with a disability under full retirement age.
2. An individual with a disability since childhood (before age 22) who is a dependent of a parent entitled to Title II disability or retirement benefits or was a dependent of a deceased insured parent.
3. A widow or widower with a disability, age 50-60, if the deceased spouse was insured under Social Security.

Other Social Security benefits for individuals without a disability (and who would not be presumptively eligible for DVR services) include:

1. Retirement
2. Survivors Benefits
3. Family Benefits

### **Social Security Title XVI and SSI**

Title XVI of the Social Security Act pertains to individuals with limited income and resources who are disabled, blind, or age 65 and older. Eligible SSI beneficiaries have a medically determinable physical or mental impairment, which results in the inability to engage in any substantial gainful activity and can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months. The SSI monthly payment varies up to the maximum federal benefit rate, which may be supplemented by the State or decreased by countable income and resources. Most recipients of SSI receive Medicaid.

Under the SSI program, there are three basic categories under which a financially needy person can get payments:

1. An adult (age 18) and over who has a disability.
2. A child (under age 18) who has a disability.
3. A person (aged 65) without a disability who meets the financial limits.

A person aged 65 and older with a disability whom was eligible for SSI prior to the age of 65 would be presumptively eligible for DVR services.

## ***Appendix C: Guidance for Serving Employers and Individuals Seeking Employment within the Cannabis Industry***

### **C.1 BACKGROUND**

Hemp and marijuana are different varieties of the same plant, Cannabis Sativa. In December 2018, the Agricultural Improvement Act of 2018 (known as the Farm Bill) was passed by congress, decriminalizing the cultivation of hemp and the sale of products containing its derivatives and removing hemp from the Controlled Substance Act. Hemp is a variety of the cannabis plant with a tetrahydrocannabinol (THC) concentration that does not exceed 0.3 percent. Any cannabis plant containing more than 0.3 percent THC is considered marijuana. While recreational marijuana use is decriminalized in Colorado, marijuana is classified as a Schedule I controlled substance and is prohibited under federal law. Federal funds, including the vocational rehabilitation grant administered under title IV of WIOA shall not be used to promote or support the cultivation, use, possession, or distribution of marijuana.

### **C.2 SERVING EMPLOYERS**

Employers in the hemp industry may access all business services available through DVR. Prior to being registered in DVR's electronic case management system to access business services, employers in the hemp industry will be asked to attest they are in compliance with all federal and state laws to ensure that the business is not promoting or supporting the cultivation, use, possession, or distribution of marijuana. An employer within the marijuana industry will not be eligible for any business services through DVR.

- DVR staff shall verify that a business cultivating hemp is registered with Colorado Department of Agriculture:  
[https://drive.google.com/file/d/1DIKqzhJo1vRe8SeGkHb9\\_cajhWZ7cv2h/view](https://drive.google.com/file/d/1DIKqzhJo1vRe8SeGkHb9_cajhWZ7cv2h/view)
- DVR staff shall verify that a business processing, selling, and distributing hemp-based products for human use/consumption (including cosmetics, foods, food additives, herbs, and supplements) is registered with the Colorado Department of Public Health and Environment:  
[https://drive.google.com/file/d/1kZDrgUhCH3mR\\_xmtA1z4i4fKqkzc-u6f/view](https://drive.google.com/file/d/1kZDrgUhCH3mR_xmtA1z4i4fKqkzc-u6f/view)

### **C.3 SERVING INDIVIDUALS SEEKING EMPLOYMENT**

An eligible individual who chooses to work within the legal hemp industry shall have access to necessary and appropriate vocational rehabilitation services to support his or her

successful employment. DVR is prohibited from actively supporting an individual to pursue employment in the marijuana industry and shall not support self-employment plans that result in the establishment of a dispensary or other employment in the marijuana industry. An individual who successfully obtains legal employment in the marijuana industry independently after the provision of substantial vocational rehabilitation that were intended to assist the individual to obtain employment in another field, may be considered for successful closure if all criteria are met. DVR shall not provide any services intended to directly support employment in the marijuana industry and DVR is prohibited from providing payment to any employer in the marijuana industry. DVR shall not purchase marijuana in any form or related equipment.

### **C.3.1 Client Use of Marijuana**

DVR counselors shall consider the impact of an individual's substance use, including marijuana, when establishing an employment goal. Vocational counseling and guidance shall be provided to ensure the individual understands the impact that marijuana use, whether recreational or medicinal, may have on the job search. Prior to agreeing to a job goal, the counselor will consider if the individual's medications or other substance use, including marijuana, impact the client's ability to safely and effectively perform job tasks.

The reported use of marijuana should not be the sole reason to require an individual to submit a random urine analysis or to complete a drug evaluation. DVR counselors should only consider utilizing random urine analysis or completing a drug evaluation for purposes relevant to the client's individual situation and when it is necessary to move forward with vocational planning and service provision.

If an individual discloses use of marijuana, the counselor shall ensure the individual understands that despite being decriminalized locally, marijuana use remains illegal federally and as such, employers are permitted to maintain policies and hiring practices that prohibit marijuana use, even away from the workplace.

### **COURT RULINGS ON MEDICAL MARIJUANA**

Most recently, in *Casias v. Wal-Mart Stores, Inc.*, a Michigan federal district court ruled that an employee who was terminated by Wal-Mart after testing positive for validly obtained medical marijuana stated no legal claims for wrongful discharge. The court accepted Wal-Mart's argument that Michigan's medical marijuana law does not regulate private employment; rather, it merely provides a potential affirmative defense to criminal prosecution or other adverse action by the state. The court rejected the plaintiff's argument that the law created a new protected employee class, which "would mark a

radical departure from the general rule of at-will employment in Michigan." The *Casias* decision is currently being appealed.

In *Ross v. RagingWire*, the California Supreme Court ruled that it is not discrimination to fire an employee for using medical marijuana. The court held that employers in California do not need to accommodate the use of medical marijuana, **even when users only ingest or smoke marijuana away from the workplace.**

In *Johnson v. Columbia Falls Aluminum Company*, the Montana Supreme Court ruled, in an unpublished decision, that an employer is not required to accommodate an employee's use of medical marijuana under the federal ADA or the Montana Human Rights Act.

In *Emerald Steel Fabricators, Inc. v. Bureau of Labor & Industries*, the Oregon Supreme Court ruled that because federal criminal law takes precedence over Oregon's medical marijuana law, employers in Oregon do not have to accommodate employees' use of medical marijuana.

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## ***Appendix D: Client Fraud Procedures***

### **REPORTING CLIENT FRAUD**

Situations of fraud damage the public trust in DVR and in State government. All DVR staff are responsible to be aware of opportunities for fraud to be committed. DVR management is responsible for investigating all reports of suspected fraudulent activity. Each DVR staff member shall be continuously attentive to suspicious activity on the part of a client and communicate suspicions in a timely manner to his/her own Supervisor and the District Supervisor of the office in which the individual is served, who will then ensure the Regional Manager and Deputy for Field Services are aware of the concerns. Each DVR staff member shall document any suspicion of client fraud and the action he or she has taken as a result within the AWARE case record of the client.

### **REQUIRED DOCUMENTATION**

The following forms shall be used to document DVR's fraud prevention efforts, suspicious activity, fraud investigations, and the results of any investigation. These documents, along with other available information, may be requested by DVR and CDLE leadership as part of the investigation, as applicable:

1. Rights and Responsibilities Form and/or Application Signature Page
2. Case notes
3. Eligibility Determination
4. Financial Need Analysis (FNA)
5. Individualized Plan for Employment (IPE)
6. Authorizations and associated invoices and receipts
7. Agency approved forms used to document fraud allegations, investigations, and outcomes
8. Receipt of State Purchased Goods Form
9. Police Report, if applicable (required if client claims that goods or funds were stolen)

Documentation of alleged and or/confirmed fraud in the case record is critical and shall include all conversations with the client about the suspicion of fraud, steps taken to inform DVR and CDLE leadership of suspected fraud, the outcome of the investigation, and anything else related to the suspected or proven fraud. The agency approved forms for documenting fraud allegations and investigations shall be completed and saved as an attachment and/or case note with AWARE. The DVR Fraud Claim form shall document the suspected fraudulent activity and related evidence of fraud, by attaching associated authorizations and receipts, pertinent emails, and travel logs, as applicable. The DVR Fraud Investigation form shall document the actions taken to investigate the allegation.

The DVR Fraud Final Determination, Repayment, and Resolution form shall document the results of the investigation, and if fraud is confirmed, this form shall document the client's responsibilities and the timeline to return funds and/or goods to DVR. Each completed document shall be saved into the AWARE case record.

## **INVESTIGATIONS**

All reports of suspected fraudulent activity shall be investigated, as outlined in this procedure, either by DVR staff or by CDLE leadership. The following steps are to be followed:

1. The DVR staff suspecting fraud notifies his or her immediate supervisor and the District Supervisor overseeing the office in which the individual receives services in writing of his or her suspicions, including the reasons for the concern.
  - a. The DVR Counselor, or other appropriate DVR staff, and the client shall review and complete the DVR Fraud Claim form, informing the client of the concern and reason(s) fraud is suspected.
  - b. The DVR Counselor and client shall review the Rights and Responsibilities form, the Fraud section of the Introduction to DVR's Service Delivery Policy, and Appendix D of DVR's Service Delivery Policy, Client Fraud Procedures in detail.
  - c. The DVR Fraud Claim form is signed by the client and the Counselor to indicate they have discussed the allegation of fraud and the client has been informed of his or her rights and responsibilities and DVR's Client Fraud Procedures. The completed form shall be saved in the client record in AWARE.
2. The District Supervisor notifies the respective Regional Manager of the suspicion in writing, who then notifies the Deputy for Field Services of the investigation in writing.
  - a. The DVR staff person or District Supervisor, in collaboration with the Regional Manager, estimates the value (i.e., loss to the DVR) of the suspected fraud based on the information available in the case record. A loss estimated to be less than \$500 can be investigated by the local office, in consultation with the Regional Manager and Deputy for Field Services.
  - b. Any loss estimated to be \$500 or above is investigated in coordination between the Deputy for Field Services and the Finance and Operations Unit.
3. The investigation shall be documented using the DVR Fraud Investigation form. The completed form shall be saved in the client record in AWARE.

- a. A final determination of fraud, and if applicable, a final calculation of the amount owed to DVR and/or state-purchased goods to be returned, is made by DVR's Finance and Operations Unit. To support these determinations, all supporting documentation shall be sent to the DVR Finance and Operations Unit. Supporting documentation shall include:
    - i. DVR Fraud Claim Form;
    - ii. DVR Fraud Investigation Form;
    - iii. All associated authorizations and payment packets (e.g., authorizations, invoices, reports, Receipts of State Purchased Goods, travel logs, etc.) supporting payments made on behalf of the client which were determined to be misused; and
    - iv. All documents considered during the investigation illustrating which goods or funds were misused by the client or gained through misrepresentation by the client.
  - b. For investigations of fraud estimated to be less than \$500, the District Supervisor, in consultation with the Regional Manager, will complete the investigation and make a recommendation as to whether the fraud is founded or unfounded. This recommendation, along with required supporting documentation, will be forwarded to the Finance and Operations Unit for the final determination.
  - c. For investigations of fraud estimated to be \$500 or more, the Finance and Operations Unit will complete the investigation and make a final determination of fraud.
  - d. The Finance and Operations Unit will notify the Deputy for Field Services and Regional Manager of the final determination, including the amount owed/state-purchased goods to be returned.
4. Investigation results shall be documented in writing using the DVR Fraud Final Determination, Repayment, and Resolution form and indicate whether or not a violation has occurred. Investigation results shall be complete and documented before additional action can occur.
  5. Services provided to applicants or eligible individuals shall not be suspended, reduced, or terminated during an investigation of fraud.

***Instances Valued at Less than \$25***

If DVR staff identify a misuse of funds or state-purchased goods with a cumulative value of less than \$25 (e.g., a client uses the balance of an authorization for books and supplies to purchase a soda or t-shirt at the school bookstore), the DVR Counselor shall notify the client of the misuse of funds, counsel the individual on the appropriate use of State funds, and request the client repay the misused funds. The DVR Counselor shall document the

situation and resolution on the DVR Fraud Claim Form, but no formal investigation shall be required. The form shall be saved in DVR's electronic case management system and copied to the Finance and Operations Unit, along with any repayment of funds received.

## **CONFIRMED FRAUD**

### **Calculation of Repayment Due**

The Finance and Operations Unit will reconcile all supporting documentation and provide the Deputy for Field Services and the Regional Manager with the final determination so to whether fraud occurred and the amount to the repaid and/or state-purchased goods to be returned to DVR.

The DVR District Supervisor and the client shall review the DVR Fraud Claim, DVR Fraud Investigation, and DVR Fraud Final Determination, Repayment, and Resolution forms, which document the suspected fraudulent activity, the related evidence and investigation, and the investigation results. The DVR District Supervisor shall notify the client of the repayment due, and negotiate a repayment plan with the client, if necessary. The client's responsibility to return goods or funds to CDLE/DVR shall be documented on the DVR Fraud Final Determination, Repayment, and Resolution form.

### **Repayment Plan**

The DVR District Supervisor and the client shall review the amounts to be repaid and/or state-purchased goods to be returned and, as applicable, develop a repayment plan, which identifies when payments will be made/goods returned and the amount of the repayment/item to be returned. Establishing a repayment plan is at the sole discretion of DVR based on the circumstances of the case. Repayment is expected as soon as reasonably possible. The District Supervisor may approve a repayment plan that does not exceed 12 months. Any repayment plan exceeding 12 months requires appropriate rationale and approval by the Regional Manager. The details of this agreement will be added to the DVR Fraud Final Determination, Repayment, and Resolution form. Once the client has signed the repayment agreement, the information will be saved to the case file in AWARE and copied to the Finance and Operations Unit. Collection of Funds

The DVR Finance and Operations Unit will log and monitor the activity for the repayment of funds or return of State-purchased goods. DVR Accounting will set up a receivable for each fraud case in which funds will be repaid. On a monthly/quarterly basis, the Finance and Operations unit will send an updated status report of the repayment progress to the Regional Manager and District Supervisor.

Payments made by the client for restitution can be made in person at the local office (recommended) or be sent to:

Colorado Department of Labor and Employment  
Division of Vocational Rehabilitation  
Attn: Finance and Operations Manager  
633 17<sup>th</sup> Street, Suite 1501  
Denver, CO 80202-3615

**Payment information must include the Participant ID#.**

Payments received will be documented in a case note in DVR's electronic case management system by the staff person accepting the payment. The Finance and Operations Unit will credit the amount paid by the client in DVR's accounting system and monitor the repayment plan.

**Failure to Repay Funds**

Failure to repay funds to DVR by the date(s) specified on the DVR Fraud Final Determination, Repayment, and Resolution form shall result in the referral of the case to the State's Central Collection Services for the collection of outstanding funds. The State's collection agency, Central Collection Services, can be reached at:

Central Collection Services  
1525 Sherman Street, Third Floor  
Denver, CO 80203  
303.866.6560 or 1.800.221.2297

**Failure to Return Goods**

State-purchased goods fraudulently obtained or utilized shall be returned, or the value of the good, as determined by the Finance and Operations Unit, repaid to DVR. Failure to return these goods to DVR by the agreed upon date(s) may result in referral to the Colorado District Attorney or the Office of the Attorney General for possible criminal charges. Prior to this referral, a letter, email, and phone call shall be placed to the client, notifying him or her that the goods must be returned within two (2) weeks or the case may be referred to the Colorado District Attorney or the Office of the Attorney General for possible criminal charges. If client fails to return the goods by that deadline, another letter, email, and phone call shall be placed, notifying the client he or she has another two (2) weeks to return the goods or the referral shall proceed. Should this last attempt result in non-cooperation, the Regional Manager shall immediately turn the case over for investigation and close the case.

**POTENTIAL CONSEQUENCES**

Should an investigation result in a finding that the individual has perpetrated fraud involving application for and receipt of DVR services and supports, DVR management,

in consultation with the CDLE leadership shall determine what action shall be taken, which may include reduction or suspension of services, up to and including case closure. When applicable, and within a specified time frame, the client shall be asked to pay back any misused funds and/or return State-purchased goods.

The first incident of confirmed fraud shall result in the suspension of all DVR services until all fraudulently used funds and/or goods have been returned to the State or an approved repayment plan has been implemented and the client remains in good standing on his or her repayment plan. While services are suspected, the client's case shall be placed into Service-Interrupted. Dependent upon the seriousness and intent of the fraud, case closure may be warranted.

A client receiving services who has a history of confirmed fraudulent activity involving DVR shall have his or her case record reviewed quarterly by the Regional Manager. All authorizations in the case record shall be issued by the Supervisor I for a minimum of one calendar year from the date the fraud is confirmed or services resume, whichever is later.

Should the matter be referred to the local law enforcement agency, the City, County or State Attorney shall decide whether to prosecute the client in the Colorado justice system. Additionally, DVR may, in consultation with the Finance and Operations Unit, refer the case to the Colorado District Attorney or Colorado Attorney General for criminal prosecution. Finally, should the matter involve fraudulent use of funds, the case may be referred to the State's Central Collection Services.

### **REPEATED FRAUDULENT ACTIVITY**

Repeated verified fraud may result in termination of the fraud-related service(s) or in case closure. Repeated incidents of fraudulent activity shall be addressed by DVR, in consultation with the DVR Deputy for Field Services, and shall take prior fraudulent activity into consideration.

Clients who choose to reapply after having a case closed due to fraud violations may do so. If a client is determined eligible for DVR services, and monies are still owed to DVR or the client has not returned State purchased goods, all future expenditures and services shall be placed on hold until the client returns the equipment to DVR or until Central Collection Services informs DVR that the monies have been fully repaid.

### **MONITORING OF FRAUD**

The Finance and Operations Unit will maintain a record of all instances of fraud, including the investigation and outcome.

## *Appendix E: Maintenance Case Studies*

### **LEAST POSSIBLE COST CONSIDERATIONS: TRAVEL VS. MAINTENANCE**

- A. A client lives in a rural community and will attend necessary training in a community 50 miles away from his home. He has classes 5 days a week. It is necessary the client be present at his school. The counselor must work with the client to determine the appropriate and least possible cost option. The client has a reliable vehicle and is willing to drive to attend his courses. He currently rents an apartment and could relocate to the community in which he'll attend training.
- Mileage Reimbursement: At 100 miles a day, there is a potential for approximately 2000 miles of travel to be eligible for reimbursement each month. With a current mileage reimbursement rate of \$0.49, **the maximum mileage reimbursement is estimated at \$980 each month.**
  - Maintenance: Per [www.livingwage.mit.edu](http://www.livingwage.mit.edu) average housing cost for 1 person is \$534 in his hometown compared to \$775 where he will be moving. **The maximum DVR can contribute to housing expenses is \$241 per month.**
  - Board: Per [livingwage.mit.edu](http://livingwage.mit.edu) average food cost for 1 person is \$297 in both his home community and community where he'll attend school. **There is no contribution from DVR available as the cost incurred is not in excess of normal living costs.**
  - Least Possible Cost Determination: **If all options appropriately meet the client's need, he is eligible for up to \$241/month in assistance.** This could be applied to his mileage expense if he chooses to drive OR it could be applied to his rent if he chooses to relocate.
- B. A client requires an assessment or training program that is not available in his home community. The service will require the individual to travel to a community 75 miles away from his home. The service will take place on 2 consecutive days. The client is willing and able to drive each day.
- Mileage Reimbursement: At 150 miles a day, there would be a maximum of 300 miles eligible for reimbursement. **The maximum mileage reimbursement is estimated to be approximately \$144.**
  - Maintenance: The client considers staying overnight in a hotel, rather than driving back and forth each day. A hotel is available for \$100, which is within the federally established per diem rate for hotel. Based on travel times and location, the client would be eligible for reimbursement for the

following meals: Day 1 - lunch, dinner, & incidentals; Day 2 - breakfast & lunch. The allowable reimbursement is the actual expense incurred (documented with receipts), not to exceed the Federal per diem rate of \$86 per [www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup](http://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup). Mileage reimbursement would apply to only 1 round trip, for a total of 150 miles and reimbursement of \$72. **The maximum total expense is estimated to be approximately \$258.**

- c. Least Possible Cost Determination: If all options appropriately meet the client's need, **DVR would be able to assist up to \$144**. This could be applied to his mileage expense if he chooses to drive OR it could be applied to his hotel if he chooses to stay overnight.

### **NORMAL LIVING EXPENSES**

A client's current living situation results in no identified housing expense (e.g. living with parents, staying with a friend, homeless individual, etc.). If the client were to remain in her home community, no change to her living situation is expected. She and DVR have agreed to an employment outcome requiring her to complete training that is not available in her home community and it is necessary for her to relocate.

- A. Room & Board (on-campus housing): The client and DVR have agreed the most appropriate option is for the client to live in on-campus housing. While living on campus the client is required to purchase a meal plan.
  - a. Room: The fee to live in a residence hall is \$5000 for the academic year (mid-August through early May, roughly 9 months) or \$555.55 a month. Per [livingwage.mit.edu](http://livingwage.mit.edu) average monthly housing cost for 1 person living in another household is \$298 in her hometown. This is determined by calculating the difference between the "1 Adult, 1 Child" housing cost and the "1 Adult" housing cost in her hometown, then divided by 12 to identify a monthly average (e.g. Weld County: "1 Adult, 1 Child" = \$10,764; "1 Adult" = \$7188;  $\$10,764 - \$7188 = \$3576$ ;  $\$3576 / 12 = \$298$ ). **The maximum DVR can contribute is \$257.55/month or \$2317.95 for the academic year** ( $\$555.55 - \$298 = \$257.55$ ;  $\$257.55 * 9 = \$2317.95$ ).
  - b. Board: Available meal plans range from \$4700 for 10 meals/week each semester to \$6200 for unlimited meals throughout the semester. Per [www.livingwage.mit.edu](http://www.livingwage.mit.edu) average food cost for 1 person is \$68.56 per week in her home community for a total of \$1234 per semester (based on an 18 week semester). **The maximum DVR can contribute for food in excess of normal living expenses is \$3466 for the year.**

- B. Room & Board (off-campus housing): The client and DVR have agreed the most appropriate option is an off-campus housing situation.
- a. Room: Per livingwage.mit.edu average monthly housing cost for 1 person living in another household is \$298 in her home town compared to \$979 where she will be moving. **The maximum DVR can contribute for housing is \$681 each month.**
  - b. Board: Per livingwage.mit.edu average food cost for 1 person is \$297 in both his home community and community where he'll attend school. **There is no DVR contribution available as the cost incurred is not in excess of normal living costs.**
  - c. The maximum DVR can contribute for Room & Board in excess of normal living expenses is \$681 each month.

A client will complete a short-term training program requiring her to relocate to another a community for 2 weeks.

- A. Room & Board (comprehensive fee): The client and DVR have agreed the most appropriate housing option is paid through a comprehensive flat fee that includes both Room & Board.
- a. A training program includes a required residential component for 2 weeks. The fee of \$700 includes both Room & Board as one flat fee in addition to tuition. Given the short term nature of this training, the client will maintain her home. The room expense is in excess of normal living expenses and the total rate is within the Federal per diem rate of a maximum of \$180/night for room and \$69/day for meals per [www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup](http://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup). **The maximum DVR can contribute for Room & Board in excess of normal living expenses is \$700.00.**

### **OUT OF STATE TRAINING**

A client and DVR have agreed to an employment outcome requiring him to complete higher education. The most appropriate option for this training is not available within Colorado and the client will relocate to Washington DC to complete the training

- A. The client lives with family in Boulder County and there are no specific identified housing expenses attributed to the individual currently.
- a. Per livingwage.mit.edu average monthly housing cost for 1 person living in another household Boulder County is \$392. Housing expense for a single adult living in Washington DC is \$1290.67 per month. **The**

- maximum DVR can contribute for housing in excess of normal living expenses is \$898.67 per month.**
- b. Per livingwage.mit.edu average food cost for 1 person living with a parent is \$152.50 per week in Boulder County compared to \$248.58 for a single adult living in Washington DC. **The maximum DVR can contribute for food in excess of normal living expenses is \$96.08 per month.**
  - c. The client is eligible for travel reimbursement for 1 round trip between Boulder County and Washington DC each year. This reimbursement is made at the least possible cost based on usual and customary rates for airfare.
  - d. The maximum DVR can contribute is \$994.75 per month, plus airfare and ground transportation for one round trip between Boulder County and Washington DC.
- B. The client currently lives in an apartment in Boulder County. He will not maintain his apartment when he relocates to Washington DC for training. *It is generally expected that a client living in a rented property will NOT maintain a home in his or her home community when relocating to participate in planned services.*
- a. Room: Per livingwage.mit.edu average housing cost for 1 person is \$989 in Boulder County compared to \$1290.67 in Washington DC. **The maximum DVR can contribute for housing is \$301.67 each month.**
  - b. Board: Per livingwage.mit.edu average food cost for 1 person is \$297 in Boulder County and \$248.58 in Washington DC. **There is no DVR contribution available as the cost incurred is not in excess of normal living costs.**
  - c. The maximum DVR can contribute for Room & Board in excess of normal living expenses is \$301.67 each month.
- C. The client currently owns a home in Boulder County. The client has provided thorough rationale for why he must maintain his household in Boulder while completing training in Washington DC.
- a. Room: Per livingwage.mit.edu average housing in Washington DC is \$1290.67. **The maximum DVR can contribute for housing is \$1290.67 each month.**
  - b. Board: Per [livingwage.mit.edu](http://livingwage.mit.edu) average food cost for 1 person is \$297 in Boulder County and \$248.58 in Washington DC. **There is no DVR**

**contribution available as the cost incurred is not in excess of normal living costs.**

- c. The maximum DVR can contribute for Room & Board in excess of normal living expenses is \$1290.67 each month.

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## *Appendix F: Equal Opportunity and Non-Discrimination Notice*

### **EQUAL OPPORTUNITY IS THE LAW**

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases:

Against any individual in the United States, on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of the Workforce Innovation and Opportunity Act, on the basis of the individual's citizenship status or participation in any WIOA Title I-financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

- Deciding who will be admitted, or have access, to any WIOA Title I-financially assisted program or activity;
- Providing opportunities in, or treating any person with regard to, such a program or activity; or
- Making employment decisions in the administration of, or in connection with, such a program or activity.

Recipients of federal financial assistance must take reasonable steps to ensure that communications with individuals with disabilities are as effective as communications with others. This means that, upon request and at no cost to the individual, recipients are required to provide appropriate auxiliary aids and services to qualified individuals with disabilities.

### **WHAT TO DO IF YOU BELIEVE YOU HAVE EXPERIENCED DISCRIMINATION**

If you think that you have been subjected to discrimination under a WIOA Title I-financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either:

- The recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or

- The Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW., Room N-4123, Washington, DC 20210 or electronically as directed on the CRC Web site at [www.dol.gov/crc](http://www.dol.gov/crc).

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you may file a complaint with CRC before receiving that Notice. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.