

# 2021

# OREGON ADMINISTRATIVE RULES COMPILATION

## CHAPTER 582

### Department of Human Services Vocational Rehabilitation Services



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## **DIVISION 1**

### **DEFINITIONS**

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##### **Definitions for Chapter 582**

The following definitions apply to each division in chapter 582 of the Oregon Administrative Rules unless otherwise indicated:

- (1) "Act" means Public Law No: 113-128, Title IV-Amendments to the Rehabilitation Act of 1973.
- (2) "Applicant" means an individual who submits an application for vocational rehabilitation services in accordance with 34 CFR §361.41(b)(2).
- (3) "Apprenticeship" means a job that allows an individual to earn money while gaining skills and experience through both technical instruction and hands-on training.
- (4) "Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.
- (5) "Assessment for determining eligibility and vocational rehabilitation needs" means, as appropriate in each case—
  - (a)(A) A review of existing data—
    - (i) To determine if an individual is eligible for vocational rehabilitation services; and
    - (ii) To assign priority for an order of selection described in 34 CFR §361.36 in the States that use an order of selection; and
  - (B) To the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make the eligibility determination and assignment;
  - (b) To the extent additional data are necessary to make a determination of the employment outcomes and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual. This comprehensive assessment—
    - (A) Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan for employment of the eligible individual;
    - (B) Uses as a primary source of information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements—
      - (i) Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in 34 CFR §361.36 for the individual; and
      - (ii) Information that can be provided by the individual and, if appropriate, by the family of the individual;
    - (C) May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual;
    - (D) May include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment; and
    - (E) To the maximum extent possible, relies on information obtained from experiences in integrated employment settings in the community and in other integrated community settings;

- (c) Referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and
- (d) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which must be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.
- (6) "Assistive technology" means technology designed to be utilized in an assistive technology device or assistive technology service. (See also, Section 3, Assistive Technology Act of 1998 (29 U.S.C. 3002))
- (7) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability, except that the reference to the term individuals with disabilities shall mean more than one individual with a disability as defined in paragraph (20)(A) of the Act. (See also Section 3, Assistive Technology Act of 1998 (29 U.S.C. 3002))
- (8) "Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes--
- (a) The 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 the customary environment of the individual;
  - (b) A service consisting of purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;
  - (c) A service consisting of selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, replacing, or donating assistive technology devices;
  - (d) Coordination and use of necessary therapies, interventions, or services with assistive technology devices, such as therapies, interventions, or services associated with education and rehabilitation plans and programs;
  - (e) Training or technical assistance for an individual with a disability or, where appropriate, the family members, guardians, advocates, or authorized representatives of such an individual;
  - (f) Training or technical assistance for professionals (including individuals providing education and rehabilitation services and entities that manufacture or sell assistive technology devices), employers, providers of employment and training services, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities; and
  - (g) A service consisting of expanding the availability of access to technology, including electronic and information technology, to individuals with disabilities.
- (9) "Auxiliary aids and services" mean:
- (a) Qualified interpreters on-site or through video remote interpreting (VRI) services; note takers; real-time computer-aided transcription services, written materials, exchange of written notes, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, including real-time captioning, voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices, videotext displays; accessible electronic and information technology, or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing,
  - (b) Qualified readers, taped texts, audio recordings, Brailled materials and displays, screen reader software, magnification software, optical readers, secondary auditory programs (SAP), large print materials, accessible electronic and information technology, or other effective methods of making visually delivered materials available to individuals who are blind or have low vision,
  - (c) Acquisition or modification of equipment or devices, and
  - (d) Other similar services and actions.
- (10) "Benefits Planning" means services that provide eligible individuals entitled to Social Security benefits under Titles II or XVI of the Social Security Act with information on assistance and supports available to individuals desiring to enter

the workforce. These services are intended to help these individuals understand the implications of employment for continued receipt of their benefits so that they can make a fully informed choice of an employment goal.

(11) "Best Practice" means promising vocational rehabilitation service delivery practices commonly seen as effective when working with specified populations of individuals with disabilities that help improve employment outcomes of people with disabilities.

(12) "Case Service Record" means the case service record documents the application for and provision of vocational rehabilitation and supported employment services to individuals with disabilities, including program outcomes. An individual may have multiple service records resulting from repeated involvement with the vocational rehabilitation and supported employment programs. Also referred to as service record or record of service (34 CFR §361.47 Record of services), file, record, case, hard copy file, electronic file, or ORCA file.

(13) "CFR" means the Code of Federal Regulations.

(14) "Client Assistance Program" (CAP) means a federally-funded program authorized under 34 CFR §370 that is independent of the Program and its purpose is to provide information, advocacy, and legal representation to individuals seeking Program services.

(15) "Closure" means an applicant's or participant's record of services shows an end to vocational rehabilitation services and the applicant's or participant's exit from the program.

(16) "Community Rehabilitation Program" (CRP) means:

(a) A vendor that provides directly or facilitates providing one or more of the following vocational rehabilitation services to individuals with disabilities:

(A) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.

(B) Testing, fitting, or training in the use of prosthetic and orthotic devices.

(C) Recreational therapy.

(D) Physical and occupational therapy.

(E) Speech, language, and hearing therapy.

(F) Psychiatric, psychological, and social services, including positive behavior management.

(G) Assessment for determining eligibility and vocational rehabilitation needs,

(H) Rehabilitation technology.

(I) Job development, placement, and retention services.

(J) Evaluation or control of specific disabilities.

(K) Orientation and mobility services for individuals who are blind.

(L) Psychosocial rehabilitation services.

(M) Supported employment services and extended services.

(N) Customized employment.

(O) Services to family members if necessary, to enable the applicant or eligible individual to achieve an employment outcome.

(P) Personal assistance services.

(Q) Services similar to the services described in paragraphs (A) through (P) of this definition.

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

(17) "Comparable services and benefits" mean services and benefits that are:

(a) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, health insurance, or employee benefits;

(b) 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 in accordance with 34 CFR §361.53;

(c) Commensurate to the services that the individual would otherwise receive from the Program; and

(d) Includes accommodations and auxiliary aids.

(e) For the purposes of this definition, comparable services and benefits does not include awards and scholarships based



on merit.

(18) "Competitive integrated employment" means work that—

(a) Is performed on a full-time or part-time basis (including self-employment) and for which an individual is compensated at a rate that-

(A) Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C.

206(a)(1)) or the rate required under the applicable 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 similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and

(C) In the case of an individual who is self-employed, 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 similar tasks and who have similar training, experience, and skills; and

(D) Is eligible for the level of benefits provided to other employees; and

(b) Is at a location—

(A) Typically found in the community; and

(B) Where the employee with a disability interacts for the purpose of performing the 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

(c) 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.

(19) "Comprehensive Statewide Assessment" means the results of a comprehensive, statewide assessment, jointly conducted by the Program and the State Rehabilitation Council every three years. Results of the assessment shall be included in the vocational rehabilitation portion of the Unified or Combined State Plan, submitted in accordance with the requirements of 34 CFR §361.10(a) and the joint regulations of this part.

(20) "Department" means the Department of Human Services.

(21) "Director" means the Director of Vocational Rehabilitation.

(22) "Due Process" is the process by which Program applicants or participants who are dissatisfied or disagree with a decision that affects the provision of vocational rehabilitation services may pursue a review.

(23) "Educational goal" means the participant's next educational or training milestone along the educational path they hope to achieve in the next year and leads to an employment goal or outcome listed in the individualized plan for employment.

(24) "Educational outcome" means the logical endpoint or conclusion of the current educational goal.

(25) "Eligible individual" means an applicant for vocational rehabilitation services who meets the eligibility requirements of 34 CFR §361.42(a).

(26) "Employment outcome" with respect to an individual, entering, advancing in, or retaining full-time or, if appropriate, part-time competitive integrated employment, as defined in 34 CFR §361.5 (c)(9) (including customized employment, self-employment, telecommuting, or business ownership), or supported employment as defined in 34 CFR §361.5(c)(53), that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(27) "Entity" means an employer, or a contractor or subcontractor of that employer, that holds a special wage certificate described in section 14(c) of the Fair Labor Standards Act of 1938 (FLSA).

(28) "Essential functions" mean the tasks that must be performed, because:

(a) The position, or business, exists to perform a particular function; or

(b) There is evidence to support a determination that a job function is considered essential because of the experience of others doing the same kind of work; judgement of experts in the field; or consequences of not performing the function.

(29) "Evidence-based practices" means a program or instructional practice with evidence that:

- (a) The practice model has gone through rigorous research and has demonstrated a record of success, and
- (b) There is reliable, trustworthy, and valid evidence that exists which demonstrates the practice effectiveness.
- (c) The evidence supporting these practices or instruction must be supported by scientifically based research.

(30) "Extended services" means ongoing support services and other appropriate services that are—

- (a) Needed to support and maintain an individual with a most significant disability including a youth with a most significant disability, in supported employment;
- (b) Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment;
- (c) Based on the needs of an eligible individual, as specified in an individualized plan for employment;
- (d) Provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, after an individual has made the transition from support from the designated State unit; and
- (e) Provided to a youth with a most significant disability by the Program in accordance with requirements set forth in 34 CFR §361 and 34 CFR §363 for a period not to exceed four years, or at such time that a youth reaches age 25 and no longer meets the definition of a youth with a disability under 34 CFR §361(c)(58), whichever occurs first. The Program may not provide extended services to an individual with a most significant disability who is not a youth with a most significant disability.

(31) "Family member," for purposes of receiving vocational rehabilitation services in accordance with 34 CFR §361.48, means an individual

(a) Who is either:

- (A) A relative or guardian of an applicant or eligible individual; or
- (B) Lives in the same household as an applicant or eligible individual; and
- (b) Who has a substantial interest in the well-being of that individual; and

(c) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(32) "Federal Fiscal Year" (FFY) means the period beginning on October 1 and ending on September 30.

(33) "Federal Minimum Wage" means the rate applicable under section 6(A)(1) of the Fair Labor Standards Act (FLSA).

(34) "Individualized Education Program" (IEP) means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d) of the Individuals with Disabilities Education Act (IDEA).

(35) "Indian; American Indian; Indian American; Indian Tribe" mean an individual who is a member of an Indian tribe and also includes a Native and a descendant of a Native, as such terms are defined in subsections (b) and (r) of section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(36) "Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act) and a tribal organization as defined in section 4(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)(1)).

(37) "Individual who is blind" means an individual who is blind within the meaning of applicable State law (ORS §346.120).

(38) "Information and Referral" means an information and referral system that ensures individuals with disabilities, including eligible individuals who do not meet the Program's order of selection criteria for receiving vocational rehabilitation services if the agency is operating on an order of selection, who do not meet the Program's eligibility criteria, or are earning subminimum wage are provided:

- (a) Accurate vocational rehabilitation information and guidance using appropriate modes of communication to assist them in preparing for, securing, retaining, advancing in, or regaining employment; and
- (b) Referral to other appropriate Federal and State programs, including other components of the statewide workforce development system, and;
- (c) The Program shall ensure referral to appropriate programs and service providers best suited to address the specific

rehabilitation, independent living and employment needs of an individual with a disability who makes an informed choice not to pursue an employment outcome under the vocational rehabilitation program.

(39) "Individual with a disability" means an individual, except as provided in section (48):

(a) Who has a physical or mental impairment; and

(b) Whose impairment constitutes or results in a substantial impediment to employment; and

(c) Who may benefit in terms of an employment outcome from the receipt of vocational rehabilitation services.

(40) "Individual with a disability" for purposes of 34 CFR §§361.5(c)(13), 361.13(a), 361.13(b)(1), 361.17(a), (b), (c), and (j), 361.18(b), 361.19, 361.20, 361.23(b)(2), 361.29(a) and (d)(8), and 361.51(b), means an individual who:

(a) Has a physical or mental impairment that substantially limits one or more major life activities;

(b) Has a record of the impairment; or

(c) Is regarded as having such an impairment.

(41) "Individual with a most significant disability" means an eligible individual who:

(a) Has a severe mental or physical impairment that seriously limits two or more functional capacities in mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome; and

(b) Is expected to require two or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.

(c) These criteria must be consistent with the requirements in 34 CFR §361.36(d)(1) and (2).

(42) "Individual with a significant disability" means an individual with a disability:

(a) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(b) Whose vocational rehabilitation can be expected to require multiple services over an extended period of time; and

(c) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental 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 for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(43) "Individualized Plan for Employment" (IPE) means a plan for attaining the individual's vocational objective

(44) "Individual's representative" means any representative chosen by an applicant or eligible individual, as appropriate, and may include a parent, guardian, other family member, or advocate. If a representative has been appointed by a court, the court appointed representative is the individual's representative.

(45) "Informed Choice" means that individual who are applicants for vocational rehabilitation services or eligible individuals receiving such services shall be active and full partners throughout the vocational rehabilitation process.

(a) Program participants shall have the opportunity to make meaningful decisions during assessment for eligibility and in the selection of the employment outcome, services needed to achieve the outcome, service providers, and method of securing services.

(b) The Program shall provide information and support services sufficient to inform each applicant and eligible individual about the availability of and opportunity to exercise informed choice.

(46) "Integrated setting" means

(a) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals other than nondisabled individuals who are providing services to those applicants or eligible individuals; and

(b) With respect to an employment outcome, means a setting:

(A) Typically found in the community; and

(B) Where the employee with a disability interacts, for the purpose of performing the duties of the position, with other employees within the particular work unit and the entire work site, and appropriate to the work performed, other individuals (e.g., customers and vendors) who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to the employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these individuals.

(47) "Maintenance" means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the individual's normal expenses 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.

(48) "Parent or Guardian" means an individual having legal responsibility for the overall welfare and well-being of an individual under age 18 or an individual, if over age 18, is adjudicated legally incapacitated.

(49) "Participant" means

(a) A reportable individual who has been determined eligible for Program services, and is in need of, and can benefit from, rehabilitation services to assist in achieving an employment outcome.

(b) This does not include students with disabilities that have only been determined potentially eligible for Pre-Employment Transition Services.

(50) "Personal assistance services" means a range of services, including, among other things, training in managing, supervising, and directing personal assistance services, provided by one or more persons, that are—

(a) 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;

(b) Designed to increase the individual's control in life and ability to perform everyday activities on or off the job;

(c) Necessary to the achievement of an employment outcome; and

(d) Provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

(51) "Physical or mental impairment" means

(a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(b) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(52) "Post-employment services" means one or more of the services identified in 34 CFR §361.48(b) that are:

(a) Provided subsequent to the achievement of an employment outcome and are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(b) Available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and,

(c) Should be limited in scope and duration.

(53) "Prior approval" means a request in writing is made in advance of the activity, obligation, or expenditure for all Program services including assessment.

(54) "Program" means Oregon Vocational Rehabilitation.

(55) "Qualified Personnel" means an individual licensed or certified by the state or who maintains an equivalent licensure or certification from another state to make the diagnosis of an applicant's impairment.

(56) "Qualified Rehabilitation Personnel" means a description of the minimum academic and experience requirements for Program professionals and paraprofessionals as amended by Workforce Innovation and Opportunity Act.

(57) "Recognized Postsecondary Credential" means a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the State involved or Federal Government, or an associate or baccalaureate degree.

(58) "Record of services" see "Service Record".

- (59) "Rehabilitation engineering" means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute 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.
- (60) "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.
- (61) "Reportable individual" means an individual who has taken action that demonstrates an intent to use program services and who meets specific reporting criteria of the program, including:
- (a) Individuals who have an approved and signed IPE; and
  - (b) Individuals who have begun to receive services.
- (62) "Reservation" means a Federal or State Indian reservation, a public domain Indian allotment, a former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); or a defined area of land recognized by a State or the Federal Government where there is a concentration of tribal members and on which the tribal government is providing structured activities and services.
- (63) "School Dropout" means an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent.
- (64) "Section 504 Student with a disability" assures that students with disabilities covered by Section 504 of the Rehabilitation Act are not discriminated against and are assured their civil rights.
- (a) A student is entitled to a Section 504 Accommodation Plan if they have been identified and the valuation shows that the individual has a mental or physical impairment that substantially limits one or more major life activities.
  - (b) This determination is made by a team of knowledgeable individuals, including the parents, who are familiar of the student and his/her disability.
- (65) "Self-Employment" means one individual owning and controlling the operations and management of an enterprise that reflects the owner's skills, interests, and preferred work environment.
- (66) "Sole local agency" means a unit or combination of units of general local government or one or more Indian tribes that has the sole responsibility under an agreement with, and the supervision of, the State agency to conduct a local or tribal vocational rehabilitation program, in accordance with the vocational rehabilitation services portion of the Unified or Combined State Plan.
- (67) "Special wage certificate" means a certificate issued to an employer under section 14(c) of the Fair Labor Standards (29 U.S.C. 214(c)) and 29 CFR part 525 that authorizes payment of subminimum wages, wages less than the statutory federal minimum wage, to workers with disabilities for the work being performed.
- (68) "State plan" means the State plan for vocational rehabilitation services submitted by the Program under 34 CFR §361.10.
- (69) "State Fiscal Year" means the period beginning on July 1 and ending on June 30.
- (70) "Student with a disability" means an individual with a disability in a secondary, postsecondary, or other recognized education program who:
- (a) Is generally not younger than 16 but may be as young as 14 years of age as determined by the Oregon Department of Education; and
  - (b) Is not older than 21 years of age; and,
  - (A) 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,
  - (B) Is a student who is an individual with a disability, for purposes of section 504, or
  - (C) Is a student who is an individual with a disability who has been home schooled.
- (71) "Substantial impediment to employment" means a physical or mental impairment that, in light of medical,

psychological, vocational, educational, communication, and other related factors, hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment consistent with the individual's unique strengths, resources, priorities, concerns, abilities and capabilities.

(72) "Transition services" means a coordinated set of activities for a student or youth with a disability—

(a) 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, or community participation;

(b) Based upon the individual student's or youth's needs, taking into account the student's or youth's preferences and interests;

(c) That includes 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;

(d) That promotes or facilitates the achievement of the employment outcome identified in the student's or youth's individualized plan for employment; and

(e) That includes outreach to and engagement of the parents, or, as appropriate, the representative of such a student or youth with a disability.

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

(74) "Unemployed Individual" means an individual who is without a job and who wants and is available for work. The determination of whether an individual is without a job, for purposes of this section, shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department of Labor in defining individuals as unemployed.

(75) "Vocational rehabilitation services" means as appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's informed choice, services that are available to assist the individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(a) If provided to an individual, means those services listed in 34 CFR §361.48 and

(b) If provided for the benefit of groups of individuals, also means those services listed in 34 CFR §361.49.

(76) "Vocational rehabilitation training" means skill training in which the basis and focus of the training is individualized or customized. Vocational rehabilitation training may include focus on disability related issues as those issues impact the skills training. Vocational rehabilitation training may include, but is not limited to:

(a) Supported employment;

(b) Disability and related skills training;

(c) On the job training;

(d) One-on-one specialized business training provided to individuals who are working to establish their own business;

(e) Customized training offered by an employer to a group of individuals for the purpose of training and possibly hiring the individuals.

(77) "Vocational training" means skills training for a specific occupation.

(78) "Youth with a disability" means an individual with a disability who is not younger than 14 years of age and not older than 24 years of age.

(79) "Youth with disabilities" means more than one youth with a disability.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.530, 344.550, 344.560, 344.570, 344.590

History: VRS 2-2020, amend filed 02/14/2020, effective 02/28/2020; VRS 1-2014, f. 12-30-14, cert. ef. 1-1-15; VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; Reverted to VRS 2-2009, f. & cert. ef. 3-27-09; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; VRS 2-2009, f. & cert. ef. 3-27-09; VRS 4-2008(Temp), f. 12-18-08, cert. ef. 12-19-08 thru 6-16-09; VRS 3-2008, f. & cert. ef. 4-10-08; VRS 2-2008, f. & cert. ef. 3-3-08; VRS 1-2008, f. & cert. ef. 2-4-08; VRS 2-2005, f. 4-20-05, cert. ef. 7-1-05; VRS 5-2004, f. & cert. ef. 8-5-04

## **DIVISION 10**

### **STATE STANDARDS FOR PROVIDERS OF COMMUNITY REHABILITATION SERVICES**

#### **582-010-0005**

##### **Statement of Policy**

- (1) Clients of OVRS should receive community rehabilitation services from a broad range of providers of varied sizes and types, offering a wide scope of services. Availability of all types of community rehabilitation services is essential to establishing and maintaining a statewide network of vocational rehabilitation services.
- (2) OVRS promotes the quality of community rehabilitation services by providing standards for its direct client service providers who have no other state mandated licensing and monitoring requirements.
- (3) OVRS promotes the availability, relevance and quality of community rehabilitation services through a flexible yet thorough process of approval tailored to utilization needs identified locally and reflected in the State Plan.
- (4) The inclusion of a provider of community rehabilitation services on the OVRS list of approved vendors does not commit OVRS to utilize the available services.
- (5) OVRS does not provide any provider of community rehabilitation services with a guarantee of a total dollar commitment or number of total client referrals during any specific time frame except if determined as a condition of a cooperative agreement for implementing a federal grant or service contract.
- (6) Providers of community rehabilitation services are expected to fully inform OVRS clients of the purpose and results of all service delivery efforts made on their behalf.
- (7) Providers of community rehabilitation services performing job development or placement tasks should only refer OVRS clients to appropriate previously-agreed on employment opportunities.

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: Reverted to VRS 2-2003, f. & cert. ef. 12-31-03; Suspended by VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09; VRS 2-2003, f. & cert. ef. 12-31-03; VRD 3-1993, f. & cert. ef. 10-15-93; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 2-1980, f. & ef. 7-2-80; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 24, f. & ef. 9-29-76; VRD 17, f. 8-28-74, ef. 9-25-74

#### **582-010-0010**

##### **Definitions**

For the purposes of chapter 582, division 10 of the Oregon Administrative Rules, the following definitions apply:

- (1) "Accreditation" is the term signifying that a community rehabilitation program meets standards of performance set by an organization or methodology listed in these rules.
- (2) "Approval" is a term signifying that OVRS standards for vendor selection are met, and the vendor may be utilized by a local OVRS office to provide OVRS purchased services for individuals with disabilities.
- (3) "Certification" refers to the acknowledgment by OVRS that the CRP has completed required application procedures and, if applicable, met specific accreditation standards.
- (4) "Department of Administrative Services" (DAS) refers to the administrative unit of the State of Oregon that is responsible for setting certain standards that apply to all state vendors and whose standards may apply to OVRS vendors.
- (5) "Interim Approval" refers to the authority of OVRS to approve a CRP and purchase its services within a limited time period while an application for CRP vendor "Approval" or "Certification" is being processed.
- (6) "Rehabilitation Facility" refers to a CRP or unit of a larger organization that meets the definition for a CRP and that is operated for the primary purpose of providing vocational rehabilitation services to individuals with disabilities and that provides singularly or in combination, one or more of the services listed in OAR 582-001-0010(10).
- (7) "State Standards for Vendor Approval" refers to a set of criteria, applied as appropriate to the type of program and used by OVRS to evaluate a provider's operation and to determine whether the provider may be listed as an approved vendor. State Standards are in addition to any federal requirements in the Rehabilitation Act or regulations and shall for

CRPs, at a minimum and as appropriate, relate to physical plant, health and safety, production, insurance, physical accessibility, organization, fiscal management, personnel, program management, client issues, program evaluation, human rights (including the safeguarding of confidential information about clients), and community relations.

(8) "Statement of Assurances and Conditions" means a document executed and signed by a provider of community rehabilitation services attesting to an understanding of and intent to comply with applicable criteria in these rules and any attending policy for implementing these rules.

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; Suspended by VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 2-2003, f. & cert. ef. 12-31-03; VRD 3-1993, f. & cert. ef. 10-15-93; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 2-1980, f. & ef. 7-2-80; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 17, f. 8-28-74, ef. 9-25-74

## **582-010-0015**

### **Recognized Accreditation Methodologies for Providers of Community Rehabilitation Services**

When viewed in combination with applicable State Standards in these rules, OVRS recognizes the following accreditation options:

- (1) Accreditation by the Commission on Accreditation of Rehabilitation Facilities (CARF).
- (2) Accreditation by the Rehabilitation Services Accreditation System (RSAS).
- (3) Certification by Department of Human Services, Seniors and People with Disabilities for employment services under OAR 309-047-0000 through 309-047-0140, or as Support Service Brokerages or Provider Organizations under 411-340-0010 through 411-340-0180 for adults with developmental disabilities.
- (4) As appropriate, for an individual providing community rehabilitation services, certification by the Commission on Rehabilitation Counselor Certification (CRCC) or by the Workers' Compensation Division of the Oregon Department of Consumer and Business Services.
- (5) Accreditation by the Northwest Association of Schools and Colleges (NASC) if clear evidence of relationship to OAR 582-010-0025 is provided.
- (6) Registration or certification by the Child Care Division of the Oregon Department of Employment.
- (7) Accreditation by other organizations approved by OVRS demonstrating an ability to evaluate based upon State Standards in OAR 582-010-0025.
- (8) For providers of vocational rehabilitation services other than vocational, personal and/or work adjustment, skill training, work readiness retention, job development, or extended employment, accreditation may be by a recognized accrediting organization or methodology within the field of expertise of the provider.
- (9) An out-of-state CRP may be accredited by an approved organization or by current placement on the approved CRP vendor list of that state's vocational rehabilitation agency.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: Reverted to VRS 2-2003, f. & cert. ef. 12-31-03; Suspended by VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09; VRS 2-2003, f. & cert. ef. 12-31-03; VRD 3-1993, f. & cert. ef. 10-15-93; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 2-1980, f. & ef. 7-2-80; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 24, f. & ef. 9-29-76; VRD 17, f. 8-28-74, ef. 9-25-74

## **582-010-0020**

### **Approval Policy for All Providers of Community Rehabilitation Services**

- (1) Approval Required: No person or public or private organization shall, on behalf of OVRS, provide vocational rehabilitation services and receive vocational rehabilitation fees without first submitting all required application materials and being placed on the Approved Vendor List of OVRS.
- (2) At the discretion of OVRS, separate approvals may be required for separate sites and/or for different programs



operated under the same management.

(3) Approvals under OAR 582-010-0020 are valid for a period of two years, with the exception of Interim Approvals, which are valid for the term or condition stated. Prior to the expiration of a two-year approval, a provider of community rehabilitation services must reapply for approval.

(4) OVRS may require full or partial reapplication when a CRP undergoes significant changes in its management or operation.

(5) Providers of community rehabilitation services that are individuals or sole proprietors without employees/contractors who provide direct services to OVRS clients must qualify under state law as independent contractors but do not have to provide verification of accreditation.

(6) A notice of approval or denial for "Approved" or "Interim Approval" status will be provided in writing to the CRP within 30 days of OVRS receipt of requirements stated in this rule.

(7) It is the responsibility of the provider of community rehabilitation services to assure that the requirements of OAR 582-010-0020 are fully met at all times.

(8) A provider of community rehabilitation services and any other vendor required under chapter 582 of the Oregon Administrative Rules to complete a Criminal History Check may be placed temporarily on the Approved Vendor List by the CRP Coordinator if the circumstances justify a temporary approval. The temporary approval may be terminated by OVRS at any time and shall expire automatically once DHS completes the criminal history check process.

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; Suspended by VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 2-2003, f. & cert. ef. 12-31-03; VRD 3-1993, f. & cert. ef. 10-15-93; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 2-1980, f. & ef. 7-2-80; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 17, f. 8-28-74, ef. 9-25-74

## **582-010-0021**

### **Approval Policy for Category A Providers**

(1) Category A providers of community rehabilitation services are those providers exclusively paid by OVRS to provide the following listed services:

- (a) Medical, psychiatric, psychological, social, and vocational services that are provided under one management;
- (b) Evaluation or control of specific disabilities;
- (c) Physical and occupational therapy;
- (d) Recreational therapy;
- (e) Speech, language and hearing therapy;
- (f) Psychiatric, psychological and social services, including positive behavior management;
- (g) Psychosocial rehabilitation services
- (h) Rehabilitation technology;
- (i) Testing, fitting, or training in the use of prosthetic and orthotic devices;
- (j) Personal assistance services;
- (k) Child care: or

(l) Professionals or entities licensed by a state or federal agency (excluding OVRS), acting within the scope of their license, and providing any services covered by OAR 582-010-0022(1).

(2) In addition to compliance with any other applicable requirements in chapters 407 and 582 of the Oregon Administrative Rules, these providers are eligible for the approved vendor list if they maintain compliance with the relevant licensing or certifying body.

(3) Providers of child care who are not eligible to apply for registration with the Child Care Division of the Employment Department under OAR 414-205-0000 may be placed on the Approved Vendor List if they successfully complete a

Criminal History Check from either DHS or the Child Care Division of the Employment Department.

(4) Providers of personal assistance services who are not qualified or certified providers for this service under Chapter 411 of the Oregon Administrative Rules may be placed on the Approved Vendor List if they successfully complete a DHS Criminal History Check.

(5) OVRS requires that providers of child care and providers of personal assistance services who are required by this rule to satisfy criminal history check requirements shall also comply with DHS criminal history check requirements with respect to each new employee or volunteer who will provide "care" (as defined at OAR 407-007-0210(4)) to OVRS clients prior to the start of care for an OVRS client. Prior to reapplication for the Approved Vendor List, these providers may be required by OVRS to repeat a criminal history check as a result of information received about vendor qualifications, behavior or performance.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.530, 344.550

History: Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; Suspended by VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09; VRS 5-2004, f. & cert. ef. 8-5-04

## **582-010-0022**

### **Approval Policy for Category B Providers**

(1) Except as provided at OAR 582-010-0022(2), Category B providers of community rehabilitation services are those providers paid by OVRS to provide the following listed services:

- (a) Assessment for determining eligibility and vocational needs, including technicians for assessment tests;
- (b) Job development, placement, and retention services;
- (c) Orientation and mobility services;
- (d) Extended employment;
- (e) Supported employment services and extended services;
- (f) Services to family members (except child care) when necessary to the vocational rehabilitation of the individual; and
- (g) Services similar to the services described in OAR 582-010-0022(1)(a)–(g), including vendors who provide training, write resumes, consult on self-employment plans, assist with a self-employed business, or write PASS plans.

(2) Professionals licensed by a state or federal agency (excluding OVRS), acting within the scope of their license, and providing any services listed in OAR 582-010-0022(1) shall be regulated as Category A providers and not subject to 582-010-0022. The CRP Coordinator may exempt an employer from the rules in division 582-010 for services provided to a specific client that are not services for which the employer would be reimbursed on a routine basis.

(3) Except as provided in OAR 582-010-0022(8), Category B providers are eligible for the approved vendor list if they meet all of the following criteria prior to providing any services to OVRS or its clients in addition to compliance with any other applicable requirements in chapters 407 and 582 of the OARs:

- (a) Submit materials required as part of the OVRS application process;
- (b) Submit proof of insurance at the level established under Department of Administrative Services guidelines;
- (c) Submit a signed Statement of Assurances and Conditions;
- (d) Successfully complete the criminal history check requirements.

(A) OVRS requires that Category B providers complete criminal history checks at the time of application for placement on the Approved Vendor List and re-application for placement on the Approved Vendor List; and to complete a DHS criminal history check if required by OVRS as a result of information received about vendor qualifications, behavior or performance.

(B) At the time of application or re-application for placement on the Approved Vendor List, OVRS also requires that Category B providers complete criminal history checks with respect to all employees and volunteers who provide "care" (as defined at OAR 407-007-0210(4)) to OVRS clients.

(C) OVRS further requires that Category B providers complete criminal history checks with respect to each new employee or volunteer who will provide "care" (as defined at OAR 407-007-0210(4)) to OVRS clients prior to the start of

care for an OVRS client.

(4) Providers of Category B community rehabilitation services that are non-profit or for-profit organizations, or sole proprietorships with employees/contractors who provide direct services to OVRS clients must provide verification of accreditation or proof of a pending application for accreditation.

(5) A Statement of Assurances and Conditions must be provided and signed by the designated representative of the provider, and reviewed mutually by OVRS and the provider for compliance and continued applicability, and must include:

(a) A description of the scope and nature of service(s), conditions, criteria and procedure under which each service is provided, and rates of payment for each approved service or group of services;

(b) A statement that prior authorization must be secured in writing from the referring counselor or other appropriate representative of OVRS before client services are provided at a cost to the local OVRS office;

(c) Assurances of compliance with State Standards and federal requirements as appropriate for the specific provider;

(d) Assurances that the provider will compile and submit, as required by OVRS, pertinent process and outcome data concerning the service(s) or groups of services provided; and

(e) Assurances that pertinent program and fiscal records shall be accessible for necessary review and/or audit by or for OVRS.

(6) Interim Approval may be granted to a CRP that has filed the necessary forms to obtain accreditation and is waiting for final "Approval." If "Approval" has been delayed due to reasons of the accreditation body, an extended period of "Interim Approval" may be granted upon receipt of verification from the accreditation body that the delay is not the result of the CRPs failure to address deficiencies in a timely manner.

(7) If OVRS funds are available, grants may be awarded to CRPs who qualify under OAR 582-010-0022(4), unless prohibited by another rule, to assist with meeting CRP "Approval" requirements or to expand resources and services that will be made available to OVRS clients. Application for a grant must be made in writing and contain at a minimum:

(a) A description of the deficiency which prevents the CRP from gaining "Approval" status and how the funds will be used to address the deficiency, or a description of the desired resource or service expansion that the funds will provide along with a demonstration of need by OVRS for such resources or services;

(b) A detailed budget for the use of the grant funds; and

(c) Assurance that the CRP is prepared to assume all costs associated with maintaining a non-deficient status, and ongoing costs to maintain the new resources or services.

(8) Vendors that only provide training, write resumes, consult on self-employment plans, assist with a self-employed business, or write PASS Plans and who have no in-person contact with any OVRS clients are exempt from the criminal records check and insurance requirements of this rule.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.530, 344.550

History: Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; Suspended by VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09; VRS 5-2004, f. & cert. ef. 8-5-04

## **582-010-0025**

### **State Standards for Vendor Approval for Providers of Community Rehabilitation Services**

In addition to the vendor approval requirements of OAR 582-080, OVRS adopts the following State Standards as required assurances that services to individuals with disabilities are provided in a safe environment and in compliance with applicable state, federal and local laws, rules or regulations. Approval methods will evaluate each applicant's ability to assure compliance with each of the following standards that, for the purposes of these rules, apply to the type of provider being evaluated:

(1) Physical Plant Standards. Provides services in an environment that meets accessibility requirements, is free of known health or safety hazards and in a site(s) which serves to support the accomplishment of its defined purpose(s).

(2) Health and Safety Standards. Meets all applicable governmental requirements, including OSHA standards for the Department of Labor; secures regular inspections and consultations (if applicable) from persons with expertise; and, has

an organized internal health and safety program (if applicable).

(3) Production Standards. When work opportunities are directly provided to individuals with disabilities: Establishes production and payment practices which maximize earning potential; assures fair and equitable wages; meets minimum expectations for working hours and conditions; and maintains all applicable certification and documentation for the Wage and Hour Division, U.S. Department of Labor.

(4) Insurance Standard. Maintain required workers' compensation insurance and applicable levels of vehicle, general and (if required) professional liability insurance protection, adequate to compensate staff and workers with disabilities for injuries and damages for which the organization may be liable.

(5) Physical Accessibility Standard. Complies with Section 504 of the Rehabilitation Act, the Architectural Barriers Act of 1968, the Uniform Accessibility Standards and their implementing standards in 41 CFR Part 101-19.6, the American National Standards Institute No. A117-1-1986, and applicable sections of the Americans with Disabilities Act (ADA).

(6) Organizational Standard. The CRP is structured to achieve its stated mission, secure all licenses or permits to do business within its jurisdiction(s) and scope of operation, plan and monitor the efficiency and effectiveness of services, and maintain records and reports that reflect the operation and provision of services and the organization's status.

(7) Fiscal Management Standard. Fiscal affairs relative to provision of rehabilitation services are managed in a manner consistent with its stated purposes and in accordance with a standard of sound business practices and legal requirements, including assurances that any state or federal audit and reporting requirements are met.

(8) Personnel Standard. As applicable, maintains competent qualified staff and written agency personnel policies which support the provision of services essential to the achievement of defined individual and program goals. The provider, when providing client transportation, ensures use of qualified, licensed vehicle operators and appropriate, safe vehicles. Criminal background check has been conducted on required staff/employees and has such on record according to DHS, state, federal and local laws, rules or regulations. When providing medical and related health services, ensures such services are prescribed by or under the formal supervision of persons licensed by the state to prescribe or supervise the provision of these services. Maintains pertinent professional and business licensure or certification as appropriate to the type of program or service(s) provided to clients.

(9) Program Management Standard. Ensures that services provided are individually tailored and coordinated in order to enhance each client's employment independence, integration, and/or productivity as identified within each Individualized Plan for Employment and through client participation in service planning, implementation and evaluation, using language or mode of communication most compatible with the individual client's abilities and culture.

(10) Program Evaluation Standard. Utilizes an approved method to enable it to identify the results of services to individuals with disabilities against established goals. Provides timely reports to OVRS of such information, and by such means, as OVRS may require for evaluation of ongoing program effectiveness, costs, and appropriateness of services provided by the provider.

(11) Human Rights Standard. Ensures, in its policies and practices, compliance with all laws and regulations dealing with non-discrimination, human and civil rights (including ADA), personal dignity and choice, and confidentiality.

(12) Community Relations Standard. The provider bases its program on documented evidence of the needs of prospective and current clients and maintains effective communications to assure that the programs and services are responsive and appropriately utilized.

(13) Code of Conduct Standard. Fully informs OVRS clients of the purpose and results of all service delivery efforts made on their behalf. The provider is respectful, inclusive, and accommodating of OVRS clients regardless of disability.

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; Suspended by VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 2-2003, f. & cert. ef. 12-31-03; VRD 3-1993, f. & cert. ef. 10-15-93; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 2-1980, f. & ef. 7-2-80; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 26, f. & ef. 7-1-77; VRD 24, f. & ef. 9-29-76; VRD 17, f. 8-28-74, ef. 9-25-74

## **582-010-0030**

### **Termination or Denial of Approval or Interim Approval**

- (1) The decision to deny or terminate "Approval" or "Interim Approval" shall be made in writing by OVRS. This notice shall contain the reason, the effective date, any requirements for reinstatement if applicable, and the appeals process.
- (2) OVRS will provide compensation for verifiable, authorized services provided by the provider of community rehabilitation services prior to the effective date of termination.
- (3) No OVRS funds will be provided for services or grant activities after the effective date as stated in the OVRS notice.
- (4) OVRS may provide a 30-day notice of termination or denial where any of the following reasons apply:
  - (a) Mutual agreement;
  - (b) Failure to provide or complete the required application;
  - (c) Termination of accreditation by the certifying body; or
  - (d) Failure to meet a service commitment.
- (5) OVRS may terminate or suspend an approval without 30-days notice for any of the following reasons:
  - (a) Engagement in or toleration of sexual harassment of any kind toward a client, i.e., deliberate or repeated comments, gestures or physical contact of sexual nature;
  - (b) Violation of any applicable federal, state or civil rights law;
  - (c) Commitment of fraud, misrepresentation, or serious error of authorization on billing statement;
  - (d) Acting alone or engaging in collusion to withhold information, or submit false or misleading documentation in order to generate payment;
  - (e) Acting alone or engaging in collusion to violate any OVRS Administrative Rule (chapter 582);
  - (f) Instructing any individual to engage in behavior contrary to the requirements of OVRS Administrative Rules (chapter 582); or
  - (g) Engagement in any behavior or comments likely to cause public embarrassment to OVRS clients.
- (6) An informal appeal of a decision to deny or terminate approval may be made to the OVRS Administrator within 30 days of the date of the written decision.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.530, 344.550

History: Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; Suspended by VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 2-2003, f. & cert. ef. 12-31-03

## **DIVISION 20**

### **DISPUTE RESOLUTION AND REVIEW OF DETERMINATIONS OF REHABILITATION SERVICES**

## **582-020-0005**

### **Dispute Resolution, General**

- (1) It is the intent of the Program to resolve disputes between the Program and its clients quickly and fairly.
- (2) Clients who are dissatisfied or disagree with a decision by Program personnel that affects the provision of vocational rehabilitation services to them shall have available a range of dispute resolution options, including problem solving, informal resolution, mediation, impartial due process hearing, and formal administrative review.
- (3) The Program shall inform clients about the range of dispute resolution options available and their right to seek the assistance of the Client Assistance Program.
- (4) The dispute resolution process is framed by the approved State Plan, the Rehabilitation Act of 1973 as amended (29 U.S.C. 701 et seq.), federal vocational rehabilitation regulations, relevant state statutes, the Administrative Procedures Act, and the Program's administrative rules and policies. The Program has not adopted the Model Rules of Procedure for Contested Cases OAR 1370030000 to 1370030700.
- (5) In the dispute resolution process clients must:
  - (a) Cooperate with scheduled meetings;
  - (b) Attend scheduled meetings and hearing related proceedings;

- (c) Submit paperwork in a timely manner; and
- (d) Reasonably provide relevant information as requested.

Statutory/Other Authority: ORS 344.530, 344.590

Statutes/Other Implemented: ORS 344.530, 344.550, 344.590

History: VRS 3-2020, amend filed 02/21/2020, effective 03/06/2020; VRS 1-2004, f. & cert. ef. 1-30-04

## **582-020-0010**

### **Definitions**

- (1) "Action" means a decision by the Program to deny, terminate, suspend, or reduce a client's eligibility or services. Action may include the Program's delay in making a decision to deny, terminate, suspend, or reduce a client's eligibility or services.
- (2) "Client" means an applicant or eligible individual of the Program.
- (3) "Delay" means:
  - (a) The Program failed to make a decision regarding an action within the timeframes specified in state or federal law; or
  - (b) If state or federal law does not impose a time limit, the client has made a dated, written request for a decision regarding a Program action and the Program has unreasonably delayed in making that decision.
- (4) "Due Process" means the process by which Program applicants or participants who are dissatisfied or disagree with a decision that affects the provision of vocational rehabilitation services may pursue a review.
- (5) "Final Order" means the written final Program action. Final order does not include any tentative or preliminary Program declaration or statement that precedes the final Program action.
- (6) "Formal Administrative Review (FAR)" means an impartial review by a reviewing official of the Impartial Hearing Officer's decision issued after the hearing.
- (7) "Good Cause" means due to unforeseen circumstances beyond the parties control, including, but not limited to, the client's extended illness that requires significant medical care or the illness or death of a family member.
- (8) "Impartial Hearing Officer (IHO)" means an individual who:
  - (a) Is not an employee of a public agency, other than an administrative law judge, hearing examiner, or employee of an institution of higher education;
  - (b) Is not a member of the State Rehabilitation Council;
  - (c) Has not been previously involved in the client's vocational rehabilitation plan;
  - (d) Has knowledge of the delivery of vocational rehabilitation services, the vocational rehabilitation services portion of the State Plan, and the Federal and State regulations governing the provision of services;
  - (e) Has received training with respect to the performance of official duties; and
  - (f) Has no personal, professional, or financial interest that could affect the individual's objectivity.
- (g) An individual is not considered to be an employee of a public agency for purposes of this definition because the individual is paid by the agency to serve as a hearing officer.
- (9) "Informal Dispute Resolution" means discussions with the Program about the resolution of a mediation or hearing request. Informal dispute resolution may occur at any time after a client files a request for mediation or hearing and, before a final mediation agreement has been signed or an order has been issued by the IHO.
- (10) "Impartial due process hearing or hearing" means a contested case hearing conducted by an IHO to review the Program's proposed action.
- (11) "Mediation" means the act or process of using a qualified and impartial third party to act as mediator, intermediary, or conciliator to assist individuals or parties in settling differences or disputes.
- (12) "Party" means, for purposes of the dispute resolution process, the Program and the client.
- (13) "Problemsolving" means an informal process where the client discusses dissatisfaction with an action with the client's counselor the counselor's supervisor, or other assigned Program employee. Problemsolving occurs before the client requests informal dispute resolution, mediation or a hearing. The client must request mediation or a hearing in order to preserve the client's appeal rights.

(14) "Qualified and impartial mediator" means an individual who:

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

(b) Is not a member of the State Rehabilitation Council;

(c) Has not been involved previously in the vocational rehabilitation plan of the client;

(d) Is knowledgeable of the vocational rehabilitation program and the applicable Federal and State laws, regulations, and policies governing the provision of vocational rehabilitation services;

(e) Has been trained in effective mediation techniques consistent with any State approved or recognized certification, licensing, registration, or other requirements; and

(f) Has no personal, professional, or financial interest that could affect the individual's objectivity during the mediation proceedings.

(g) An individual is not considered to be an employee of the Program for the purposes of this definition solely because the individual is paid by the Program to serve as a mediator.

(15) "Representative" means an individual who represents the client or the Program in an impartial fair hearing. The client may be represented by an attorney licensed by the Oregon State Bar or any other representative authorized by law, including but not limited to the Client Assistance Program. The Program may be represented by the Attorney General's office or by a Program lay representative.

(16) "Reviewing Official" means the individual who conducts the impartial administrative review of the IHO's decision if a party is dissatisfied with that decision. The reviewing official shall be the Director, or designee, of the Department of Human Services. The designee may not be an employee of the Program, or an individual previously involved in the vocational rehabilitation of the client, or an individual with a personal or financial conflict of interest.

Statutory/Other Authority: ORS 344.530(2), 344.590

Statutes/Other Implemented: ORS 183.310 - 183.550, 344.511 - 344.690, 344.710 - 344.730

History: VRS 3-2020, amend filed 02/21/2020, effective 03/06/2020; VRS 1-2004, f. & cert. ef. 1-30-04; VRD 1-1998, f. & cert. ef. 2-26-98; VRD 4-1997, f. & cert. ef. 11-20-97; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 1-1990, f. & cert. ef. 11-26-90; VRD 21, f. & ef. 3-5-76

## **582-020-0015**

### **Problem Solving**

(1) A client may request that their Program counselor engage in problemsolving with the client to resolve a dispute regarding the client's vocational rehabilitation services. A Notice of Action is not required in order for the client to request problemsolving. For purposes of this rule, a dispute does not necessarily involve a Program action that entitles the client to mediation or hearing rights.

(2) The Program may include a supervisor or other assigned Program employee in the meeting to resolve the issue. The client may have a representative or support person present during the discussions.

(3) Both parties must agree to participate in problemsolving. The Program may decline to participate in problemsolving if the client refuses to cooperate in scheduling or to participate in a meeting to discuss the dispute, or the same dispute has been resolved by the dispute resolution process and no further appeal rights are available, or prior attempts to resolve the dispute have been unproductive.

(4) Problemsolving may occur at any time prior to the client requesting a hearing or mediation. A client's request to engage in problemsolving does not exempt the client from complying with applicable legal timeframes to request a hearing or mediation.

Statutory/Other Authority: ORS 344.530, 344.590

Statutes/Other Implemented: ORS 344.530, 344.550, 344.590

History: VRS 3-2020, amend filed 02/21/2020, effective 03/06/2020; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2004, f. & cert. ef. 1-30-04

## **582-020-0020**

### **Notice of Dispute Resolution Rights**

- (1) The Program shall provide a written Notice of Dispute Resolution Rights to the client or, if appropriate, the client's representative:
- (a) At the time the client applies for vocational rehabilitation services;
  - (b) At the time the client is assigned to a category during an order of selection;
  - (c) At the time the individualized plan for employment (IPE) is developed; and
  - (d) Whenever vocational rehabilitation services are reduced, suspended, or terminated.
- (2) The Notice of Dispute Resolution Rights shall include the following information:
- (a) Statement about the continuum of dispute resolution processes available to the client, including problemsolving, informal dispute resolution, mediation and an impartial due process hearing;
  - (b) Where and how to file the request, including the names and addresses of individuals with whom requests may be filed, and relevant timeframes;
  - (c) The procedures for the assignment of mediators and Impartial Hearing Officers (IHO) to a particular case;
  - (d) The availability of the Client Assistance Program to assist the client with mediation or a hearing, including contact information;
  - (e) That interpreters and materials in alternative formats are available, if needed.

Statutory/Other Authority: ORS 344.530(2), 344.590

Statutes/Other Implemented: ORS 183.310 - 183.550, 344.511 - 344.690, 344.710 - 344.730

History: VRS 3-2020, amend filed 02/21/2020, effective 03/06/2020; VRS 1-2004, f. & cert. ef. 1-30-04; VRD 4-1997, f. & cert. ef. 11-20-97; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 1-1990, f. & cert. ef. 11-26-90; VRD 1-1981, f. & ef. 12-1-81; VRD 21, f. & ef. 3-5-76

## **582-020-0025**

### **Notice of Action and Notice of Procedural Rights**

- (1) The Program shall provide the client with a written Notice of Action when it makes a decision to deny, terminate, suspend, or reduce a client's eligibility or services.
- (2) The Notice of Action must include the following:
- (a) The date the notice is mailed;
  - (b) The information provided in the Notice of Dispute Resolution Rights;
  - (c) A description of the procedure and time to request a hearing, or a statement of the time and place of the hearing;
  - (d) Statement of the authority and jurisdiction under which the hearing is to be held;
  - (e) A short and plain statement about the action the Program intends to take and the action effective date;
  - (f) Statement about the reason for the action, including citations to the statutes or rules involved;
  - (g) Statement indicating whether and under what circumstances an order by default may be entered;
  - (h) Statement regarding the right to stay the proceedings and assistance available to active duty service members; and
  - (i) Statement regarding the right to continuing benefits under federal law.
- (3) The Program shall provide a written Notice of Procedural Rights to the client, or, the client's representative, when the client requests a hearing.
- (a) The Notice shall include the information set forth in ORS 183.413, except to the extent that the information was already provided to the client in the Notice of Action.
  - (b) The Program's failure to give notice of any of the items in ORS 183.413, unless notice of that item is also required by another applicable state or federal law, does not invalidate any determination or order of the Program unless upon an appeal from or review of the determination or order, a court finds that the failure affects the substantial rights of the complainant. In the event of such finding, the court shall remand the matter to the Program for a reopening of the hearing and shall direct the Program as to what steps it shall take to remedy the prejudice to the rights of the complainant.



Statutory/Other Authority: ORS 344.530, 344.590

Statutes/Other Implemented: ORS 344.511 344.690

History: VRS 3-2020, adopt filed 02/21/2020, effective 03/06/2020

## **582-020-0030**

### **Informal Dispute Resolution**

(1) When the client submits a request for mediation or a hearing, the parties may also request informal dispute resolution before the mediation or the hearing proceeds. A client does not need to request informal dispute resolution in order to request mediation or a hearing.

(2) The client may have a representative in the informal dispute resolution process. The Program shall have at least one other Program staff member or its representative involved in the process.

(3) The Program may decline to participate in informal dispute resolution if the client refuses to cooperate in scheduling or participating in a meeting to discuss the action, the same action has been resolved by the dispute resolution process and no further appeal rights are available, or prior attempts to resolve the disputed action have been unsuccessful.

(4) If the subject of the mediation or hearing request is resolved through the informal dispute resolution process, the resolution shall be confirmed in writing by the parties, and:

(a) The client shall withdraw the request for mediation or a hearing; or

(b) If the client fails to withdraw the request for hearing, the Program, if the matter has not yet been assigned to an IHO, or the IHO, if the matter has already been assigned, shall issue an order dismissing the client's hearing request.

(5) If the client or the Program is represented in the informal dispute resolution process, all settlement offers must be communicated to the party's representative.

(6) A client's request to engage in informal dispute resolution process does not extend the applicable legal timeframes to hold the hearing or to resolve the mediation, unless the parties agree to an extension for specific period of time.

Statutory/Other Authority: ORS 344.530, 344.590

Statutes/Other Implemented: ORS : 344.511 - 344.690

History: VRS 3-2020, amend filed 02/21/2020, effective 03/06/2020; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2004, f. & cert. ef. 1-30-04; VRD 4-1997, f. & cert. ef. 11-20-97; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 1-1990, f. & cert. ef. 11-26-90; VRD 1-1981, f. & ef. 12-1-81; VRD 21, f. & ef. 3-5-76

## **582-020-0035**

### **Mediation and Hearing Requests**

(1) A client who is dissatisfied with a Program action may request mediation, a hearing, or both. The client may also simultaneously request informal dispute resolution.

(2) The client shall use the Program approved Mediation and Hearing Request form to request mediation, a hearing, or both.

(3) To be timely a mediation and hearing request shall:

(a) Be received by the Program's Dispute Resolution Coordinator within 60 calendar days following the date of the Program's written Notice of Action or alleged Program delay in making a decision, except as otherwise provided in this rule.

(b) The client's hearing request is also considered timely if the Program's Dispute Resolution Coordinator:

(A) Receives a timely request for mediation under section (3)(a) of this rule; and

(B) Receives a completed request for hearing within 60 calendar days following the date of the Program's written notice declining to participate in or ending mediation under OAR 5820200045.

(4) Process for handling untimely mediation or hearing request:

(a) If the request for mediation or hearing is not timely under section (3) of this rule, the Program may issue an order accordingly or refer the issue to the IHO for a determination on the issue of timeliness.

(b) If the client believes that there is good cause for failure to timely request mediation or hearing, the client may send a written request to the Program's Dispute Resolution Coordinator requesting that the Program consider the client's

untimely request. The client's request shall be supported with a written statement explaining why the request was late and why this qualifies as good cause. The Program shall review this information and determine whether the client demonstrated that they had good cause for the untimely request.

(A) The Program may conduct further inquiry, including requesting supporting documentation from the client. The client must cooperate with this inquiry and within the timeframes set by the Program.

(B) If the Program finds that the client has good cause for the untimely request, the Program may accept the request as timely and proceed as if the request was timely.

(5) If there is a factual dispute about whether there is good cause for an untimely filing, the Program shall refer the matter to the IHO for a hearing to determine whether:

(a) The hearing request was received timely;

(b) The client received the Notice of Action; and

(c) The information included in the client's statement demonstrates good cause.

(6) The following are nonhearable issues:

(a) A client does not have a right to mediation or a hearing if the client fails to allege that he or she is dissatisfied by a Program action, as that term is defined in OAR 5820200010(1) or the same action has already been resolved through the dispute resolution process and no further appeal rights are available under these rules.

(b) If the Program determines that the client's mediation or hearing request does not identify a Program action that gives the client the right to mediation or a hearing, the Program shall contact the client or client's representative in writing to identify the deficiencies in the request and to give the client the opportunity to provide a corrected mediation or hearing request within 14 calendar days.

(c) In order for the corrected mediation or hearing request under subsection (b) of this rule to be considered timely, the Dispute Resolution Coordinator shall receive a complete request identifying a hearable issue within:

(A) The original deadline to request mediation or a hearing as described in section (3) of this rule; or

(B) 14 calendar days following the date the Program notified the client or client's representative of the deficiencies in the notice.

(d) If the client submits a corrected request identifying a hearable issue within the timeframes described in section (5)(c), the Program shall use the date of the corrected request, not the original request, for purposes of calculating the 60 day deadline to hold the mediation or hearing as described in section (10) of this rule.

(e) If the client does not submit a corrected request identifying a hearable issue that gives the client the right to mediation or a hearing under these rules, the Program may:

(A) Decline to participate in mediation;

(B) Enter an order to that effect; or

(C) Refer the matter to an IHO for a hearing on the question of whether the client has a right to an impartial due process hearing.

(7) When the Program has issued a Notice of Action and the client fails to request mediation or a hearing within required timeframes, the Program's Notice of Action is final and the Program shall issue no further order. The Program file, including all materials submitted by a party, shall be considered the record of the matter, and the record shall constitute a prima facie case supporting the Program's action. The only exception is if the client demonstrates that there was good cause, under section (4) of this rule, for the untimely request.

(8) After the client requests a hearing, the Program or the IHO shall dismiss the request for hearing, and the Program's Notice of Action becomes the final order in the case, as if the client never requested a hearing, if:

(a) The client withdraws the request for hearing;

(b) The client abandons the request for hearing by failing to respond to the Program's or IHO's attempts to schedule a prehearing conference, hearing or other hearing-related proceeding; or

(c) The client was notified about the scheduled prehearing conference, hearing, or other hearing related proceeding and:

(A) The client fails to appear at the prehearing conference, hearing or other hearing-related proceeding without good cause;

(B) The client informs the Program or IHO that the client will not appear at the prehearing conference, hearing or other hearing-related proceeding.

(9) If the client fails to appear at the scheduled prehearing conference, hearing or other hearing-related proceeding or appears to abandon the hearing request and before dismissing the request for hearing, the IHO finds that the client had good cause, the IHO may not dismiss the request for hearing under section (8) of this rule. In this case, the IHO shall schedule a new prehearing conference, hearing or other hearing-related proceeding. If the reasons for the client's failure to appear are in dispute, the IHO shall schedule a hearing on the reasons for the client's failure to appear.

(10) The client may withdraw a request for hearing at any time before the IHO issues an order.

(a) If the request for hearing is withdrawn before the case is assigned to an IHO, the Program shall issue the order dismissing the request for hearing.

(b) After the case is assigned to an IHO, the IHO shall issue the order dismissing the request for hearing.

(11) The hearing or mediation shall be held within 60 calendar days from the date the Program's Dispute Resolution Coordinator received the client's timely request for hearing or mediation, unless:

(a) Informal dispute resolution successfully resolves the matter within the 60day deadline;

(b) A final mediation agreement is agreed to and signed by the parties within the 60day deadline;

(c) The hearing request was made pursuant to section (3)(b) of this rule, and the hearing occurs within 60 days following the date of the hearing request; or

(d) The parties agree to an extension of the deadline for a specific period of time. Extensions of the timeline shall be documented in writing.

(12) For purposes of these rules when a rule describes:

(a) A deadline in calendar days and the last calendar day of a specified time period falls on a Saturday, Sunday, a legal holiday or the Program's Central Administrative Office is closed, the deadline shall be extended until the next working day.

(b) All requests or other documents must be sent to the Program's Dispute Resolution Coordinator at the Program's Central Administrative Office in Salem.

(13) The Program shall offer assistance to help clients request mediation or a hearing, and shall inform them that they may also request the assistance of the Client Assistance Program in making these requests.

Statutory/Other Authority: ORS 344.530, 344.590

Statutes/Other Implemented: ORS 344.511 344.690

History: VRS 3-2020, adopt filed 02/21/2020, effective 03/06/2020

## **582-020-0040**

### **Continuation of Services**

The Program may not suspend, reduce, or terminate vocational rehabilitation services being provided to a client, including evaluation and assessment services and IPE development, pending a resolution through mediation, pending a decision by the IHO or Reviewing Official, or pending informal dispute resolution, unless:

(1) The client or client's representative requests suspension, reduction, or termination of services pending the outcome of dispute resolution process; or

(2) The Program has evidence that the services have been obtained through misrepresentation, fraud, collusion or criminal conduct on the part of the client or the client's representative.

Statutory/Other Authority: ORS 344.530, 344.590

Statutes/Other Implemented: ORS 344.530, ORS 344.540 & 344.590

History: VRS 3-2020, amend filed 02/21/2020, effective 03/06/2020; VRS 1-2004, f. & cert. ef. 1-30-04; VRD 4-1997, f. & cert. ef. 11-20-97

## **582-020-0045**

### **Mediation**

(1) Participation in the mediation process is voluntary. If the Program declines to participate following a request for

mediation under OAR 582 0200035, the Program shall provide written notice to the client that mediation is declined and the client shall be advised of their right to request a hearing, if a request for a hearing is not already pending.

(2) Selection of mediator:

(a) The Program shall select mediators who are listed on the Oregon State Alternative Dispute Resolution (ADR) Provider Roster of the State of Oregon Department of Justice, who have indicated an interest or expertise in disabilityrelated issues, and who meet the requirements of a qualified and impartial mediator.

(b) Upon receipt of a timely request for mediation from the client, the Program shall contact, on a rotating basis, a mediator who is geographically near the Program office of the client. If that mediator is not available within two weeks, the Program shall contact other mediators using this same identification process until one is identified who can provide timely services. If no mediator is mutually selected from the pool of mediators geographically near the Program office of the client, the Program shall contact, on a rotating basis, mediators from a wider geographic range.

(c) Each party shall be given the opportunity to agree to or reject an identified mediator prior to the beginning of mediation services.

(3) Agreement to mediate:

(a) Prior to the beginning of the first mediation session, the parties shall sign the Programapproved "Agreement to Mediate" form.

(b) The mediation shall occur between the Program counselor or assigned Program employee and the client. The parties may have a representative assist them in the mediation. The inclusion or participation of any other individuals for either side shall be at the discretion of the mediator, unless otherwise prohibited by law.

(4) Conclusion of mediation:

(a) At any point during the mediation process, either party or the mediator may elect to terminate the mediation.

(b) A successful mediation shall be concluded with a final written mediation agreement prepared by the mediator. The parties must agree to and sign the agreement in order for it to be effective in resolving the case. The parties shall be given a copy of the signed agreement.

(A) The final agreement shall become part of the case file record, unless otherwise agreed.

(B) If the agreement includes any changes to the Individualized Plan for Employment (IPE), a revision to the IPE or amended IPE that incorporates the changes shall be in writing and signed by the Program and the client.

(c) If an agreement is not reached, the Program shall provide the client with written notice that the mediation process has ended and advise the client of their right to request an impartial due hearing process within the timeframes specified in OAR 5820200035, if a hearing request is not already pending.

(5) Confidentiality of mediation:

(a) All mediation communications, including discussions, memorandum, work product, draft mediation agreements, or any other documents prepared for, submitted, or made in the course of mediation, shall be confidential and may not be used as evidence in any subsequent impartial due process hearing or other civil proceeding, unless otherwise required by law.

(b) A written mediation agreement that arises out of mediation, including any term or condition of the agreement, is not confidential and may be used as evidence in any subsequent impartial due hearing process or other legal proceeding.

(c) Notwithstanding any other provision of these rules, the mediator, the Program, and the client may retain any mediation documentation to the extent it is necessary for administrative or payment purposes, or to comply with applicable laws, including but not limited to the Public Records law.

Statutory/Other Authority: ORS 344.530, 344.590

Statutes/Other Implemented: ORS 344.530, 344.540, 344.590

History: VRS 3-2020, adopt filed 02/21/2020, effective 03/06/2020

## **582-020-0050**

### **Impartial Due Process Hearing**

(1) The Program shall refer a completed and timely hearing request, as described in OAR 5820200035, to an IHO.

- (2) The hearing shall be held at a time consistent with OAR 5820200035 and designated by the IHO.
- (3) The hearing shall be held in a location that is convenient and accessible, as agreed to by the client and the Program.
- (4) Hearings shall be conducted in person, unless agreed to by the client and the Program.
- (5) The parties shall have the opportunity to submit documentary evidence, to testify, and to call and cross-examine witnesses.
- (6) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.
- (7) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, and privileges afforded by Oregon law shall be recognized by the IHO.
- (8) Transmittal of questions to Program: At the request of one of the parties or their representatives, or on the IHO's own motion, the IHO may transmit a question to the Program to request the Program's interpretation of its rules and applicable statutes, or which rules or statutes apply to a proceeding.
  - (a) The IHO shall submit any transmitted question in writing to the Program. The submission shall include a summary of the matter in which the question arises and shall be served on the parties.
  - (b) The Program may ask for clarification in order to respond to the transmitted question.
  - (c) Unless prohibited by statute or administrative rules governing the timing of hearings, the IHO may continue the hearing or delay issuing a decision in order to get a response from the Program.
  - (d) The Program shall respond in writing to the transmitted question within a reasonable time. The Program's response shall be signed by an individual with authority to answer the question transmitted.
  - (e) The Program's response shall be made a part of the hearing record. The Program's response may be to decline to answer the transmitted question. The Program shall provide its response to the parties and IHO. The parties may reply to the Program's response no less than seven calendar days, unless ordered by the IHO and agreed to by the Program.

Statutory/Other Authority: ORS 344.530, 344.590

Statutes/Other Implemented: ORS 344.511 - 344.690

History: VRS 3-2020, amend filed 02/21/2020, effective 03/06/2020; VRS 1-2004, f. & cert. ef. 1-30-04; VRD 4-1997, f. & cert. ef. 11-20-97

## **582-020-0055**

### **Selection of Impartial Hearing Officer**

- (1) IHOs are assigned from a pool of qualified individuals who meet the requirements of OAR 5820200010(7) and who have been identified jointly by the Program and the State Rehabilitation Council.
- (2) IHOs are assigned on a rotational basis unless the parties agree in advance to the assignment of a specific IHO from the pool outside of the rotation.
- (3) Either party may request that the assigned IHO remove himself or herself because of a potential conflict of interest or disqualification. Requests based on conflict of interest shall be reviewed under the standards of Rule 3.10 of the Oregon Code of Judicial Conduct (disqualification) and 34 CFR 361.5(b)(25)(i)(F) (an individual has no personal, professional or financial interest that would be in conflict with the objectivity of the individual). If the IHO removes himself or herself or is removed under section (5) of this rule, a new IHO shall be chosen by rotation from the pool unless the parties agree to a specific IHO from the pool outside of the rotation.
- (4) If the IHO denies a request to withdraw under section (3) of this rule, the IHO shall advise the parties in writing of the nature of the alleged conflict and the rationale for the decision not to remove himself or herself.
- (5) The IHO's decision not to remove himself or herself may be appealed immediately to the Program Director, whose decision is final.

Statutory/Other Authority: ORS 344.530, 344.590

Statutes/Other Implemented: ORS 344.511 344.690

History: VRS 3-2020, adopt filed 02/21/2020, effective 03/06/2020

## **582-020-0060**

## **Prehearing Conferences**

(1) Prior to hearing, the IHO shall conduct at least one prehearing conference to facilitate the conduct and resolution of the case. Unless both parties agree that no conference is desired, the parties must attend and participate in at least one scheduled prehearing conference.

(2) The purposes of a prehearing conference may include, but are not limited to the following:

(a) To facilitate discovery and resolve disagreements about discovery;

(b) To identify, simplify, and clarify issues directly related to the disputed Program action identified in the hearing request;

(c) To eliminate irrelevant or nonhearable issues;

(d) To obtain stipulations of fact and admit documents into evidence;

(e) To provide to the IHO and parties, in advance of the hearing, copies of all documents intended to be offered as evidence at the hearing and the names of all witnesses expected to testify;

(f) To authenticate documents;

(g) To decide the order of proof and other procedural matters pertaining to the conduct of the hearing;

(h) To discuss the use of a collaborative dispute resolution process in lieu of or preliminary to holding the contested case hearing;

(i) To schedule the date, time and location of the hearing or for any other matters connected with the hearing, including motion hearings, dates for prefiled testimony and exhibits and exchange of exhibits and witness lists; and

(j) To discuss settlement or other resolution or partial resolution of the case.

(3) The prehearing conference may be conducted in person or by telephone.

(4) The IHO shall make a written record of any stipulations, rulings and agreements. Stipulations to facts and to the authenticity of documents and agreements to narrow issues shall be binding upon the parties to the stipulation unless good cause is shown for rescinding a stipulation or agreement.

Statutory/Other Authority: ORS 344.530, 344.590

Statutes/Other Implemented: ORS 344.511 - 344.690

History: VRS 3-2020, amend filed 02/21/2020, effective 03/06/2020; VRS 1-2004, f. & cert. ef. 1-30-04; VRD 4-1997, f. & cert. ef. 11-20-97

## **582-020-0065**

### **Impartial Hearing Officer Responsibility to Maintain a Hearing Record**

(1) The IHO shall maintain an audio record of all prehearing conference events, whether by telephone or in person.

(2) The IHO shall maintain a written record of all hearing events, including, but not limited to, all pleadings, notices, email correspondence, exhibits submitted, witness lists, stipulations, agreements, rulings, orders, and decisions.

(3) The hearing officer does not have the authority to order a court reporter or other resource to create or maintain the written or audio record at the Program's expense. Any additional resources requested and to be paid by the Program shall be agreed to by the Program.

Statutory/Other Authority: ORS 344.530, 344.590

Statutes/Other Implemented: ORS 344.511 344.690

History: VRS 3-2020, adopt filed 02/21/2020, effective 03/06/2020

## **582-020-0070**

### **Discovery**

(1) Before the hearing, the parties shall provide to the IHO and the other party a list of witnesses the party intends to call to testify at the hearing, and any documents that the parties intend to offer as evidence. The IHO may set a deadline to exchange witness lists and exhibits. The IHO may exclude witnesses or evidence that was not provided by this deadline unless the party offers a satisfactory reason for having failed to do so, or unless excluding the evidence would violate the duty to conduct a full and fair inquiry of the issue.

(2) Any discovery request shall be reasonably likely to produce information that is generally relevant and necessary to

the case, or is likely to facilitate resolution of the case.

(3) The client may review the Program case file. However, materials protected under 34 CFR 361.38(c)(2) because of potential harm to the client may be withheld from clients representing themselves if these materials are not offered into evidence at the hearing.

(4) The Program, an attorney representing one of the parties, or the IHO may issue subpoenas for the attendance of witnesses or the production of documents.

(5) Depositions may not be taken without the Program's express authorization.

(a) A party seeking to take the testimony of a material witness by deposition shall file a written request with the Program, with a copy to the IHO. The request shall include the name and address of the witness, a showing of materiality of the testimony of the witness, an explanation of why a deposition rather than informal, or other means of discovery, is necessary, and a request for the purpose of recording testimony.

(b) The Program shall consider the petition and issue a written order either granting or denying the deposition. If the Program grants the deposition, the deposition shall be taken on the terms the Program may order, including, but not limited to, location, manner of recording, time of day, individuals permitted to be present, and duration. The Program shall not pay for any deposition taken by the client.

Statutory/Other Authority: ORS 344.530, 344.590

Statutes/Other Implemented: ORS 344.511 - 344.690

History: VRS 3-2020, amend filed 02/21/2020, effective 03/06/2020; VRS 1-2004, f. & cert. ef. 1-30-04; VRD 4-1997, f. & cert. ef. 11-20-97

## **582-020-0075**

### **Program Representation during Impartial Hearings**

(1) The Program may be represented by an Assistant Attorney General.

(2) Subject to the approval of the Attorney General, an employee of the Program is authorized to appear as the lay representative in hearings governed by OAR chapter 582, division 020.

(3) A Program representative may not make legal argument.

(a) Legal argument includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the agency; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) Legal argument does not include presentation of evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

(B) Comparison of prior actions of the Program in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; and

(D) The admissibility of evidence or the correctness of procedures being followed.

(4) When a lay representative represents the Program, the IHO shall advise the representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections involve legal argument, the IHO shall provide reasonable opportunity for the Program employee to consult legal counsel and permit legal counsel to file written legal argument within a reasonable time after conclusion of the hearing or to represent the Program if the hearing is continued.

Statutory/Other Authority: ORS 344.530, 344.590

Statutes/Other Implemented: ORS 344.511 - 344.690

History: VRS 3-2020, adopt filed 02/21/2020, effective 03/06/2020

## **582-020-0080**

### **Impartial Hearing Officer's Decision**

(1) The Impartial Hearing Officer's (IHO) decision shall be based on the approved State Plan, the federal Rehabilitation Act, federal vocational rehabilitation regulations, relevant state statutes, and the Program's administrative rules and policies.

(2) The IHO shall provide a full written report of the findings and grounds for his or her decision to the parties within 30 calendar days the date the hearing was completed, unless the parties agree to an extension for a specific period of time. The written report shall include any findings from prehearing conferences, motion hearings or any other formal hearing events, unless the IHO has already issued a separate order with these findings.

(3) A party who is dissatisfied with the IHO's decision may request a Formal Administrative Review of that decision within 20 days following the date of mailing of the IHO's decision. The date of mailing shall be the date identified on the certificate of mailing attached to the decision; if there is no certificate, the date of mailing shall be the date of the postmark; if there is no certificate or postmark, the date of mailing shall be the date of the decision.

(4) The IHO's decision is final, unless either party timely requests a Formal Administrative Review of the decision. If a FAR is requested, the IHO's order shall be automatically stayed and the decision may not be implemented while the FAR is pending.

(5) If neither party timely requests a FAR, the IHO's decision becomes the Program's final order and shall be implemented 21 days from the date of mailing of the IHO's decision. If both parties agree in writing that they will not appeal the IHO's decision, the decision may become the Program's final order and implemented earlier than 21 days after the mailing date of the IHO's decision.

Statutory/Other Authority: ORS 344.530, 344.590

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 3-2020, amend filed 02/21/2020, effective 03/06/2020; VRS 1-2004, f. & cert. ef. 1-30-04; VRD 4-1997, f. & cert. ef. 11-20-97

## **582-020-0085**

### **Program Appeals**

The Program Director or designee shall approve any decision by the Program to challenge a decision by an Impartial Hearing Officer, a reviewing official, or a court of law.

Statutory/Other Authority: ORS 344.530(2), 344.590

Statutes/Other Implemented: ORS 344.511 344.690, 344.710 344.730

History: VRS 3-2020, amend filed 02/21/2020, effective 03/06/2020; VRS 5-2004, f. & cert. ef. 8-5-04

## **582-020-0090**

### **Formal Administrative Review**

(1) A party who is dissatisfied with the IHO's decision may request a Formal Administrative Review (FAR) of the decision within 20 days from the mailing of the IHO's decision, as described in OAR 5820200080(3). The request shall be in writing and filed with the Program Dispute Resolution Coordinator at the Central Administrative Office in Salem.

(2) A party may not request a Formal Administrative Review before the hearing process has ended or before the Impartial Hearing Officer has issued a final decision.

(3) The FAR shall be conducted by a reviewing official.

(4) On receipt of a timely request for FAR, the Program Dispute Resolution Coordinator shall promptly notify the reviewing official and the parties. The Program Dispute Resolution Coordinator shall provide the entire hearing record to the reviewing official.

(5) The reviewing official shall provide both parties with an opportunity to submit in writing additional evidence and information relevant to a final decision concerning the action under review. Each party shall submit that information to the reviewing official and other party. If the reviewing official does not provide a schedule for submitting written materials, all written materials shall be received by the reviewing official no later than 20 days following the date the Program's Dispute Resolution Coordinator sent its notice of the pending request, as described in section (3) of this rule.

(6) The reviewing official shall make an independent, final decision following review of entire hearing record and provide



the decision in writing, including a full report of the findings and the statutory, regulatory, or policy grounds for the decision to the client, the client's representative, and to the Program Dispute Resolution Coordinator within 30 days following the date of the request for a FAR.

(7) The reviewing official may not overturn or modify the IHO's decision, or any part of that decision, that supports the position of the client unless the reviewing official concludes, based on clear and convincing evidence, that the decision of the IHO is clearly erroneous on the basis of being contrary to the approved State Plan, the federal Rehabilitation Act, federal vocational rehabilitation regulations, and Program administrative rules and policies that are consistent with federal requirements.

(8) The reviewing official's decision is a final order unless either party appeals the decision to state court or brings a civil action under OAR 582020-0095.

(9) If a party appeals or brings a civil action to challenge the reviewing official's final order, the order must be implemented pending review by the court, unless a stay is requested and granted by the Program or otherwise ordered by a court.

Statutory/Other Authority: ORS 344.530, 344.590

Statutes/Other Implemented: ORS 344.511 - 344.690

History: VRS 3-2020, amend filed 02/21/2020, effective 03/06/2020; VRS 1-2004, f. & cert. ef. 1-30-04; VRD 4-1997, f. & cert. ef. 11-20-97

## **582-020-0095**

### **Civil Action**

Any party who disagrees with the reviewing official's final order may bring a civil action with respect to the disputed action. The action may be brought in any state court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

Statutory/Other Authority: ORS 344.530 & 344.590

Statutes/Other Implemented: ORS 344.530, ORS 344.540 & 344.590

History: VRS 3-2020, adopt filed 02/21/2020, effective 03/06/2020

## **DIVISION 30**

### **CONFIDENTIALITY OF CLIENT INFORMATION AND RELEASE OF INFORMATION**

## **582-030-0000**

### **General Provisions**

The purposes of this division are to:

(1) Implement policies and procedures for the protection, use and release of personal information about individuals applying for or receiving Vocational Rehabilitation (Program) services, consistent with federal statutes and regulations for the Program.

(2) Implement the confidentiality statutes for the Program in ORS 344.530(1)(b) and 344.600.

(3) Clarify how these regulations incorporate and supplement other applicable federal and state laws and regulations.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 1-2019, amend filed 04/05/2019, effective 04/15/2019; VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; VRS 3-2004, f. & cert. ef. 3-12-04; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 4-1991, f. & cert. ef. 12-13-91

## **582-030-0005**

### **Definitions**

The following definitions apply to each Rule in Division 30 unless otherwise indicated.

(1) "Confidential Information" means any personally identifiable information acquired or developed by the Program, its staff or its representatives or that identifies an individual as someone applying for or receiving services from the Program.

- (2) "Cooperative Agreement" means a written agreement between the Program and another agency or organization which includes terms protecting confidentiality of individual's information in keeping with the statutory and regulatory requirements of all parties to the agreement.
- (3) "Department Director" means the Director of the Department of Human Services.
- (4) "Designee" means any officer or employee appointed by the Director of the Department of Human Services to respond to requests for reduction or waiver of fees for public records of the Department.
- (5) "Director" means the Director of Vocational Rehabilitation.
- (6) "HIV/AIDS Information" is any information covered by ORS 433.045(3) or that is likely to identify, directly or indirectly, that a client has been tested for the HIV virus or has HIV infection, antibodies to HIV, AIDS (Acquired Immunodeficiency Syndrome) or related infections or illnesses.
- (7) "Individual" means any individual who has provided information to the Program as part of the application process for the Program services or subsequent to an application.
- (8) "Informed Written Consent" means, after receiving a thorough explanation and understanding of the purposes, limitations, recipients, and specific information to be released, an individual or, if appropriate, individual's representative completes and signs a Department of Human Services Form 2099 (Authorization for Use and Disclosure of Health Information), or its successor, or other sufficient written authorization, releasing personal information from or to the Program.
- (9) "Parent Locator Service" means a service authorized by 42 USC 653 seeking information for the purpose of establishing parentage or establishing, setting, modifying or enforcing child support.
- (10) "Parent or Guardian" means an individual having legal responsibility for the overall welfare and well-being of an individual under age 18 or an individual, if over age 18, is adjudicated legally incapacitated.
- (11) "Person" includes any natural person, corporation, partnership, firm or association.
- (12) "Photocopy" means a photograph, microphotograph and any other reproduction on paper or film in any scale, or the process of reproducing, in the form of a photocopy, a public record.
- (13) "Public Officer Privilege" means, as provided in ORS 40.270, a public officer shall not be examined as to public records determined to be exempt from disclosure under ORS 192.502(8) and (9).
- (14) "Public Record" means any writing that contains information relating to the conduct of the public's business that is prepared, owned, used or retained by the Department regardless of physical form or characteristics.
- (15) "Representative" means any person identified by the individual as being authorized to speak or act on behalf of the individual or to assist the individual in any matter pertaining to Program services, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.
- (16) "Requestor" means an individual requesting inspection, copies, or other reproduction of the Department's public records.
- (17) "Subpoena" means a written order for a witness to appear and give testimony or deliver named material issued.
- (18) "Substance Abuse Information" means any information regulated under 42 CFR 2.1 - 2.67.

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 1-2019, amend filed 04/05/2019, effective 04/15/2019; VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; VRS 1-2008, f. & cert. ef. 2-4-08; VRS 3-2004, f. & cert. ef. 3-12-04; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 4-1991, f. & cert. ef. 12-13-91

## **582-030-0008**

### **Billing Policy and Procedures**

- (1) An individual or an individual's representative, including Disability Rights Oregon's Client Assistance Program (CAP) representing that individual, may request a copy of information from the individual's files at no cost once every 12

months. If the individual requests another copy of the same information, more frequently than once every 12 months, then the Program may impose a reasonable, cost-based fee.

(2) The Program shall charge for the cost of making the record available to the extent permitted by OAR 407-003-0010.

(3) All moneys received shall be handled and recorded under approved state accounting procedures.

(4) If the Program denies an initial verbal request for waiver or reduction of fees, the requestor shall submit a written request. If the Program subsequently denies the written request for a waiver or reduction of fees, the requestor may petition the Attorney General for a review of the denial pursuant to the provisions of ORS 192.440(5) and 192.450.

(5) At the option of the Branch office that processes the requested material, the Branch manager as the Director designee may waive assessment of a fee.

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 1-2019, amend filed 04/05/2019, effective 04/15/2019; VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; VRS 1-2008, f. & cert. ef. 2-4-08; VRS 3-2004, f. & cert. ef. 3-12-04; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 4-1991, f. & cert. ef. 12-13-91

## **582-030-0010**

### **Program Uses and Disclosures**

(1) All personally identifiable information about an individual that is obtained, generated by, or made available to the Program, its representative or employees, shall be protected, and held confidential. The information is the property of the Program and may only be used and disclosed as permitted by these rules. In addition, the information may not be used or disclosed in violation of any of the following laws where those laws are applicable:

(a) Federal laws concerning substance abuse information as set out in 42 CFR part 2;

(b) State laws concerning HIV information as set out in ORS 433.045;

(c) State laws concerning DNA and genetic information as set out in ORS 192.537 and 192.539.

(2) Confidential information may be used and disclosed by the Program for purposes directly connected with the administration of the Program, unless prohibited by law. Except for purposes directly connected with the administration of vocational rehabilitation or as required by law, the Program may not use or disclose any list of or names of, or any information concerning individuals applying for or receiving vocational rehabilitation services.

(3) Except as directed by the individual under informed written consent, the individual's information may not be disclosed outside the Program unless disclosure is:

(a) Required by federal or state law, including the exceptions to written consent requirements described in OAR 582-030-0040;

(b) Ordered by a judge, magistrate or other authorized judicial officer; or

(c) Authorized by these rules.

(4) Any information about a crime committed by any individual, or suspected abuse or neglect, or that poses a threat to the safety of the individual or others is not confidential except as provided by law.

(5) Identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the Program, unless the individual gives written consent.

(6) Each affected individual shall be informed that discussion of work related information with potential employers, in connection with the individual's job placement, is considered to be within the scope of the administration of the Program and the information may be used or disclosed to the extent allowed by law. The information shall be limited to that which the counselor determines to be necessary to the placement process and directly related to the individual's abilities to perform, retain, or acquire the skills to perform, specific employment.

(7) Unless prohibited by law, individual information may be released to other agencies which have cooperative agreements with the Program without the written consent of the individual only if providing such information has a bearing on administration of the Program or the provision of Program services. At time of application and at other times

that individual information is being collected, the Program shall inform the individual about situations where information is routinely released and identify the involved agencies.

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 1-2019, amend filed 04/05/2019, effective 04/15/2019; VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; VRS 3-2004, f. & cert. ef. 3-12-04; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 4-1991, f. & cert. ef. 12-13-91; VRD 3-1981, f. & ef. 12-1-81; VRD 22, f. & ef. 3-5-76

## **582-030-0020**

### **Release of Information to Other Agencies, Organizations, or Authorities**

(1) Form 2099 (Authorization for Use and Disclosure of Health Information), or other sufficient written authorization, shall be used to obtain client permission to release or obtain client information. Before the client or client's representative signs this form it must be completed to indicate informed consent, involved parties and timelines for obtaining or releasing specified information. For a client who has been adjudicated legally incapacitated, the parent or legal guardian must also sign the form.

(2) The cover page of any document, record, or report containing the Program's client information released to any other agency, organization or person shall be imprinted with a statement that reads:

CONFIDENTIAL

This information cannot be released to any other person, agency, or organization without the prior written approval of the Oregon Vocational Rehabilitation Program.

(3) Release to other agencies or programs. Upon receiving the informed written consent of the individual, the Program may release individual information to another agency or organization to assist with vocational rehabilitation services. The Program may restrict disclosure of individual information believed to be harmful if released directly to an individual until the Program secures written agreement from the requester that the information shall be used only for the purposes authorized and may not be further released to the individual.

(4) Release for audit, evaluation, or research. The Program may release confidential information to an organization, agency, or authority engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for individuals with disabilities and only when the Program is assured that:

- (a) The information shall be used only for the purposes authorized;
- (b) The information shall be released only to authorities officially connected with the authorized activity;
- (c) The information shall not be released to the involved individual;
- (d) The information shall be managed in a manner to safeguard confidentiality; and
- (e) The final product shall not reveal the identity of any involved individual without the individual or representative's written consent.

[Publications: Publications referenced are available from the agency.]

[ED. NOTE: Forms referenced are available from the agency.]

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 1-2019, amend filed 04/05/2019, effective 04/15/2019; VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; VRS 3-2004, f. & cert. ef. 3-12-04; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 4-1991, f. & cert. ef. 12-13-91; VRD 3-1981, f. & ef. 12-1-81; VRD 22, f. & ef. 3-5-76

## **582-030-0025**

### **Subpoenas**

(1) The Director is the official custodian of all records for the Program. Any subpoena for release of an Program records shall be directed to the Director at the Program's central administration.

- (2) A subpoena generated or authorized by an individual participating in the Program or the individual's attorney to testify or release individual information is deemed to be an informed written consent from the individual, except as prohibited by law.
- (3) Upon verification that an individual's attorney is authorized to issue the subpoena on the individual's behalf, Program employees may communicate with the individual's attorney within the scope of the request to the extent provided under OAR 582-030-0030.
- (4) Without a valid written authorization from the individual or an order issued by a judge, magistrate or other authorized judicial officer, Program employees may not provide the individual information in response to a subpoena not generated by or authorized by an individual or the individual's attorney.
- (5) Any Program employee who appears in response to a subpoena not generated by or authorized by the individual or the individual's attorney and without a valid written authorization shall read a statement at the start of the appearance instead of providing documents or testifying about an individual. The statement shall explain that the documents and testimony are confidential and privileged under federal and state law. If after making this statement to a judge, magistrate or other authorized judicial officer, the judge, magistrate or other judicial officer issues an order, the Program employee shall comply with the order, including providing any documents or testimony within the scope of the order.
- Statutory/Other Authority: ORS 344.530
- Statutes/Other Implemented: ORS 344.530, 344.540(1), 344.600
- History: VRS 1-2019, amend filed 04/05/2019, effective 04/15/2019; VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; VRS 3-2004, f. & cert. ef. 3-12-04

## **582-030-0030**

### **Release to Clients, Parents, Guardians and Legal Representatives**

- (1) Upon written request using DHS Form 2093, or its equivalent, the requested information from the Program case file shall be released to the individual or, as appropriate, the individual's representative, in a timely manner, with the following exceptions:
- (a) Case file information obtained from another agency or organization, treatment records, and psychological evaluations may only be released under the conditions established by the treatment provider or source of the records or under the conditions established by agreement between the Program and the treatment provider or source of the records.
- (b) If an individual or, as appropriate, a parent, guardian, or other representative presents a written request to review medical or psychological reports from the individual's Program file and the counselor believes direct release of such information to any of the above persons may be harmful to the individual, the following procedures shall be followed:
- (A) The counselor shall contact the practitioner who wrote the report to request an opinion as to whether the practitioner believes direct release of the information would be harmful to the individual; or, if a practitioner is unavailable;
- (B) The counselor shall obtain an opinion from the appropriate office medical or psychological consultant as to whether the consultant believes direct release of the information would be harmful to the individual; the consultant shall record the opinion on the Medical/Psychological Review Record in the medical jacket (R-114);
- (C) If the practitioner or consultant states that direct release would not be harmful, the counselor shall release the requested Program information directly to the individual or (as appropriate) to the individual's parent, guardian, or designated representative;
- (D) If the practitioner or consultant states that direct release would be harmful, the counselor shall request but not require the individual to designate an appropriate and qualified physician or psychologist of the individual's choosing for the purpose of reviewing and interpreting the contents of the report to the individual. If the individual agrees, the counselor shall schedule the appointment, mail copies of the report to the practitioner, and if the individual so requests, execute an Authorization for Purchase to pay the practitioner for an office visit at the Program current approved rate of payment.
- (E) Medical, psychological, or other information that the Program determines may be harmful to the individual may not

be released directly to the individual, but if release is allowed under these rules, shall be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, a qualified medical or mental health professional, unless a representative has been appointed by court to represent the individual in which case the information shall be released to the court-appointed representative.

(2) If the individual is or was a minor age 14 or older who consented to their own mental health or substance abuse treatment, informed written consent from the individual is required for the release of mental health or substance abuse information to a parent or guardian.

(3) If the individual is or was a minor age 15 or older who consented to their own medical treatment, informed written consent from the individual is required for the release of general medical information to a parent or guardian.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 1-2019, amend filed 04/05/2019, effective 04/15/2019; VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 3-2004, f. & cert. ef. 3-12-04; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 4-1991, f. & cert. ef. 12-13-91; VRD 3-1981, f. & ef. 12-1-81; VRD 22, f. & ef. 3-5-76

## **582-030-0040**

### **Exceptions to Written Consent Requirements**

(1) The following reporting and response to investigations are required:

(a) The Program employees shall report to the appropriate authorities abuse of individuals age 65 and over, (see ORS 124.060), under the age of 18, (see ORS 419B.010), individuals 18 age or over with developmental disabilities or mental illness, (see ORS 430.765), and residents of long-term care facilities, (see ORS 441.640);

(b) The Program shall release the individual's information if required by federal law or in response to investigations in connection with law enforcement, fraud or abuse (unless expressly prohibited by federal or state laws or regulations) or in response to an order issued by a judge, magistrate or other authorized judicial officer.

(2) Response to Child Support Enforcement. An individual authorized under federal law may access information for the Federal Parent Locator Service under ORS 25.265.

(3) The Program may release an individual's information to protect the individual or others when the individual poses a threat to his or her safety or to the safety of others.

(4) For deceased Individuals:

(a) Vital Statistics. These rules do not restrict the disclosure of the Program identifying information relating to the death of an individual under laws requiring the collection of vital statistics or permitting inquiry into the cause of death;

(b) Consent by Personal Representative. Other requirements of these rules notwithstanding, if written consent to disclosure is required, that consent may be given by an executor, administrator or other personal representative appointed under applicable state law. If there is no such appointment, consent may be given by the spouse or other responsible member of the individual's family.

(5) Participation in State Agency Information Exchange: The Program shall participate in the State Shared Information System (SIS) or Performance Reporting Information System (PRISM), and Department information sharing to the extent allowed by and consistent with state and federal law and regulations.

(6) The Program may disclose the minimum information necessary for purposes directly connected with the administration of vocational rehabilitation; federal Rehabilitation Services Administration; or other state or federal agencies with regulatory authority over the Program or administrative responsibilities necessary for Program services.

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 1-2019, amend filed 04/05/2019, effective 04/15/2019; VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 3-2004, f. & cert. ef. 3-12-04; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 4-1991, f. & cert. ef. 12-13-91

## **582-030-0050**

### **The Individual's Right to Amend Records**

(1) An individual who believes that information in the record of services is inaccurate or misleading may request the Program to amend the information. The Program is not required to amend the record of services. If the Program does not amend the information, the individual may prepare an amending statement and request that the Program insert the statement into the record of services.

(2) The Program may not amend or remove a record created and received from another agency, program, or independent contractor, but may accept amended records from another agency, program, or independent contractor to supplement the record of service.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 1-2019, amend filed 04/05/2019, effective 04/15/2019; VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11

## **DIVISION 50**

### **REFERRAL, APPLICATION AND ELIGIBILITY FOR VOCATIONAL REHABILITATION SERVICES**

## **582-050-0000**

### **Referrals and Applications**

(1) Referrals to and applications for vocational rehabilitation services provided by the Program shall be handled promptly and equitably.

(2) The Program shall establish timelines for making a good faith effort to inform individuals referred to or seeking services from the Program of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.

(3) Assessment to determine eligibility and priority for services shall commence as soon as an application for services is received and to the maximum extent possible shall be expedited through use of existing information, including school, Social Security, medical and family member records.

(4) An individual is considered to have submitted an application only when all the following conditions have been satisfied:

(a) The individual or the individual's representative, as appropriate, has completed and signed a Program application form or has otherwise requested services;

(b) The individual or the individual's representative, as appropriate, has provided the information necessary to initiate an assessment for eligibility; and

(c) The individual is available to complete the assessment process.

(5) Once the Program has received an application for vocational rehabilitation services, including applications for vocational rehabilitation services made through common intake procedures in One-Stop centers established under section 121 of the federal Workforce Investment Act of 1998, the Program must make an eligibility determination within 60 days, unless:

(a) Exceptional and unforeseen circumstances beyond the control of the Program preclude making an eligibility determination within 60 days and the Program and the individual agree to a specific extension of time; or

(b) A trial work experience or exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out in accordance with 34 CFR 361.42(e) or, if appropriate, an extended evaluation is carried out in accordance with 34 CFR 361.42(f).

(6) The Program 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 Program has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative, to encourage the applicant's participation.

(7) The length of time between eligibility determination and the signing of the Individualized Plan for Employment (IPE) by the Program counselor and the individual or the individual's representative may not exceed 90 days. If the Program

invokes an Order of Selection, the length of time begins once the individual is removed from the waitlist. Exceptions to the 90 day time frame include:

- (a) Mutual agreement by the individual and counselor to an extension to a specific date by which the IPE shall be completed, taking into consideration the unique needs of the individual;
- (b) Individual involvement in the Program dispute resolution process addressing issues critical to plan development;
- (8) The Program shall make information regarding application requirements and forms available statewide.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.570

History: VRS 1-2014, f. 12-30-14, cert. ef. 1-1-15; VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; Reverted to VRS 3-2009, f. & cert. ef. 3-27-09; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; VRS 3-2009, f. & cert. ef. 3-27-09; VRS 2-2006, f. & cert. ef. 8-1-06; VRS 5-2004, f. & cert. ef. 8-5-04; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 2-1991, f. & cert. ef. 9-11-91

## **582-050-0005**

### **Trial Work Experiences and Extended Evaluations**

(1) Trial work experiences for individuals with significant disabilities.

(a) Prior to any 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, OVRs shall conduct an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations to determine whether or not there is clear and convincing evidence to support such a determination.

(b) OVRs shall develop a written plan to assess periodically the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences, which must be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

(c) Trial work experiences include supported employment, on-the-job training, and other experiences using realistic work settings.

(d) Trial work experiences must be of sufficient variety and over a sufficient period of time for OVRs to determine that:

(A) 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

(B) 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.

(e) OVRs shall provide appropriate supports, including assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of the individual during the trial work experiences.

(2) Extended evaluation for certain individuals with significant disabilities.

(a) Under limited circumstances if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before OVRs is able to make the determinations described in OAR 582-050-0005(1)(d), OVRs will conduct an extended evaluation to make these determinations.

(b) During the extended evaluation period, vocational rehabilitation services must be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

(c) During the extended evaluation period, OVRs will develop a written plan for providing services necessary to make a determination under OAR 582-050-0005(1)(d).

(3) During the extended evaluation period, OVRs provides only those services that are necessary to make the determinations described in OAR 582-050-0005(1)(d). Extended evaluation is used only until the eligibility determination can be made and may not exceed 18 months.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; VRS 5-2004, f. & cert. ef. 8-5-04; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 2-1991, f.



## **582-050-0010**

### **General Provisions**

(1) Eligibility requirements are applied without regard gender, race, creed, color, religion, ethnicity or national origin, nature or severity of disability, age, sexual orientation, residency or political ideation. Unless otherwise stated in the context, the rules in OAR 582-050 pertain only to Vocational Rehabilitation Services.

(2) Except for individuals whose impairments fall within the definition of legal blindness, or are of a rapidly progressive nature leading to legal blindness, OVRS shall not exclude any group of individuals from eligibility for services solely on the basis of type of disability or impairment.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; VRS 5-2004, f. & cert. ef. 8-5-04; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 2-1991, f. & cert. ef. 9-11-91; VRD 3-1978, f. 3-14-78, ef. 3-15-78

## **582-050-0020**

### **Criteria**

Applicants must meet the following conditions before they may be "eligible" for Vocational Rehabilitation Services:

(1) A determination by qualified personnel that the applicant has a physical or mental impairment.

(2) 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.

(3) A determination by a qualified vocational rehabilitation counselor employed by OVRS that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(4) A presumption, in accordance with OAR 582-050-0020(5), that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(5) Presumption of benefit. OVRS presumes that an applicant who meets the eligibility requirements OARS 582-050-0020(1) and (2) can benefit in terms of an employment outcome unless OVRS demonstrates, based on clear and convincing evidence, that the applicant is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the applicant's disability.

(6) Presumption of eligibility for Social Security recipients and beneficiaries. 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 under OAR 582-050-0020(1) and (2); and

(b) Considered an individual with a significant disability as defined in 34 CFR 361.5(b) (31).

(7) 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 (and, therefore, is presumed eligible for vocational rehabilitation services under OAR 582-050-0020(6)), but is unable to provide appropriate evidence, such as an award letter, to support that assertion, OVRS 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 OVRS to determine the applicant's eligibility for vocational rehabilitation services within 60 days of the individual submitting an application for services in accordance with 34 CFR 361.41(b)(2).

(8) Any applicant who is presumed eligible under OAR 582-050-0020(6) must require vocational rehabilitation services and intend to achieve an employment outcome that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(9) Interim Eligibility for Supported Employment recipients: OVRS may make an interim determination of eligibility for an applicant eligible for, or receiving, Supported Employment services when:

(a) The applicant was referred expressly for Supported Employment Services; The applicant clearly demonstrates a high

likelihood of eligibility for vocational rehabilitation services based on available data (e.g. records from county mental health programs, Seniors and Persons with Disabilities or other sources);

(b) The applicant is someone who has not maintained, or is not expected to maintain, competitive employment through the provision of traditional rehabilitation services.

(c) There is reasonable expectation that the applicant will be competitively employable with provision of rehabilitation services and on-going support;

(d) The supported-service provider has accepted the applicant; and

(e) There is evidence in writing of the availability of on-going support services adequate to maintain employment for the applicant. Services provided during interim eligibility are those available within the Supported Employment Program (e.g. community based situational assessment, job development, job training, transportation and other goods or services required to secure and maintain employment). If OVRS cannot establish eligibility within 60 days, services may be interrupted or the case may be closed. If information is insufficient to determine eligibility after 60 days, OVRS shall either place the case in delayed status, with the agreement of the participant, or close the case as appropriate. OVRS may reopen closed supported employment cases in the general program and enter extended evaluation.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; VRS 5-2004, f. & cert. ef. 8-5-04; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 2-1991, f. & cert. ef. 9-11-91; VRD 3-1978, f. 3-14-78, ef. 3-15-78

## **582-050-0050**

### **Citizenship**

Citizenship is not a requirement for eligibility. A person may be eligible for Vocational Rehabilitation Services if he/she meets the basic criteria for eligibility in chapter 582, division 50 of the Oregon Administrative Rules and he/she is:

(1) In the United States for other than a temporary purpose; and

(2) Legally entitled to hold employment in this country.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 1-2005, f. & cert. ef. 1-11-05; VRS 5-2004, f. & cert. ef. 8-5-04; VRD 2-1991, f. & cert. ef. 9-11-91; VRD 4-1981, f. & ef. 12-1-81

## **582-050-0060**

### **Residency**

(1) There is no requirement for duration of residence in Oregon as part of the determination of eligibility.

(2) OVRS may provide services to an otherwise eligible individual, available and able to participate in services leading to an employment outcome, if the individual is:

(a) Currently living in the State of Oregon, regardless of duration; or

(b) Currently and legally employable in the State of Oregon and seeking services to retain or advance in employment with the same employer; or

(c) All of the following apply:

(A) The individual is currently living in a state not in an Order of Selection;

(B) The vocational rehabilitation office closest to the individual's residence is an OVRS office; and

(C) The individual is not in the state for the sole purpose of receiving vocational rehabilitation services.

(3) OVRS may, through mutual agreement, cooperate with another state's Vocational Rehabilitation Agency in the implementation or supervision of planned services of an Individualized Plan for Employment.

(4) Reasonable effort is made to assure that duplicate services are not provided concurrently in more than one state VR Agency nor shall more than one file per individual be open and active within OVRS.

(5) When an individual in open plan status establishes residence in another state and is no longer available to participate

actively with the Oregon case-carrying counselor in the provision of services, the counselor may:

(a) Negotiate with the Vocational Rehabilitation Agency of the new state-of-residence to obtain assistance in supervision of the OVRs services needed to complete the plan and obtain employment; or

(b) Close the case file 'other than rehabilitated' due to the individual being 'unavailable for services.' If requested by the individual, the office may provide copies of appropriate in-file data to the vocational rehabilitation agency of the new state-of-residence.

(6) The office may close an individual's case file when the individual relocates outside the state of Oregon if:

(a) The individual is not in plan status; or

(b) The individual does not meet Residency criteria.

(7) OVRs may retain the case file of an individual who relocates outside of Oregon if the individual is in open plan status at the time of relocation and remains available to participate actively with the Oregon case-carrying counselor.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; Reverted to VRS 1-2005, f. & cert. ef. 1-11-05; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; VRS 1-2005, f. & cert. ef. 1-11-05; VRS 5-2004, f. & cert. ef. 8-5-04; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 2-1991, f. & cert. ef. 9-11-91; VRD 4-1981, f. & ef. 12-1-81

## **DIVISION 60**

### **TERMINATION OF VOCATIONAL REHABILITATION SERVICES**

#### **582-060-0010**

##### **Termination of Services Because of Ineligibility**

(1) Case closure shall occur when OVRs determines that the individual does not meet one or more of the following eligibility criteria:

(a) No disabling condition;

(b) No impediment to employment;

(c) Does not require vocational rehabilitation services; or

(d) Disability too severe to benefit from services.

(2) OVRs shall make the ineligibility determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative.

(3) Ineligibility due to 'too severe to benefit'. Prior to any determination that an individual with a disability is incapable of benefiting from vocational rehabilitation services, OVRs shall conduct an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations to determine whether or not there is clear and convincing evidence to support such a determination.

(a) OVRs shall develop a written plan to assess the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences.

(b) Trial work experiences:

(i) Shall be in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual;

(ii) Include supported employment, on-the-job training, and other experiences using realistic work settings; and

(iii) Shall be of sufficient variety and over a sufficient period of time for the designated State unit to determine that:

(A) 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

(B) There is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services.

(c) OVRs shall provide appropriate supports, including assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of the individual during the trial work experiences.

(4) OVRs shall notify the individual in writing of file closure due to ineligibility. As necessary the office shall supplement

notification by other appropriate modes of communication consistent with the informed choice of the individual.

Notification shall include:

- (a) Notice that the office is closing the individual's case file;
- (b) The rationale for the ineligibility determination; and
- (c) Dispute resolution information regarding the mediation and impartial fair hearing appeal process, as well as contact information about for the Client Assistance Program (CAP).
- (5) The office shall refer the individual to other available programs under the Workforce Investment Act that address the individual's training or employment-related needs.
- (6) If the office determines the individual to be incapable of achieving an employment outcome, the office shall:
  - (a) Refer the individual to local extended employment providers; and
  - (b) Review the individual's file within 12 months. The individual or, if appropriate the individual's representative, may thereafter request subsequent annual reviews. The office needs not conduct the review if:
    - (A) The individual has refused the review;
    - (B) The individual is no longer present in the State;
    - (C) The individual's whereabouts are unknown; or
    - (D) The individual's medical condition is rapidly progressive or terminal.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; VRS 5-2004, f. & cert. ef. 8-5-04; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 2-1991, f. & cert. ef. 9-11-91; VRD 2-1978, f. 3-14-78, ef. 3-15-78

## **582-060-0020**

### **Termination of Services After Eligibility**

(1) Termination of Services — 'Other Than Rehabilitated'.

(a) The office may close an individual's file when the individual fails to achieve an employment outcome for the following reasons:

- (A) Death;
- (B) Ineligibility;
- (C) Extended services for Supported Employment not available despite exploration of all types of extended supports;
- (D) Individual fails to cooperate with or fails to make suitable progress toward developing or completing necessary steps in the IPE within the agreed-upon timeframes;
- (E) Individual is institutionalized or otherwise unavailable for services;
- (F) Individual received VR services and was placed in non-integrated, non-competitive work setting;
- (G) The office is unable to locate or contact the individual;
- (H) Individual has refused necessary services or chooses not to participate in necessary OVRS programs;
- (I) Individual is receiving services from another agency and no longer requires the office's services; or
- (J) Other reason as documented by the office.

(b) The office may close the file of a presumed-eligible individual if:

- (A) The file documents clear and convincing evidence that the individual is incapable of benefiting from services; or
- (B) The individual meets the criteria for termination of services under 582-060-0020(1)(a).

(c) The office shall make a closure determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative. The individual's involvement is not required when:

- (A) The individual refuses to participate;
- (B) The individual is no longer present in the state;
- (C) The individual's whereabouts are unknown; or
- (D) The individual's medical condition is rapidly progressive or terminal.

- (d) All notifications of closure shall include:
  - (A) Notice that the office is closing the case;
  - (B) The rationale for the closure; and
  - (C) Dispute resolution information regarding the mediation and impartial fair hearing appeal process, as well as referral to information about the Client Assistance Program (CAP).
- (2) Termination of Services — Rehabilitated:
  - (a) Closure of an individual's file as 'Rehabilitated' requires documentation that:
    - (A) The individual has achieved the employment outcome identified in by the IPE, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice;
    - (B) The individual has maintained the employment outcome for an appropriate period of time, not less than 90 days, sufficient to ensure stability in the position without further vocational rehabilitation services;
    - (C) The individual and counselor consider the employment outcome to be satisfactory and agree the that individual is performing consistent with goal identified in the IPE; and
    - (D) The office informs the individual in writing, supplemented through other appropriate modes of communication as necessary, of the availability of post-employment services.
  - (b) The office shall provide notice to an individual that OVRS is closing the file 'Rehabilitated'. The notification shall:
    - (A) Be in writing supplemented, as necessary, through appropriate modes of communication;
    - (B) Inform the individual that OVRS is closing the case as 'Rehabilitated';
    - (C) Provide the rationale for the decision; and
    - (D) Include dispute resolution information regarding the mediation and impartial fair hearing appeal process and the Client Assistance Program (CAP)

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; VRS 5-2004, f. & cert. ef. 8-5-04; VRD 2-1991, f. & cert. ef. 9-11-91; VRD 2-1978, f. 3-14-78, ef. 3-15-78

## **DIVISION 70**

### **STANDARDS FOR PROVISION OF SERVICES AND RATES OF PAYMENT**

#### **582-070-0010**

##### **General Policy**

NOTE: For community rehabilitation programs and medical or related services refer also to OAR 582-010, 582-075 and 582-080.

It is the policy of the OVRS to reimburse vendors who provide previously-authorized services and/or supplies to persons who qualify for such services.

- (1) Vendors shall be paid in accordance with the lesser of:
  - (a) The vendor's usual charge for such service, i.e., that fee for service which the vendor under ordinary circumstances charges to the general public for such services; or
  - (b) A pre-determined charge that has been negotiated between the vendor and an agency person authorized to consummate agreements between this agency and the vendor.
- (2) In addition to any such general contracts or agreements, actual services to individuals must be specifically prior authorized and are not considered approved or billable until the vendor receives a completed Agency Authorization for Purchase (AFP) form or its equivalent, listing specific prior authorized services and estimated billable amounts, signed by the appropriate agency representative(s):
  - (a) Only in extreme emergencies may services be prior authorized verbally and any such verbal authorization must be documented promptly and followed with a written AFP within 72 hours;
  - (b) Apparent fraud, misrepresentation or substantial discrepancies between services rendered and billed amounts shall

be investigated and, as appropriate, legal steps taken to prevent or recover overpayments.

(3) Except as specified in OAR 582-070-0010(4), Rehabilitation Services funds will not be expended before OVRS determines that "comparable benefits and services" are not available to meet, in whole or in part, the cost of such services, unless such a determination would interrupt or delay:

(a) The progress of the individual toward achieving the employment outcome identified in the Individualized Plan for Employment;

(b) An immediate job placement; or

(c) The provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by appropriate qualified medical personnel.

(4) The following vocational rehabilitation services are exempt from a determination of the availability of comparable services and benefits:

(a) Assessment for determining eligibility and vocational rehabilitation needs;

(b) Counseling and guidance, including information and support services to assist an individual in exercising informed choice;

(c) Referral and other services to secure needed services from other agencies, including other components of the statewide workforce investment system, if those services are not available from OVRS;

(d) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

(e) Rehabilitation Technology, including telecommunications, and other technological aids and devices.

(f) Post-employment services consisting of any of the services in OAR 582-070-0010(4)(a)–(e); and

(5) Purchases shall be of the most reasonable and satisfactory quality at the lowest available cost, subject to supervisory and/or administrative review and/or approval prior to authorization; accordingly, OVRS reserves the right to establish upper limits on the utilization of existing services, subject to an exception process.

(6) Preliminary diagnostic assessment is limited to a review of existing data and such additional data as is necessary to determine eligibility or, for Rehabilitation Services, to assign priority for order of selection for service (when appropriate). Comprehensive assessment and/or extended evaluation services may be provided only until eligibility/ineligibility or nature and scope of needed Rehabilitation Services can be determined. Additionally, other services are available (including the use of Rehabilitation Technology services, as appropriate) to determine the nature, scope and types of services needed to attain a specific vocational rehabilitation objective of the eligible individual. Continued eligibility is contingent upon reasonable progress by the individual toward attainment of measurable intermediate objectives within time-lines arrived at and agreed to through joint counselor/individual development of the plan and any amendments thereto.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 2-2004, f. & cert. ef. 3-9-04; VRD 4-1993, f. & cert. ef. 11-1-93; VRD 2-1992, f. & cert. ef. 4-20-92; VRD 1-1978, f. 3-14-78, ef. 3-15-78

## **582-070-0020**

### **Specific Policies**

Specific rules pertain to the provision of the following services:

(1) On-the-Job Training:

(a) Payment to on-the-job trainers/employers for training services shall be negotiated at the lowest reasonable level and shall always be considered as reimbursement for actual expenses and/or trainer time; the trainer/employer cannot expect to make a profit from such payments;

(b) Offset against an individual's wages shall be negotiated with the trainer/employer on a mutual sharing basis at the

lowest reasonable level to adequately pay the individual for his/her productive work efforts with the trainer/employer ultimately paying the entire wage. Total length of the training program and length of OVRS involvement in payments shall be negotiated on the basis of the complexity of the training and the amount of relevant skill and knowledge the individual possesses prior to entering training.

(2) Training: Educational and training services, except on-the-job training, must be purchased from public educational organizations in Oregon. Exceptions are authorized only when:

(a) No publicly-supported school provides the courses necessary for the individual's needs in order to reach the vocational objective; or

(b) The individual cannot utilize publicly-supported schools because of his or her disability; or

(c) OVRS's financial participation in the plan is no greater than if the individual had enrolled at the nearest appropriate publicly-supported school; or

(d) The net cost to Oregon governmental agencies is significantly less; or

(e) The training services for the individual will be significantly delayed.

(3) Vocational training: Referrals for vocational training may be made only to the following schools or programs:

(a) A school that has accreditation recognized by the United States Department of Education;

(b) A school has been approved by the Oregon Student Assistance Commission through the Office of Degree Authorization to offer and confer degrees in Oregon;

(c) A community college;

(d) A state institution of higher education within the Oregon University System;

(e) The Oregon Health and Science University.

(f) A career school licensed under ORS 345.010 to 345.450

(g) An apprenticeship program that is registered with the State Apprenticeship and Training Council

(4) Maintenance: OVRS shall only pay or provide for maintenance expenses consistent with the definition of this term at OAR 582-001-0010(25) and 34 CFR 361.5(b) (35).

(5) Clothing Purchases: Clothing purchases may be authorized if the need is a result of participation by the individual in a rehabilitation program and the individual does not possess sufficient financial resources to provide for these expenses. These must be appropriate in type and in a price range, comparable to clothing items normally used by persons engaged in similar rehabilitation, training or employment settings.

(6) Transportation Services:

(a) OVRS may provide transportation services if the services are necessary to enable the applicant or eligible individual to participate in required rehabilitation services.

(b) Selection of transportations services shall:

(A) Give preference to the most inexpensive alternative as determined by OVRS; and

(B) Take into consideration the circumstances and special needs of the individual.

(d) Moving and relocation expenses. OVRS may authorize moving and relocation expenses when the office has determined that it is less costly than having the individual commute for employment or training.

(e) Routine vehicle maintenance. It is the owner's responsibility to maintain a private vehicle. OVRS does not pay for routine costs associated with maintenance of a vehicle. OVRS may make an exception if OVRS determines circumstances justify vehicle maintenance.

(f) Travel and related expenses for personal assistance. OVRS may provide travel and related expenses for personal assistance services if such services are necessary to enable the individual to travel to participate in a vocational rehabilitation assessment or service.

(7) Vehicle Insurance: OVRS does not generally pay for vehicle insurance. Oregon law requires insurance to operate a vehicle and it is an ongoing maintenance expense.

(a) OVRS does not pay for vehicle insurance unless exceptional circumstances necessitate assistance to reduce a transportation barrier. OVRS may authorize full or partial payment only if the office determines auto liability insurance is necessary for participation in vocational rehabilitation services and supports the least expensive transportation option.

- (b) The individual shall be responsible for insurance for a vehicle purchased or modified by OVRS and for insurance on vehicular adaptive equipment
- (c) If the insurance premium increases, or will increase, OVRS may pay for an increase in the premium for minimum vehicle liability insurance coverage required under Oregon law.
- (d) OVRS may pay for the full premium amount for minimum vehicle liability insurance coverage required under Oregon state law if the office determines that payment is appropriate. OVRS may pay the full premium amount for up to 60 days from the start of employment.
- (e) Authorization of full or partial payment for vehicle insurance requires that:
  - (A) Payment for vehicle insurance supports the least expensive transportation alternative for the individual;
  - (B) The individual owns the insured vehicle. If the individual is a minor the individual's parents or legal guardians shall own the insured vehicle; and
  - (C) The individual, or minor individual's parents or guardians, has a current valid Oregon driver's license.
- (8) Travel: When an individual's travel requires lodging and meals, payment for lodging and meals shall be based on the definition of maintenance under 582-001-0010(25) and shall not exceed the current federal GSA domestic per diem rates for the state in which the lodging occurred.
  - (a) The per diem rate used shall be based on the rate for the city in which the individual lodges, or the rate for the city closest to where the individual lodges.
  - (b) Unless the individual uses a personal vehicle for the needed transportation, reservations shall be made through the state travel agency.
  - (c) If the individual utilizes a service animal; OVRS may provide payment for the lodging of the service animal.
  - (d) In those instances in which the federal per diem rate is insufficient to cover the cost of lodging, or the individual has a legitimate need for more costly lodging, payment may exceed the federal per diem rate.
- (9) Community Rehabilitation Programs' (CRP) Services.

NOTE: Refer also to OAR 582-010.

- (a) State-wide rates are intended to pay only the anticipated cost of standard rehabilitation services. This fee schedule may be adjusted for a specific CRP to reflect non-standard types or levels of service, or statewide for standard service, if a significant increase or decrease in the actual cost of serving individuals occurs;
- (b) For a CRP operated under private auspices, fees may be negotiated taking into consideration costs such as buildings, staffing and equipment. For a publicly owned and operated CRP (e.g., state or county owned or operated) fees, if any, must be based upon and not exceed actual costs.
- (10) Extended Evaluation: OVRS shall provide only those services authorized under OAR 582-050-0005.
- (11) Personal Care Assistance (PCA). A personal care assistant is provided only when necessary to allow an individual to benefit from other rehabilitation services, including assessment, and when the individual is not entitled to PCA services from another source:
  - (a) Participant as Employer: The participant, in most cases, as the employer of the personal care assistant may be reimbursed for necessary PCA services required to participate in rehabilitation services;
  - (b) Third Party Vendor: Direct payment to the PCA vendor by OVRS requires prior approval in addition to the requirements of Oregon Administrative Rules Chapter 582, Office 10;
  - (c) Written Contract: In most instances the individual is to be the employer of his/her own personal care assistant. OVRS may assist the individual to establish an appropriate written contract with the provider.
- (12) Interpreter Service: OVRS provides interpreter service only when necessary to assist the individual to derive full benefit from other rehabilitation services:
  - (a) Limitation: To be provided by OVRS only when "comparable benefits" are not available;
  - (b) For the Deaf and Hearing Impaired: OVRS gives preference to using interpreters certified by the National Registry of Interpreters for the Deaf and/or one who is on the approved vendor list of the State Association of the Deaf. When deemed mutually acceptable by the individual and the counselor, another interpreter may be utilized;
  - (c) Regional Resources: Oregon Deaf and Hard of Hearing Services (ODHHS) may be used as a resource to both



individuals and staff for securing interpreters.

(13) Other Support Services Providers: May be selected for specific skills needed. Where provider licenses, insurance, certificates and state or local codes are indicated OVRS reasonably attempts to assure that appropriate levels are met before authorizing services from the provider. (See OAR 582-080 for additional rules on vendor selection.)

(14) Vendor Insurance: Providers of services shall obtain and maintain insurance as required by law for that provider; additionally, where OVRS is providing for services, appropriate levels of personal, automobile, professional and general liability insurance may be required, depending on the type of service.

(15) Private vehicle maintenance is primarily the responsibility of the owner. The office does not pay for insurance or associated expenses such as registration costs. In exceptional circumstances, as determined by OVRS, the office may make an exception.

(16) Occupational Licenses, Tools and Equipment for Training and/or Employment:

(a) May be provided when required for either extended evaluation or when an individual is in plan status, including post employment. OVRS accepts no responsibility for individual lease/rental agreements or the leased/rented items other than to reimburse the individual for such prior authorized expenditures;

(b) Repossessed items shall be used whenever appropriate and available;

(c) Except for personally prescribed items, title/ownership of an OVRS purchased (or jointly purchased) item is held by OVRS (or jointly with OVRS) until case closure when ownership may be transferred to the individual for non-expendable items deemed by OVRS to be needed for continued success in the individual's program.

(17) Land and/or Stationary Buildings: Are never purchased by OVRS as a service to an individual. Existing buildings may be modified when necessary to enable an eligible individual to attain a vocational plan goal. No permanent additions or weight bearing partitions are to be erected as services to individuals.

(18) Rehabilitation Technology Services: May be applied at any time during rehabilitation services to address barriers to the individual's participation in evaluation, training, and employment:

(a) OVRS shall ensure that rehabilitation technology service providers are qualified in the areas of engineering skills and/or technology required for a given service. Selected Community Rehabilitation Programs' Approvals may include rehabilitation technology services, when State Standards for Approvals are met for rehabilitation technology services;

(b) Rehabilitation technology services are exempt from a determination of the availability of comparable benefits. All reasonably available comparable services shall be used before authorizing expenditure by OVRS. Personal services contracts for rehabilitation technology services require field services manager approval prior to implementation.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; Reverted to VRS 3-2008, f. & cert. ef. 4-10-08; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; Reverted to VRS 3-2008, f. & cert. ef. 4-10-08; VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09; VRS 3-2008, f. & cert. ef. 4-10-08; VRS 2-2008, f. & cert. ef. 3-3-08; VRS 1-2008, f. & cert. ef. 2-4-08; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 2-2003, f. & cert. ef. 12-31-03; VRS 1-2003, f. & cert. ef. 9-23-03; Reverted to VRD 4-1993, f. & cert. ef. 11-1-93; VRD 1-1996(Temp), f. 2-26-96, cert. ef. 3-1-96; VRD 4-1993, f. & cert. ef. 11-1-93; VRD 2-1992, f. & cert. ef. 4-20-92; VRD 1-1978, f. 3-14-78, ef. 3-15-78

## **582-070-0025**

### **Vehicle Purchase/Vehicle Modification**

(1) The following definitions apply to this rule:

(a) "Approved Vendor" means a dealer recognized by OVRS as an approved retailer or installer of specified devices;

(b) "Qualified Mechanic" means; American Standard Automotive or American Standard Engineering certified;

(c) "Qualified Vehicle Modification Evaluation" means an evaluation performed by a licensed occupational therapist;

(d) "Reasonable transportation alternatives" include but are not limited to:

(A) Car repairs to a vehicle already owned;

(B) Use of mass transit or community transportation;

- (C) Moving the individual to a new area;
  - (D) Assistance from family members, volunteers, paid drivers or attendants;
  - (E) Car pools; or
  - (F) Accommodations made by individual's employer.
- (e) "Vehicle modifications" are services involving the purchase and installation of adaptations or devices intended to meet the employment-related transportation needs of individuals.
- (2) OVRs does not provide funds for individuals to lease or purchase motor vehicles that require a license to operate. The OVRs administrator may grant an exception if no reasonable transportation alternatives are available and the office has made the following determinations:
- (a) The exception is not prohibited by state or federal statute, rule or regulation;
  - (b) The individual is eligible for vocational rehabilitation services and is in plan or post-employment status;
  - (c) Assessments, evaluations and tests demonstrate the purchase is necessary to remove a transportation related barrier;
  - (d) The purchase is in support of a specific vocational goal (identified in the individual's IPE);
  - (e) At closure the individual will have sufficient income and resources to meet daily living expenses and cost of vehicle operation and replacement;
  - (f) The individual possesses or can obtain a valid driver's license; and
  - (g) The individual can safely operate the vehicle.
- (3) OVRs may deny purchase of vehicle modification services if:
- (a) The individual fails to cooperate with required evaluations, assessments or tests; or
  - (b) It is determined the individual is unable to drive safely. OVRs may permit an exception when a qualified driver other than the individual will be operating the vehicle.
- (4) When OVRs authorizes payment toward a purchase, the primary lien holder must be the office.
- (5) OVRs shall transfer ownership only when required for employment and successful file closure. OVRs must repossess, reassign or otherwise dispose of the vehicle when it has determined transfer to the individual is not justified. Disposal must occur according to department or office property disposition guidelines.
- (6) Scope of Vehicle Modifications: OVRs shall only authorize a vehicle modification when the office determines modification is the most cost effective and appropriate means of providing necessary employment-related transportation for the individual. Purchase of a vehicle modification shall be the least costly necessary to accomplish the goal of enabling the individual to enter, maintain or regain employment.
- (a) As Rehabilitation Technology, defined as necessary to address vocational barriers confronted by individuals with disabilities in the area of transportation, OVRs may not purchase the following:
    - (A) Modifications to a van if it would be possible to modify a sedan style automobile to meet the individual's need for transportation;
    - (B) Modifications to a vehicle if the individual owns or has use of another vehicle that would meet the individual's transportation needs; or
    - (C) Modifications to a vehicle if a qualified vehicle modification evaluation indicates that the individual is not capable of driving due to the individual's disability. OVRs may permit an exception when a qualified driver other than the individual will be operating the vehicle.
  - (b) OVRs may provide vehicle modifications if:
    - (A) The exception is not prohibited by state or federal statute, rule or regulation;
    - (B) The individual does not own another vehicle which meets the individual's employment-related transportation needs;
    - (C) The individual is capable of safely operating a motor vehicle; and
    - (D) The individual requires the proposed modification, as documented and recommended in by a qualified vehicle modification evaluation.
- (7) Vehicle requirements for OVRs participation in the cost of modifications are as follows:
- (a) the vehicle to be modified has been judged safe and is in reasonably good condition, as determined by a qualified

mechanic;

(b) All proposed modifications are consistent with applicable vehicle safety laws;

(c) OVRs shall preauthorize any payment for a modification in a new or used vehicle acquired by the individual. The individual shall be responsible for the costs of any modification not recommended by a qualified vehicle modification evaluation. The individual is responsible for the costs of any modification-equipment not covered by the office;

(d) Preinstalled modifications in used vehicles. OVRs shall preauthorize any payment for preinstalled modifications in a used vehicle acquired by the individual. The individual shall be responsible for all payment for any modification equipment not recommended by the qualified vehicle modification evaluation and/or any modification equipment costs not covered by the office;

(e) Unmet modification requirements. Where new or used pre-existing vehicle modification equipment is insufficient to meet the individual's needs, as documented by the qualified vehicle modification evaluation, the office shall direct negotiate or bid out the unmet minimum necessary modification requirements;

(f) OVRs shall not provide such optional equipment as may generally be purchased through an automobile dealer at the time the vehicle is purchased unless such equipment is required as a result of the individual's disability and is categorized in the Occupational Therapists driver's evaluation as necessary to the modification of the vehicle;

(8) OVRs conditions for vendor selection are as follows:

(a) Vehicle modifications shall be purchased from vendors or dealers who are listed and on file with OVRs as an approved vendor of the devices;

(b) Such purchases must be made in accordance with State procurement regulations and OVRs purchase policy and procedures.

(9) OVRs is not obligated to purchase any service negotiated or contracted by the individual or individual's family. The office shall authorize all vehicle modification services through the standard State and OVRs procurement and purchasing process.

(10) Maintaining a private vehicle is the responsibility of the owner.

(11) OVRs assumes no warranty responsibility.

(12) Second or subsequent modifications are limited to those needed to accommodate changes in the individual's medical condition.

(13) The individual shall be the primary driver of the modified vehicle. The office may make an exception permitting a qualified driver other than the individual to operate the modified vehicle;

(14) The individual must register or co-register the modified vehicle in the individual's own name. A minor individual must register the modified vehicle in the name of the individual's parents or guardian. The office may authorize an exception to register the modified vehicle in a name other than the name of the individual and/or individual's parent or guardian.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; Reverted to VRS 1-2008, f. & cert. ef. 2-4-08; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; VRS 1-2008, f. & cert. ef. 2-4-08; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2003, f. & cert. ef. 9-23-03; VRD 2-1996, f. & cert. ef. 8-28-96

## **582-070-0030**

### **Limitations of Payments**

NOTE: For medical and related services refer also to OAR 582-075 and 582-080; and, for providers of community rehabilitation services refer also to OAR 582-010.

(1) Payment in Full: Vendors providing any services authorized by OVRs shall not make any charge to or accept any payment from the individual or his/her family for such services unless the amount of the service charge or payment to be borne by the individual is previously agreed to by the individual or his/her family, known to and, where applicable, approved by OVRs.

(2) Client Financial Participation and the Financial Needs Test: Except as expressly exempted, services funded by OVRS are subject to Client Financial Participation. Individuals shall be allowed or required to contribute financially as set forth in OAR 582-070-0030. The contribution requirements apply starting July 1, 2004 for individuals submitting applications for services, requests for post-employment services, and for annual IPE reviews.

(a) The purpose of individual participation in service costs is to encourage the commitment of the individual to their vocational rehabilitation goal, create a cooperative relationship with the individual, and conserve limited OVRS resources.

(b) Except as provided in OAR 582-070-0030(2)(j) and (k), the following individuals are exempted from the Financial Needs Test and Client Financial Participation:

(A) Any individual who has been determined eligible for and is currently the recipient/beneficiary of Social Security Benefits under Title II (Social Security Disability Insurance, SSDI) or Title XVI (Supplemental Security Income, SSI) of the Social Security Act;

(B) Recipients of qualifying needs-based public assistance programs, including Self Sufficiency Cash Benefits, Oregon Health Plan, Temporary Assistance for Needy Families, and Food Stamps, and excluding financial aid for post-secondary education;

(C) Homeless or transient individuals.

(c) Except as provided in OAR 582-070-0030(2)(j) and (k), the following services are exempt from Client Financial Participation:

(A) Assessment for determining eligibility, vocational rehabilitation needs, or priority for services, including assessment by personnel skilled in rehabilitation technology;

(B) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice;

(C) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce investment system and to advise those individuals about client assistance programs;

(D) Job related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

(E) Personal assistance 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;

(F) Auxiliary aids or services required to participate in the vocational rehabilitation program, such as interpreter services including sign language and oral interpreter services for individuals who are deaf or hard of hearing; or tactile interpreting services for individuals who are deaf-blind.

(d) Under the Financial Needs Test, individuals with annual family income of less than either 250 percent of the federal poverty guidelines or \$60,000 are not subject to Client Financial Participation and are exempt from the guidelines set out in OAR 582-070-0030(2)(e).

(e) Client Financial Participation shall be determined on an annual basis, not to exceed the annual cost of non-exempt services to OVRS, applying the following contribution schedule:

(A) Individuals with family income between \$60,000 and \$69,999 are subject to a mandatory financial contribution of \$700.

(B) Individuals with family income between \$70,000 and \$79,999 are subject to a mandatory financial contribution of \$900.

(C) Individuals with family income between \$80,000 and \$89,999 are subject to a mandatory financial contribution of \$1300.

(D) Individuals with family income between \$90,000 and \$99,999 are subject to a mandatory financial contribution of \$1700.

(E) Individuals with family income between \$100,000 and \$109,999 are subject to a mandatory financial contribution of

\$2100.

(F) Individuals with family income between \$110,000 and \$119,999 are subject to a mandatory financial contribution of \$2900.

(G) Individuals with family income between \$120,000 and \$129,999 are subject to a mandatory financial contribution of \$3700.

(H) Individuals with family income at \$130,000 or higher are subject to a mandatory financial contribution of \$3700 plus ten percent of their family income in excess of \$130,000.

(f) OVRS shall use the following definitions to calculate Client Financial Participation:

(A) "Income" is determined by the adjusted gross income from the most recent federal tax return, unless unusual circumstances merit other documentation.

(B) "Family income" consists of income from the individual, the spouse of the individual if residing with the individual, and includes parents if the individual is under 18 and living with parents, or the parents claim the individual as a dependent on federal taxes, or the individual maintains dependent status for financial aid reasons.

(C) "Federal poverty guidelines" are the current poverty guidelines of the United States Department of Health and Human Services.

(D) "Size of the family unit" for purposes of selecting the appropriate federal poverty guideline includes those family members residing with the individual or claimed on federal taxes as dependents; but if the individual is under 18 and living with parents, or the parents claim the individual as a dependent on federal taxes, or the individual maintains dependent status for financial aid reasons, the family unit may include those family members residing with the parents or claimed on the federal taxes of the parents as dependents

(g) If the individual or their family choose not to share information about their income as part of the calculation of the financial needs test, an annual, mandatory individual contribution of \$3700 shall be established, not to exceed the annual cost of non-exempt services to OVRS, unless OVRS concludes that the annual family income of a individual may exceed \$130,000 in which case the individual contribution shall be established at 100 percent for items and services subject to Client Financial Participation.

(h) Subsequent Financial Needs Tests shall be conducted with the annual review of the Individualized Plan for Employment, and may also be conducted if there is a change in the financial situation of either the individual or the family unit.

(i) "Extenuating Circumstances" shall be considered when the counselor identifies other information related to the individual's financial situation that negatively affects the individual's ability to participate in the cost of the rehabilitation program or if requiring the expected financial contribution will result in undue delay in the rehabilitation program. In determining whether to make an adjustment for extenuating circumstances, OVRS may consider the individual's current income and the reasons for the request. If there are extenuating circumstances that justify an exception, OVRS may delay or waive all or part of the individual's financial contribution. In such cases the counselor shall:

(A) Obtain written approval of their supervisor;

(B) Provide documentation of the reasons for the exception;

(C) Maintain both the signed exception and the documentation of circumstances in the client individual file record.

(j) If an individual prefers an upgrade, enhancement, optional feature, or more expensive vendor of essentially the same service, equipment or item available from a less expensive vendor, and this preference is not required to satisfy the vocational rehabilitation goals that justify the expenditure, OVRS and the individual may agree that the individual shall pay the difference in cost between the service or item purchased and the service or item available that would have satisfied the vocational rehabilitation goals that justify the expenditure. In this situation, payment is required regardless of whether the financial needs test authorizes payments by the individual; and any payments by the individual in this situation do not count toward the individual's mandated financial contribution.

(k) An Individualized Plan for Employment (IPE) may include voluntary client contributions. An agreement in an IPE to make a voluntary contribution is not enforceable.

(3) Student Financial Aid: OVRS assures that "maximum" effort is made by OVRS and the individual to secure student

financial aid for any approved training in institutions of higher education. "Maximum" effort includes making timely application for such grant assistance on a consistent basis and utilizing such benefits as are available in lieu of Vocational Rehabilitation funding:

(a) Coverage: All individuals, including graduate students, must apply for all financial aid benefits each academic year. All need based grants, including Pell Grants and Student Employment Opportunity Grants, must be used to pay for educational costs, including tuition and books, before an individual may utilize VR funds for this purpose. This requirement does not apply to merit based grants, including scholarships or loans. However, individuals may voluntarily elect to use these funds, as well as work study and loans for this purpose.

(b) Other Comparable Benefits or Services: If a third party (e.g., employer, insurance company, WCD) is required to or agrees to pay or reimburse to OVRS all of the case service rehabilitation costs of the individual, the financial aid grant offer need not be applied against the plan costs nor treated as a "comparable benefit;"

(c) Late Applications: Pending determination of student aid by the financial aid officer, OVRS funds can be expended for education-related expenses between the date of application for financial aid and determination of the individual's eligibility for federal student aid provided that such expenditures are reduced by any amounts of comparable benefits subsequently received, excepting student loans;

(d) Duplicate Payments: When student financial aid is approved, arrangements must be made promptly to reduce projected OVRS payments and/or recover duplicate payments;

(e) Parent Non-Participation: With the Field Services Manager's approval, the counselor may fund the parental contribution portion of the student's budget (as prepared by the college or university FAO) if the parents refuse or are unable to contribute.

(4) For Industrially-Injured Workers: OVRS shall provide only for the cost of those rehabilitation services which are not the responsibility of the employer, insurer or the Oregon Worker's Compensation Office.

(5) Increased Cost Maintenance: OVRS shall not provide maintenance except for additional costs incurred while participating in authorized services, such as when the individual must maintain a second residence away from the regular household in order to achieve a rehabilitation goal. Such maintenance shall be provided according to the provisions under OAR 582-070-0020(4), 582-001-0010(25), and 34 CFR 361.5(b) (35).

(6) Physical and Mental Restoration Services: Are provided only to ameliorate a diagnosed physical or mental condition that presents a substantial impediment to employment for the eligible individual. The services must be essential for the individual's achievement of a vocational goal:

(a) Drugs:

(A) When a physician (MD or OD) or dentist recommends prescription medication, if practical, the lowest price (e.g., generic) shall be obtained prior to issuing an authorization;

(B) Controlled substances require a prescription; an attending physician's statement under ORS 475.309(2)(a) does not qualify as a prescription.

(b) Dental Services: Dental care may be provided by OVRS when the condition of teeth or gums imposes a major impediment to employment (e.g., endangers health, emergency needs, or serious cosmetic needs). Dentures may be purchased from licensed dentists or certified denturists;

(c) Eye Glasses: Eye glasses may be purchased when determined essential for evaluation of eligibility or the achievement of the vocational goal, limited to basic frames and lenses unless other features are medically required (e.g., sun glasses, tints, contact lenses);

(d) Wheelchairs: OVRS may purchase a wheelchair when the equipment is required to reduce or eliminate a disability related functional limitation that is a substantial impediment to employment. Wheelchairs must be prescribed by a qualified medical specialist;

(e) Hearing Aids. OVRS may provide hearing aides only when:

(A) Essential to complete an evaluation;

(B) Necessary to reduce or eliminate a barrier to employment; or

(C) The participant requires the hearing aids to retain employment. OVRS shall document the need for a hearing aid. All

hearing services must be performed by licensed audiologists.

(f) Other Prosthetic Devices: Prosthetic devices may be purchased only upon the authorization of the counselor and with a written prescription by a qualified professional;

(g) Psychotherapy: Group or individual psychotherapy may be provided in those instances when required for a person to reach a vocational goal and when an immediate and positive goal related impact is anticipated. A specific number of sessions or a specified time limit is required. OVRs may limit these services to those recommended by an OVRs psychological or psychiatric consultant;

(h) Physical or mental restoration services shall not be provided by OVRs for the treatment of an acute or chronic medical complication or emergency unless these are associated with or arise out of the provision of physical or mental restoration services in the IPE, or are inherent in the condition under treatment as described in the IPE.

(i) Corrective surgery or therapeutic treatment shall not be provided or funded by OVRs if it is not 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.

(7) Services Not Provided: OVRs shall not authorize or provide funding for the following services:

(a) Any individual-incurred debt;

(b) Any services obtained by the individual prior to the date of application;

(c) Purchase of land or stationary buildings;

(d) Fines or penalties, such as traffic violations, parking tickets, library fines, etc;

(e) Breakage fees and other refundable deposits;

(f) Contributions and donations;

(g) Entertainment costs;

(h) Payments to credit card companies;

(i) Authorization to supermarkets or grocery stores for food items;

(j) Basic Maintenance;

(k) Gender reassignment surgery;

(l) Except for eye glasses or hearing aids essential to completing diagnostic/evaluation services (to determine Rehabilitation Services eligibility) in applicant status, or occupational tools or licenses essential to Extended Evaluation Services, the following may never be authorized for an individual who has applied but has not yet been found eligible for rehabilitation services:

(A) Prosthetic devices;

(B) Occupational tools and licenses;

(C) Placement services.

(8) OVRs shall not contract with individuals receiving OVRs services, except in the following circumstances:

(a) The individual is a current OVRs vendor and is receiving services from or through OVRs; or,

(b) The individual's Individualized Plan for Employment provides for the development of a business where there is no known competition in the region of the state in which the business will be or is located. In addition, the individual's case has been reviewed by a branch manager who concurs there is no known competition to the business or proposed business.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; Reverted to VRS 1-2008, f. & cert. ef. 2-4-08; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; VRS 1-2008, f. & cert. ef. 2-4-08; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 2-2004, f. & cert. ef. 3-9-04; VRD 4-1993, f. & cert. ef. 11-1-93; VRD 2-1992, f. & cert. ef. 4-20-92; VRD 2-1981, f. & ef. 12-1-81; VRD 1-1978, f. 3-14-78, ef. 3-15-78

**582-070-0040**

**Repossession/Disposition of Non-Expendable Property**

(1) For tools, supplies, equipment, vehicles, etc., funded by OVRS and needed by the individual for employment at time of closure as employed (from Individualized Plan for Employment or post-employment services), ownership or title is transferred to the individual.

(2) If an individual is closed as 'other than rehabilitated', or if tools, supplies, equipment, vehicles, etc., are not needed while the individual is receiving plan services or not needed by the individual employed at the time of a successful closure, where practical and appropriate, such property shall be repossessed and reassigned or otherwise disposed of by OVRS if this property was funded by OVRS and has a current aggregate value of \$1000 or more:

(a) For such property with a current aggregate value under \$1000, the counselor may agree to transfer the property to the ownership of the individual. Such agreements are only valid if the agreement is written. If there is no such agreement, the counselor shall make a reasonable effort to repossess the property through voluntary cooperation by the involved individual, individual's family or other individual who may be in current possession of said property, including small claims court; and

(b) For property with current values estimated to be \$1000 or more in the aggregate, OVRS may pursue, if necessary, other available legal means to regaining such property, or its equivalent value, including obtaining advice or assistance from the office of the attorney general.

(3) Any property funded by OVRS that has been purchased via prescription (such as glasses, hearing aids, wheelchairs) may be retained by the individual, with justification at closure documented in the individual's record.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; Reverted to VRS 1-2005, f. & cert. ef. 1-11-05; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; VRS 1-2005, f. & cert. ef. 1-11-05; VRS 5-2004, f. & cert. ef. 8-5-04; VRD 2-1992, f. & cert. ef. 4-20-92

## **582-070-0041**

### **Self Employment Including Micro-Enterprises**

Self-employment is an employment option that offers people with disabilities an opportunity to enter the labor market and contributes to self-sufficiency and independence. Self-employment, including micro-enterprises, should be consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities and interests, providing the individual full opportunity to exercise informed choice in the selection of their employment outcome.

Statutory/Other Authority: ORS 344.530(2)

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; VRS 5-2004, f. & cert. ef. 8-5-04; VRD 1-2000, f. & cert. ef. 7-24-00

## **582-070-0042**

### **Definitions**

The following definitions apply to Rules 582-070-0041 through 582-070-0044:

(1) "Business plan" means a document that describes the organization and operation of the proposed business. It is prepared by the individual, with assistance, as needed, from the counselor and/or Small Business Development Center at a local community college, a micro-enterprise organization, private business consultant, consultant from the Service Corps of Retired Executives (SCORE) or other similar source(s). The business plan shall be used by the counselor and the individual, in consultation with a qualified expert, to evaluate the viability of the business, as well as provide the individual with a blue print for the business. The business plan shall outline the financial projections of the business, the business marketing plan, and the method and schedule of ongoing record keeping and analysis that shall be used to evaluate the progress of the business. If the plan is viable, it can also be used to apply for any needed funding.

(2) "Self-employment" means working for oneself, in a business that sells goods or services. Self-employment may be a sole proprietorship, partnership, or corporation. If the business plan includes a partnership or corporation, and OVRS funding is requested, the individual must be the owner, controlling partner or controlling shareholder of the corporation.

(3) "Start-up costs" mean those costs as described in the business plan required in order for a business to begin



operation. Start up costs that are considered reasonable and necessary shall only be considered for funding by OVRS after all comparable services and benefits have been applied. Reasonable and necessary start-up costs required to establish the business may be provided by the OVRS in accordance with applicable purchasing rules and regulations.

(4) "Viable" when used with "business plan" means a business plan that has a reasonable chance of success leading to self sufficiency, based upon a market feasibility study; financial review of projected revenue, expenditures and assets; and the demonstrated technical and business management skills and abilities of the individual. An analysis of the ongoing costs required for the operation of the business and the resources that will cover those expenses will also be necessary to determine whether the projected resources will be sufficient to cover ongoing operational costs of the business. In order to be "viable" the individual's technical skills must be commensurate with those required of the self-employment venture. A business plan, to be viable, has been reviewed, in consultation with the individual and the OVRS counselor, by an individual or organization with a credible background in business planning. Although OVRS does not require that an individual utilize loan funds as a comparable benefit, a business plan may require loan funding or additional funding sources other than OVRS (e.g., family, friends) in order to be considered viable.

Statutory/Other Authority: ORS 344.530(2)

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; VRS 5-2004, f. & cert. ef. 8-5-04; VRD 1-2000, f. & cert. ef. 7-24-00

### **582-070-0043**

#### **Nature and Scope of OVRS Services/Role of the Vocational Rehabilitation Counselor and the Individualized Plan for Employment**

(1) The primary role of the Vocational Rehabilitation Counselor when assisting the individual in obtaining self-employment is to address the individual's disability-related barriers to employment. The Vocational Rehabilitation Counselor shall ensure the individual's business plan and the Individualized Plan for Employment (IPE) incorporates the strengths, resources, priorities, concerns, abilities, capabilities, and interests identified in a comprehensive assessment. In order to ensure the individual is provided full opportunity to exercise informed choice, OVRS may:

- (a) Help the individual evaluate his or her abilities, and interest in managing a business, including both formal evaluation, as well as observation and assessment of the individual's planning skills, ability to formulate a marketing and business plan, aptitudes to perform skills intrinsic in the operation of the business, initiative, commitment, and follow-through on tasks;
- (b) Help the individual develop a viable business plan;
- (c) Help the individual research and obtain the resources necessary for the business plan;
- (d) Identify, in full consultation with the individual, the measurements that shall be used to determine progress toward the planned outcome.
- (e) Work with the individual to understand the risks and responsibilities of owning and operating a business, especially when funds are borrowed to capitalize and support ongoing business needs; and
- (f) Assist with reasonable and necessary start-up costs of viable business plans when appropriate.

(2) If the individual's formal business plan is determined to be viable, the counselor and the individual shall complete the individual's Individualized Plan for Employment (IPE). The IPE must:

- (a) Specify needed services and costs, including training in specific skill areas in starting and owning a business, if the individual lacks skills necessary for successful business management;
- (b) Identify Assistive Technology and any other accommodations required;
- (c) Identify all resources available to fund the business plan, as described in OAR 582-070-0044(2).
- (d) Include a plan to monitor and evaluate the success of the business through scheduled reviews with the individual, and individual provided financial and marketing activity reports, as defined in the business plan.

Statutory/Other Authority: ORS 344.530(2)

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; VRS 5-2004, f. & cert. ef. 8-5-04; VRD 1-2000, f. & cert. ef. 7-24-00

#### **582-070-0044**

##### **Funding Requirements for a Viable Business Plan**

- (1) Under most circumstances, OVRS should not be considered a primary resource for the capital required for a self-employment venture. When no comparable benefits and services are available, OVRS may fund reasonable and necessary start up costs for a business as part of a individual's Individualized Plan for Employment. In order for a plan to be viable, other funding sources may be necessary to cover costs identified in the business plan that would not be covered by OVRS.
- (2) Funding for the business plan may include, but is not limited to, the individual's own resources; comparable services and benefits; loans from banks, finance companies or venture capitalists; grants; foundations; loans or loan guarantees from the Small Business Administration; local and state economic development funds; help from family or friends; a Social Security Plan for Achieving Self Support (PASS); or other such resources.
- (3) The individual is not required to accept a loan or utilize a PASS plan to fund the business plan. However, to be viable, a business plan may require additional funding such as that in a subsection (2) to cover the cost of the business venture.
- (4) Except for reasonable and necessary initial start-up costs, OVRS shall not pay for ongoing functions intrinsic to the operations of the business. Any request for initial start-up costs must include:
  - (a) The determination that OVRS and the individual have explored all reasonable self-employment funding options, as identified in subsection (2); and
  - (b) The determination that available financial resources, as identified in subsection (2), will not meet the reasonable and necessary start-up costs for the business.
- (c) Verification from the qualified expert approving the business plan that the requested start up costs are reasonable, necessary, and representative of what would be required for a start up business to begin operations.
- (5) OVRS shall assume no financial liability for debts, including existing debt. Any loss shall not be reimbursed by OVRS.
- (6) If additional funding such as that in subsection (2) is required to cover the cost of the business venture, the individual shall decide, based upon informed choice about the funding options available, whether to proceed with the business plan. This may include deciding to accept a loan for capitalization and ongoing business expenses.

Statutory/Other Authority: ORS 344.530(2)

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; VRS 5-2004, f. & cert. ef. 8-5-04; VRD 1-2000, f. & cert. ef. 7-24-00

## **DIVISION 72**

### **SUPPORTED SERVICES**

#### **582-072-0005**

##### **Definitions**

The following definitions apply:

- (1) "Customized Employment" means competitive integrated employment, for an individual with a significant disability that is:
  - (a) Based on an individualized determination of the strengths, needs, and interests of the individual with a significant disability, and
  - (b) Designed to meet the specific abilities of the individual and the business needs of the employer, and
  - (c) Carried out through flexible strategies, such as –
    - (A) Job exploration by the individual; and
    - (B) Working with an employer to facilitate placement, including -
  - (i) Customizing a job description based on current employer needs or on previously unidentified and unmet employer

needs;

(ii) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;

(iii) Using a professional representative chosen by the individual, or if elected self-representation, to work with an employer to facilitate placement; and

(iv) Providing services and supports at the job location.

(2) "Business startup costs" means amounts paid or incurred for

(a) Creating an active trade or business, or

(b) Investigating the creation or acquisition of an active trade or business. Start-up costs include amounts paid or incurred in connection with an existing activity engaged in for profit, and for the production of income in anticipation of the activity becoming an active trade or business.

(c) Qualifying business start-up costs are allowable if they meet both of the following tests:

(A) It is a cost that is paid or incurred to operate an existing active trade or business (in the same field as the one you entered).

(B) It is a cost paid or incurred before the day your active trade or business begins.

(d) Start-up costs include amounts paid for the following.

(A) An analysis or survey of potential markets, products, labor supply, transportation facilities, etc.

(B) Advertisements for the opening of the business.

(C) Salaries and wages for employees who are being trained and their instructors.

(D) Travel and other necessary costs for securing prospective distributors, suppliers, or customers.

(E) Salaries and fees for executives and consultants, or for similar professional services.

(e) Nonqualifying costs. Start-up costs shall not include deductible interest, taxes, or research and experimental costs.

(A) Research and experimental costs means activities intended to provide information that would eliminate uncertainty about the development or improvement of a product.

(B) Uncertainty exists if the information available to you does not establish how to develop or improve a product or the appropriate design of a product.

(C) Whether costs qualify as research and experimental costs depends on the nature of the activity to which the costs relate rather than on the nature of the product or improvement being developed or the level of technological advancement.

(3) "Essential functions of the job" means the fundamental job duties of the employment position the individual with a disability holds or desires. The term "essential functions" does not include the marginal functions of the position.

(a) A job function may be considered essential for any of several reasons, including but not limited to the following:

(A) The function may be essential because the reason the position exists is to perform that function;

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or

(C) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(b) Evidence of whether a particular function is essential includes, but is not limited to:

(A) The employer's judgment as to which functions are essential;

(B) Written job descriptions prepared before advertising or interviewing applicants for the job;

(C) The amount of time spent on the job performing the function;

(D) The consequences of not requiring the incumbent to perform the function;

(E) The terms of a collective bargaining agreement;

(F) The work experience of past incumbents in the job; and/or

(G) The current work experience of incumbents in similar jobs.

(4) "Job coaching" means direct services authorized by Program staff and provided for the job to teach participant the essential skills necessary to complete required job tasks beyond what is normally provided by the employer.

(5) "Job stability" means the participant and employer agree that job is satisfactory, the participant is adequately performing the duties of the job to the participant's and employer's satisfaction, job continues to match the vocational goal and number of hours as listed on referral, and long term supports, if needed, have been defined and are in place.

(a) All components of job stability must be met.

(A) The individual has reached the employment outcome in their individualized plan for employment (IPE), and

(B) The individual has met or made substantial progress toward meeting the hours-per week work goal, and

(C) The individual and the vocational rehabilitation counselor consider the employment outcome to be satisfactory and agree that the individual is performing well on their job, and

(D) The employer is satisfied that that individual is performing well on their job, and, if applicable,

(E) Before transition, extended (i.e., ongoing long-term) services must be available and can be provided without an interruption in service.

(b) The maximum number of months the Program can provide supported employment services is 24 months.

(c) A participant may choose to take a supported employment position paying at least minimum wage but lower than local comparable wages and benefits, on a short-term basis. In this circumstance:

(A) The Program shall apply this category when the employment specialist finds a job that participant chooses to accept and that job pays a lower hourly wage and/or amount of benefits than other new employees of that business (or local comparable businesses) who are doing similar work at a similar number of hours per week.

(B) This placement is approved by the Program counselor with the provision that the wage shall be increased when participant increases their targeted knowledge and skill and the employer agrees.

(C) When a participant chooses to accept such a job offer, the Program shall only accept it as a placement on a short-term basis (six (6) months with a limited provision for an additional six (6) months).

(D) In order for the VR counselor to accept the placement, the following shall occur:

(i) The job developer and/or job coach work with participant to create, as part of the retention plan, a written plan to increase per hour salary and/or benefits; and

(ii) The employer agrees with the plan; and

(iii) The case record shall contain documentation of planning, monitoring of the plan, and agreements made between the VR counselor, participant and the employer.

(6) "Maximizing hours" means all individuals with disabilities who want to work in the community shall be given an opportunity to pursue competitive employment that allows them to work the maximum number of hours consistent with individual choice, preferences, and circumstances, and all individuals who receive supported employment services in an integrated employment setting must have a goal of working the maximum numbers of hours consistent with their individual choice, preferences, and circumstances.

(7) "Microenterprise" means a service of the program, which is self-employment, where:

(a) The business is either full or part time in scope; and

(b) The Program shall not pay more than \$3,000 in business start-up costs.

(8) "Natural Supports" means approaches that emphasize integrating individuals into the workplace culture in ways that are natural and typical, rather than accentuating limitations of individuals and supporting individuals with specialized assistance from a professional.

(9) "Ongoing support services", as used in the definition of supported employment, means services that—

(a) Are needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment;

(b) Are identified based on a determination by the Program of the individual's need as specified in an individualized plan for employment;

(c) Are furnished by the Program from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement;

(d) Include an assessment of employment stability and provision of specific services or the coordination of services at or

away from the worksite that are needed to maintain stability based on—

- (A) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or
  - (B) If under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice monthly meetings with the individual;
- (e) Consist of—
- (A) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in paragraph (c)(5)(ii) of this section;
  - (B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;
  - (C) Job development and training;
  - (D) Social skills training;
  - (E) Regular observation or supervision of the individual;
  - (F) 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;
  - (G) Facilitation of natural supports at the worksite;
  - (H) Any other service identified in the scope of vocational rehabilitation services for individuals, described in §361.48(b);
- or
- (I) Any service similar to the foregoing services.

(10) "Stabilization" means conditions that maintain or cause to maintain employment, clarified in closure criteria listed in the Individual Plan for Employment for the Program participant.

(11) "Supported employment" —

(a) Supported employment means competitive integrated employment, including customized employment, or employment in an integrated work setting in which an individual with a most significant disability, including a youth with a most significant disability, is working on a short-term basis toward competitive integrated employment that is individualized, and customized, consistent with the unique strengths, abilities, interests, and informed choice of the individual, including with ongoing support services for individuals with the most significant disabilities—

(A) For whom competitive integrated employment has not historically occurred, or for whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(B) Who, because of the nature and severity of their disabilities, need intensive supported employment services and extended services after the transition from support provided by the Program, in order to perform this work.

(b) For purposes of this part, an individual with a most significant disability, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment, as defined in paragraph (c)(9) of this section is considered to be working on a short-term basis toward competitive integrated employment so long as the individual can reasonably anticipate achieving competitive integrated employment—

(A) Within six months of achieving a supported employment outcome; or

(B) In limited circumstances, within a period not to exceed 12 months from the achievement of the supported employment outcome, if a longer period is necessary based on the needs of the individual, and the individual has demonstrated progress toward competitive earnings based on information contained in the service record.

(12) "Supported employment services" means 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—

(a) Organized and made available, singly or in combination, in such a way as to assist an eligible individual to achieve competitive integrated employment;

(b) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment;

(c) Provided by the Program for a period of time not to exceed 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and

(d) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

(13) "Supported Microenterprise" means microenterprise where the Program determines through a comprehensive assessment that the Participant requires support, including natural supports, to plan for, establish, and maintain the microenterprise.

(14) "Supported Self-Employment" means a method to, or environment within which, an eligible individual with significant disabilities may pursue an employment outcome matched to the participant's skills and supports in order for the individual to carry out their employment goal. This method or environment provides required, additional activities in order to establish the viability of self-employment as an appropriate employment outcome.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 4-2020, adopt filed 03/13/2020, effective 03/31/2020

## **582-072-0010**

### **General provisions for supported employment**

(1) Supported employment shall be competitive integrated employment, consistent with the unique strengths, resources, concerns, abilities, capabilities, interests, and informed choice of an individual with a most significant disability:

(a) For whom competitive integrated employment has not historically occurred or for whom employment has been interrupted or intermittent as a result of a significant disability; and

(b) Who, because of the nature and severity of their disabilities, need intensive supported employment services and extended services after transition from support by the Program; and

(c) Who have been found eligible for vocational rehabilitation services; and

(d) For whom supported employment has been identified as appropriate through use of a comprehensive assessment.

(2) An individual whose supported employment is in an integrated setting but does not satisfy the criteria of salary, benefits, and opportunity for advancement comparable to other employees, may make an informed choice to work to advance in employment on a short-term basis so long as the individual can reasonably anticipate achieving the desired competitive integrated employment:

(a) Within six months of achieving the supported employment outcome; or

(b) In limited circumstances, within a period not to exceed 12 months, if a longer period is necessary based on the needs of the individual and the individual has demonstrated progress toward competitive earnings based on information contained in the service record.

(3) The Program may use funds allocated under 34 CFR §363.4 for the State Supported Employment Services Program, to provide extended services to youth with the most significant disabilities:

(a) For a period of time not to exceed four years, or

(b) Until such time that a youth reaches the age of 25.

Statutory/Other Authority: ORS 344.530, 344.570, 344.710 - 344.730

Statutes/Other Implemented: ORS 344.511 - 344.690

History: VRS 4-2020, adopt filed 03/13/2020, effective 03/31/2020

## **582-072-0015**

### **Eligibility for supported employment services**

(1) The Program may provide supported employment services to any individual, including a youth with a disability, when:

(a) The individual is determined eligible for vocational rehabilitation services in accordance with 34 CFR §361.42;

(b) Is an individual with a most significant disability; and,

(c) Supported employment has been identified as appropriate for the individual on the basis of a comprehensive assessment of rehabilitation needs, including existing data to the greatest extent possible, that the individual is determined to require supported employment services to maintain and advance in employment.

(2) 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; and
- (b) Considered an individual with a significant disability; and
- (c) The Program may start providing services while seeking mandatory verification of the applicant's eligibility under Title II or Title XVI.

Statutory/Other Authority: ORS 344.530, 344.570, ORS 344.511 - 344.690, 344.710 - 344.730

Statutes/Other Implemented:

History: VRS 4-2020, adopt filed 03/13/2020, effective 03/31/2020

## **582-072-0020**

### **Supported employment services**

(1) "Supported employment services" means ongoing support services, including customized employment, needed to support and maintain an individual with a most significant disability in supported employment, that are:

- (a) Provided singly or in combination and are organized and made available in such a way as to assist an eligible individual to achieve competitive integrated employment;
- (b) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment (IPE); and
- (c) Provided by the Program for a period of not more than 24 months, except that period may be extended, if necessary, in order to achieve the employment outcome identified in the individualized plan for employment (IPE).

(2) Ongoing support services:

- (a) Are furnished by the Program from the time of job placement until transition to extended services, unless postemployment services are provided following transition, and thereafter by one or more extended service providers through the individual's term of employment in a specific job placement; and
- (b) Include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on:
  - (A) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or
  - (B) If under specific circumstances, especially at the request of the individual, the individualized plan for employment (IPE) provides for off-site monitoring, twice monthly meetings with the individual; and
- (c) Are provided for up to 24 months, except that period may be extended if necessary, in order to achieve the employment outcome identified in the individualized plan for employment (IPE); and
- (3) Specified in the individualized plan for employment (IPE); and
- (4) Include post-employment services when required to ensure that the employment outcome remains consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Statutory/Other Authority: ORS 344.530, 344.570, 344.710 - 344.730

Statutes/Other Implemented: ORS 344.511 - 344.690

History: VRS 4-2020, adopt filed 03/13/2020, effective 03/31/2020

## **582-072-0030**

### **Stabilization of employment and transition to extended services**

(1) Stabilization of employment is reached when:

- (a) The participant is working the hours per week identified in the individualized plan for employment (IPE) or close to the number with plans to increase hours; and
- (b) The participant is satisfied with the type of work; and
- (c) The Vocational Rehabilitation counselor and participant agree that the participant is performing adequately; and
- (d) According to the employer the participant is performing adequately.

(2) Transition to extended services provided by other than the Program shall occur when stabilization is reached and:

- (a) Counselor and participant have discussed extending the provision of supported employment services and agree that no further supported employment services are necessary; and

- (b) Extended services are available and ongoing; or
- (c) Natural supports are available and adequate for the individual to maintain the job.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 4-2020, adopt filed 03/13/2020, effective 03/31/2020

#### **582-072-0035**

##### **Extended services for youth with a most significant disability**

- (1) "Extended services" means ongoing support services and other appropriate services that are:
  - (a) Needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment; and
  - (b) Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment; and
  - (c) Based on the needs of an eligible individual, as specified in an individualized plan for employment;
  - (d) Provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, after an individual has made the transition from support from the Program; and
- (2) Provided to a youth with a most significant disability by the Program in accordance with requirements set forth in OAR 582-072-0035 and 34 CFR §363.53 for a period not to exceed four years, or at such time that a youth reaches age 25 and no longer meets the definition of a youth with a disability under paragraph (c)(58) of this section, whichever occurs first.
- (3) The Program may provide extended services to an individual youth with a most significant disability, who is assessed as needing supported employment services and extended support services; who has:
  - (a) Been offered employment that matches their plan goal of type of work and hours of work; and
  - (b) Received the full 24 months of supported employment services during which:
    - (A) Natural supports were explored and developed to the extent possible; and
    - (B) Comparable benefits for extended services were sought but not currently available to the participant.
- (4) Program administrator approval shall be required to amend individualized plan for employment to include extended support services from the Program, for a period of time (whichever occurs first):
  - (a) For up to one year at a time for a total of up to four years; or
  - (b) Until the youth reaches the age of 25; and
  - (c) The amendment includes the provision to seek comparable benefits, or utilize Social Security work incentives, if needed.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 4-2020, adopt filed 03/13/2020, effective 03/31/2020

#### **582-072-0040**

##### **Supported employment outcome**

The participant who is employed in competitive integrated employment shall be considered to have achieved a supported employment outcome when:

- (1) Participant has completed supported employment services; and
- (2) Participant received up to 24 months of supported employment service(s) and participant and the Program agree that no more services are required; or
- (3) Participant and the Program have determined that an extension of time beyond 24 months is necessary to support and maintain the individual in supported employment; and
- (4) The participant has transitioned to extended services provided by other than the Program or by the Program to youth in specific circumstances; and
- (5) The participant has maintained employment and achieved stability in the work setting for at least 90 days after



transitioning to extended services; and

(6) The employment is individualized and customized and consistent with the strengths, abilities, interests, and informed choice of the individual.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 4-2020, adopt filed 03/13/2020, effective 03/31/2020

## **582-072-0045**

### **Supported employment closure**

(1) Closing the record of services of a participant who has achieved an employment outcome of competitive integrated employment shall happen when documentation in the client's file shows that:

(a) Case closure requirements of 34 CFR §361.56 have been met; and

(b) Participant is not receiving extended services from the Program or any other vocational rehabilitation service.

(2) The service record of a youth with a most significant disability who is receiving extended services provided by the Program shall be closed when the youth:

(a) No longer meets the age requirements (is 25 years old or older); or

(b) Has received extended services from the Program for a period of four years; or

(c) Has transitioned to extended services provided by other than the Program, and

(d) Satisfies requirements for case closure in 34 CFR §361.56; and

(e) Is no longer receiving vocational rehabilitation service from the Program.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 4-2020, adopt filed 03/13/2020, effective 03/31/2020

## **582-072-0050**

### **Supported employment post-employment services**

(1) Shall be only those needed services that are unavailable from an extended services provider; and

(2) Shall meet rehabilitation needs that do not require a complex and comprehensive provision of services (34 CFR §361.46(c)); and

(3) Shall be limited in scope and duration (34 CFR §361.5(c)(42)).

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 4-2020, adopt filed 03/13/2020, effective 03/31/2020

## **582-072-0070**

### **General requirements for customized employment for participants who receive supported employment or supported self-employment services**

(1) Customized employment shall be competitive integrated employment that is:

(a) Based on an individualized and documented determination of the unique strengths, needs, and interests of the participant; and

(b) Intended to meet the specific documented abilities of the participant and the business needs of the employer; and

(c) Meets the number of hours per week and the type of work in the individualized plan for employment (IPE); and

(d) Uses strategies like those listed in the definition (34 CFR§361.5(c)(11)).

(2) When the customized employment does not match any current work being done in the place of employment, the Program shall document that:

(a) The employer helped the participant develop their scope of work (job description) and supports development of natural supports at the worksite; and

(b) There is evidence that the employment will continue beyond closure of the record of service.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 4-2020, adopt filed 03/13/2020, effective 03/31/2020

## **DIVISION 75**

### **RATES OF PAYMENT — MEDICAL**

#### **582-075-0010**

##### **General Policy**

(1) The Office of Vocational Rehabilitation Services (OVRs) does not have the authority to reimburse vendors for the cost of goods and services if OVRs has not authorized payment prior to the provision of goods and services. OVRs shall reject all charges without such prior authorization.

(2) Except as provided in subsection (3) of this rule and OAR 582-075-0030, the amount that OVRs shall pay vendors for previously authorized medical or psychological services shall be the lesser of the following:

(a) The lowest fee that the vendor charges the general public or other state agencies for the service; or

(b) One of the following prescribed fees:

(A) The maximum fee prescribed by the Workers' Compensation Schedule.

(B) For medical, psychological, laboratory, and other services not governed by that schedule, OVRs shall pay the amount derived by applying the cost ratio between that schedule and the Division of Medical Assistance Program (DMAP) Schedule to the fee prescribed by the DMAP schedule.

(3) With prior written approval by the Field Services Manager, OVRs may exceed the fee prescribed by subsection (2) of this rule when financial or human considerations outweigh the difference in cost.

Statutory/Other Authority: ORS 344.530(2)

Statutes/Other Implemented: ORS 344.511 - 344.690

History: VRS 5-2004, f. & cert. ef. 8-5-04; VRD 6-1997, f. 12-31-97, cert. ef. 1-1-98; VRD 4-1993, f. & cert. ef. 11-1-93; VRD 1-1991, f. 1-14-91, cert. ef. 3-1-91

#### **582-075-0020**

##### **Definitions**

(1) "Brief narrative," as used in division 075, means a document from a treating vendor that summarizes client treatment to date and current status; responds briefly to 3–5 specific questions posed by OVRs, if any; and is usually one or two pages.

(2) "Complete narrative," as used in division 075, means a document from a treating vendor that describes an extended client history, addresses six or more specific topics, and is usually three or more pages.

(3) "Vendor," as used in division 075, means an entity that provides goods and/or services at the request of OVRs.

Statutory/Other Authority: ORS 344.530(2)

Statutes/Other Implemented: ORS 344.511 - 344.690

History: VRS 5-2004, f. & cert. ef. 8-5-04; VRD 6-1997, f. 12-31-97, cert. ef. 1-1-98; Reverted to VRD 4-1993, f. & cert. ef. 11-1-93; Temporary suspended by VRD 2-1997(Temp), f. 6-13-97, cert. ef. 6-15-97; VRD 1-1997(Temp), f. 5-8-97, cert. ef. 6-15-97; VRD 4-1993, f. & cert. ef. 11-1-93; VRD 1-1991, f. 1-14-91, cert. ef. 3-1-91

#### **582-075-0030**

##### **Medical Evidence of Record (MER) and Narrative Charges**

(1) OAR 582-075-0010(2) and (3) do not govern payment for Medical Evidence of Record and Narratives.

(2) OVRs payment for existing medical records shall not exceed the lesser of the following:

(a) The lowest fee that the vendor charges the general public or other state agencies for the service; or

(b) When the invoice itemizes the number of pages copied and provided:

(A) \$18.00 for ten or fewer pages;

- (B) \$0.25 per page for pages 11 to 20;
- (C) \$0.10 per page for pages greater than 21; and
- (D) A total maximum payment of \$22.50.
- (c) When the invoice does not itemize the number of pages copied and provided, a total maximum payment of \$18.00.
- (3) Additional payment will not be made for second or subsequent requests when the information to be provided was available to the vendor when the original request was processed.
- (4) Integrated records will be paid as a single record request.
- (5) When OVRs receives copies of existing medical records within 7 days from the date recorded on the OVRs record request, OVRs shall pay the vendor an additional \$5.00. Time shall be measured from the date of the OVRs written request to the date that OVRs electronically receipts the copies or receives them in the rehabilitation services local office.
- (6) When OVRs and a vendor enter a public contract for the contractor to obtain existing medical records on behalf of OVRs and perform additional related services:
  - (a) The contract governs payment to the contractor;
  - (b) The fee schedule prescribed by subsection (2) governs the contractor's payment to those from whom the contractor obtains the medical records.
  - (c) No bonus, as prescribed by subsection (5) of this rule shall be paid by OVRs or by the contractor.
- (7) When purchasing a brief narrative, OVRs shall pay the amount billed up to a maximum payment of \$35.00.
- (8) When purchasing a complete narrative, OVRs shall pay the amount billed up to a maximum payment of \$75.00.
- (9) A supplier of records under this rule is not entitled to any payments if the supplier fails to provide the records requested within a specific deadline identified in the letter requesting the records, and OVRs is not able to make use of the records as a result.

Statutory/Other Authority: ORS 344.530(2)

Statutes/Other Implemented: ORS 344.511 - 344.690

History: VRS 5-2004, f. & cert. ef. 8-5-04; VRD 6-1997, f. 12-31-97, cert. ef. 1-1-98; Reverted to VRD 4-1993, f. & cert. ef. 11-1-93; Temporary suspended by VRD 2-1997(Temp), f. 6-13-97, cert. ef. 6-15-97; VRD 1-1997(Temp), f. 5-8-97, cert. ef. 6-15-97; VRD 4-1993, f. & cert. ef. 11-1-93; VRD 1-1991, f. 1-14-91, cert. ef. 3-1-91

## **582-075-0040**

### **Limitations of Payments**

The vendor shall accept the fees prescribed by division 75 as payment in full. If a vendor's usual and customary fee for a service exceeds the fee prescribed by division 75, the client and/or his or her family shall not be liable to the vendor for any portion of a vendor's usual and customary fee unless the client and/or his or her family agrees in writing to assume the additional charges. Without such explicit agreement, the vendor must accept the OVRs payment, including any client copayment, as payment in full.

Statutory/Other Authority: ORS 344.530(2)

Statutes/Other Implemented: ORS 344.511 - 344.690

History: VRS 5-2004, f. & cert. ef. 8-5-04; VRD 6-1997, f. 12-31-97, cert. ef. 1-1-98

## **DIVISION 80**

### **VENDOR SELECTION POLICIES**

## **582-080-0010**

### **General Policy**

- (1) It is the policy of OVRs to purchase goods and services only from qualified vendors, in accordance with state licensure laws, OVRs Approval Standards, state purchasing regulations and applicable federal regulations. Goods and services will be purchased that are within the purview of the particular license or approval standards.
- (2) It is policy not to discriminate against a vendor based upon sex, race, creed, ethnic origin or disability. Favoritism by

OVRs in the selection or use of a vendor — resulting from considerations unrelated to informed client choice, cost, quality, or other criteria in these rules — will be avoided. Other factors being equal, a suitable vendor nearest the client will be used. OVRs maintains a listing of approved vendors selected to provide services to the OVRs.

(3) OVRs may select vendors or a pool of vendors on the basis of informed client choice in the context of third-party funding and comparative cost considerations. In addition, quality of service, facilities, barrier free access, program length, timeliness of needed services, and the vendor's history of timely and completeness of reports may be considered by OVRs in making a selection.

(4) It is OVRs policy that medical services will normally be purchased through the treating source when that source is willing and qualified to provide the authorized service at the rates OVRs would otherwise pay in the client's geographic location.

(5) OVRs may select vendors or a pool of vendors for medical services on the basis of informed client choice in the context of medical insurance and comparative cost considerations. In addition, quality of service, facilities, barrier free access, program length, timeliness of needed services, and the vendor's history of timely and completeness of reports may be considered by the OVRs in making a selection. When more than one medical provider is listed in the geographic area, selection of appropriate medical providers may be made on distance from the client, an equal distribution of services, or rotation of available vendors.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09; VRS 5-2004, f. & cert. ef. 8-5-04; VRD 4-1993, f. & cert. ef. 11-1-93; VRD 3-1992, f. & cert. ef. 4-20-92; VRD 6-1978, f. 5-18-78, ef. 6-1-78

## **582-080-0020**

### **Standards for Selection of Vendors**

The following standards supplement any other requirements that may apply to the same vendors. In all instances, the authorizing vocational rehabilitation counselor (with the guidance of the Field Services Manager) has the primary responsibility to assure that the vendor is on the OVRs approved vendor list and meets the applicable standards. When there is no client preference or circumstances which would dictate otherwise, vendor choice will be made from the pool of approved vendors available in the community, moving consecutively through the list in alphabetical order:

(1) Licensed professional individuals — (physicians, dentists, pharmacists, psychologists, academic teachers, etc.).

Licensable professional individuals must be licensed by the appropriate state licensing boards as required by law to provide services as private practitioners. It is the responsibility of the vocational rehabilitation counselor to use only licensed individuals. If the vocational rehabilitation counselor has reason to believe that a professional vendor is not appropriately licensed, the counselor is to discontinue further use until the matter can be cleared by OVRs. For additional requirements refer to OAR 582-010-0005 through 582-010-0030.

(2) Service organizations — (hospitals, medical groups, mental health clinics, child care facilities, placement agencies, group homes, foster homes, nursing homes, sheltered workshops, community rehabilitation programs, etc.). Service organizations must be qualified under state law or certified or accredited by a recognized state or national organization or be official arms of state or local government, and/or approved under the terms of OAR Chapter 582 for vendor selection. For all practicing groups of licensable, certifiable or other professionals, sections (1), (5), and (6) of this rule apply. For additional requirements pertaining to providers of community rehabilitation services refer to OAR 582-010-0005 through 582-010-0030.

(3) Commercial vendors — (supplies or material goods, transportation, insurance, shipping, and other commercial services, etc.). Commercial vendors must conform to all applicable state licensing requirements. All purchases will be made in accordance with state purchasing policies. In addition, the vendor must be able to provide the requested goods and services at the levels of quantity and quality and in the required time period authorized by the vocational rehabilitation counselor.

(4) Training vendors — (universities, community colleges, proprietary schools and OJT trainers, and correspondence schools, etc.). Training vendors must conform to all applicable licensing requirements. OVRs will only refer eligible individuals for vocational training to those schools and programs specified in 582-070-0020(3). Degree granting academic institutions must be accredited by a regional or national accrediting organization. Except when circumstances such as overall cost or specific need of a client justify otherwise, state-supported schools are used. OVRs conduct studies based on periodic sampling of training vendors to assure acceptable quality, reasonable costs, and effective results from the services provided. The studies may, on an annual basis, include a review of factors such as cost, utilization levels and rehabilitation survival rates for each community rehabilitation program or major training vendor used. OJT vendors will only be utilized if the vocational rehabilitation counselor and (as appropriate) the counselor's supervisor are assured in terms of their professional judgment, that the trainer/employer can deliver the training services as per the terms of the OJT contract.

(5) Certified professionals — (interpreters for the deaf, psychological and vocational counselors, occupational therapists, etc.). Certifiable professionals must possess a current certificate from a recognized state or national professional association or organization. If the vocational rehabilitation counselor questions the validity of the credentials, the counselor should refer the matter to the CRP Coordinator for guidance.

(6) Non-certified or non-licensed professionals — (e.g. tutors, peer mentors). In instances where a professional individual is not subject to licensing requirements or the OVRs approval process for providers of community rehabilitation services, the qualifications of the vendor must be determined to the satisfaction of the authorizing vocational rehabilitation counselor, the client and (as appropriate) the counselor's supervisor prior to the authorization of services. In addition:

(A) Peer mentors and tutors must be approved by the CRP Coordinator prior to placement on the Approved Vendor List;

(B) OVRs requires that tutors and peer mentors comply with DHS criminal history checks at the time of application for placement on the Approved Vendor List, re-application for placement on the Approved Vendor List, and if required by OVRs as a result of information received about vendor qualifications, behavior or performance; and

(C) OVRs requires that peer mentors submit proof of insurance at the level established under Department of Administrative Services guidelines.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: Reverted to VRS 2-2008, f. & cert. ef. 3-3-08; VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09; VRS 2-2008, f. & cert. ef. 3-3-08; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 2-2003, f. & cert. ef. 12-31-03; VRD 4-1993, f. & cert. ef. 11-1-93; VRD 3-1992, f. & cert. ef. 4-20-92; VRD 6-1978, f. 5-18-78, ef. 6-1-78

## **582-080-0030**

### **Selection Policy for Out-of-State Vendors**

The vendor selection policies of divisions 582-080, OAR 582-010 and 582-075 will be used for all out-of-state vendors. The vocational rehabilitation counselor may contact the other Vocational Rehabilitation state agency for vendor information and to check rates.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09; VRS 5-2004, f. & cert. ef. 8-5-04; VRD 3-1992, f. & cert. ef. 4-20-92; VRD 6-1978, f. 5-18-78, ef. 6-1-78

## **582-080-0040**

### **Conflict of Interest Regarding Vendor Selection**

No employee or representative of OVRs may take any action that would result in the person's private financial benefit, nor shall the action benefit any member or any business with which he/she or any member of his/her household is associated. All OVRs employees must give notice to their immediate supervisor of all potential conflicts of interest. If the supervisor agrees that there is a conflict of interest, the supervisor shall send the matter through supervisory channels to

the appointment authority for resolution.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09; VRS 5-2004, f. & cert. ef. 8-5-04; VRD 6-1978, f. 5-18-78, ef. 6-1-78

## **582-080-0050**

### **Civil Rights**

All vendors must provide all of their services in compliance with Titles VI and VII of the Civil Rights Act of 1964 as amended; Sections 503 and 504 of the Rehabilitation Act of 1973 as amended; Architectural Barriers Act of 1968 as amended; Uniform Accessibility Standards in 41 CFR Part 101-19.6 et seq.; American National Standards Institute No. A 117.1 — 1986; and, Americans with Disabilities Act (P.L. 101-336).

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: Reverted to VRD 3-1992, f. & cert. ef. 4-20-92; VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09; VRD 3-1992, f. & cert. ef. 4-20-92; VRD 6-1978, f. 5-18-78, ef. 6-1-78

## **DIVISION 85**

### **STANDARDS FOR INDEPENDENT LIVING SERVICE PROVIDERS**

## **582-085-0004**

### **Independent Living Service Providers Receiving Vocational Rehabilitation Funds**

An independent living service provider who receives funds for vocational rehabilitation services must comply with the same standards applicable in chapter 582 of the Oregon Administrative Rules to other providers of the specific vocational rehabilitation services funded.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.530, 344.550

History: Reverted to VRS 5-2004, f. & cert. ef. 8-5-04; Suspended by VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09; VRS 5-2004, f. & cert. ef. 8-5-04

## **582-085-0005**

### **Providers Receiving Independent Living Services Funds**

(1) Providers must satisfy the following requirements to receive funds allocated under Section 713(1) of the federal Rehabilitation Act:

- (a) Approval of the State Independent Living Council for the specific funds provided; and
- (b) Satisfy all applicable state licensure or certification requirements for the specific services funded; and either
- (c) Satisfy the requirements of Section 702 of the federal Rehabilitation Act to qualify as a "Center for Independent Living"; or
- (d) Qualify for and be placed on the OVRs Approved Vendor List for the specific services funded.

(2) Providers must satisfy the following requirements to receive funds allocated under Section 713(3) of the federal Rehabilitation Act:

- (a) Approval of the State Independent Living Council for the specific funds provided; and
- (b) Satisfy the requirements of Sections 702 and 725 of the federal Rehabilitation Act concerning Centers for Independent Living as well as Standards and Assurances.

Statutory/Other Authority: ORS 344.530, 344.540

Statutes/Other Implemented: ORS 344.530, 344.540, 344.550

History: VRS 5-2004, f. & cert. ef. 8-5-04

## **DIVISION 90**

## **CERTIFICATION OF DISABILITY**

### **582-090-0010**

#### **Certification of Disability Generally**

(1) The Office of Vocational Rehabilitation Services (OVRs) will provide certification services on request for individuals with disabilities seeking employment under a governmental entity's special hiring practices if a certificate is required.

(2) OVRs will provide certification services on request for clients who require documentation of disability for specific programs such as Tri-Met Honored Citizen Cards and the Public Utility Commission Telecommunications Devices Access Program.

(3) Individuals seeking a certification of disability shall provide OVRs with the certification instructions and form of the governmental organization if requested, and provide documenting evidence of their disability.

(4) OVRs may provide certification of disability services regardless of whether individuals apply for OVRs services under 34 CFR 361.41, qualify for services under 34 CFR 361.42, or have an open case with OVRs for vocational rehabilitation services.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.530

History: VRS 5-2004, f. & cert. ef. 8-5-04; VRS 4-2004, f. & cert. ef. 4-2-04; VRD 1-1993, f. & cert. ef. 9-7-93; VRD 5-1981, f. & ef. 12-1-81; VRD 1-1979, f. & ef. 10-1-79

### **582-090-0020**

#### **Certification of Disability for Federal Employment**

(1) OVRs will provide certification services for federal job applicants under Schedule A hiring authorities (5 CFR 213.3101), including 5 CFR 213.3102(t) for hiring people with mental retardation, 5 CFR 213.3102(u) for hiring people with severe physical disabilities, and 5 CFR 213.3102(gg) for hiring people with psychiatric disabilities.

(2) A certification issued by an OVRs counselor for federal job applicants under Schedule A hiring authorities must verify that the applicant has a severe disability and is therefore eligible under a Schedule A appointment authority and that the applicant is able to perform the essential duties of the position. The certification must also describe any needed reasonable accommodation.

(3) An OVRs counselor may issue a certification for federal job applicants under Schedule A hiring authorities as follows:

(a) An OVRs counselor may first issue a letter certifying that the individual is disabled and eligible for appointment under a particular Schedule A appointment authority. This type of certification is sufficient for an applicant to be considered for any Schedule A job;

(b) If the individual with a disability is tentatively selected for the position, the OVRs counselor may issue a second letter, as merited, stating that the counselor has evaluated the job tasks and determined the applicant is able to perform the essential duties of the position. This second letter must also state what reasonable accommodations, if any, are sought.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.530

History: VRS 4-2004, f. & cert. ef. 4-2-04; VRD 5-1981, f. & ef. 12-1-81; VRD 1-1979, f. & ef. 10-1-79

### **582-090-0030**

#### **Assistance with State Employment**

(1) OVRs will assist its job-ready clients to seek state employment through the HIRE (Hiring Individuals Ready for Employment) system. OVRs counselors will explain the HIRE system to interested clients, and assist clients in the preparation of client materials, if necessary.

(2) Once an OVRs client has filled out a state application form and other required paperwork, the OVRs counselor will submit to the Department of Administrative Services (DAS), Human Resource Services Division (HRSD) Recruitment the completed state application (PD 100), skill code documents (if applicable), and a completed and signed referral.

Statutory/Other Authority: ORS 344.530

Statutes/Other Implemented: ORS 344.530

History: VRS 4-2004, f. & cert. ef. 4-2-04; VRD 1-1993, f. & cert. ef. 9-7-93; VRD 1-1988, f. & cert. ef. 3-4-88; VRD 5-1981, f. & ef. 12-1-81; VRD 1-1979, f. & ef. 10-1-79

## **DIVISION 100**

### **ORDER OF SELECTION FOR VOCATIONAL REHABILITATION SERVICES**

#### **582-100-0000**

##### **Order of Selection**

(1) An order of selection describes the priority with which eligible individuals shall receive Program services when there are insufficient resources to provide services to all eligible individuals.

(2) The purpose of these rules is to describe the procedures and criteria that shall be used to determine the necessity of an order of selection, to determine the basis for assignment of eligible individuals to priority categories, identify exceptions to the priority categories, and describe the administration of the order of selection.

(3) These rules shall only apply if the Program determines that an order of selection is necessary, has set an effective date, and determined the priority categories that shall be served under the order.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 5-2020, adopt filed 06/01/2020, effective 06/08/2020

#### **582-100-0005**

##### **Determination of Need for an Order of Selection**

(1) The Program may implement an order of selection if it determines that it cannot provide the full range of vocational rehabilitation services to all eligible individuals, based on projected fiscal and personnel resources and the rehabilitation needs of individuals with significant disabilities in the state.

(2) The Program shall determine whether an order of selection is necessary prior to the beginning of each fiscal year or during a fiscal year based on changed circumstances.

(3) The Program shall consult with the State Rehabilitation Council regarding the administrative rules governing the order of selection and prior to making a determination to implement the order.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 5-2020, adopt filed 06/01/2020, effective 06/08/2020

#### **582-100-0011**

##### **Provision of Services under an Order of Selection**

(1) Provision of Services Outside of Priority Categories. On and after the effective date of the order of selection and regardless of an individual's assignment to a priority category, the Program shall:

(a) Continue to provide to an eligible individual all needed services, listed in their individualized plan for employment (IPE), if that individual started receiving IPE services prior to the effective date of the order of selection;

(b) Continue to provide pre-employment transition services to a student or a youth with a disability if that student or youth started receiving services prior to being determined eligible for Program services;

(c) Provide an eligible individual with specific services or equipment necessary to maintain their current employment pursuant to OAR 582-100-0020; and

(d) Provide an applicant with assessment services that are necessary to determine Program eligibility and priority category;

(e) Provide career counseling and information and referral services to an eligible individual employed in subminimum wage employment, as described in OAR 582-115-0010; and

(f) Provide an eligible individual, who is not receiving services under the order of selection, with information and referral services.



(2) Priority Categories. On and after the effective date of the order of selection, the Program shall only provide services, within available funding and in the following order of priority, based on the individual's date of application:

- (a) All persons assigned to priority category one, in the order of the eligible individual's date of application; and then,
- (b) All persons assigned to priority category two, in the order of the eligible individual's date of application; and then,
- (c) All persons assigned to priority category three, in the order of the eligible individual's date of application.

(3) An eligible individual's date of application is the date that the Program receives their completed application, as provided in OAR 582-050-0000(4). If an eligible individual has had their eligibility terminated for a period of time, applied again and been determined to be eligible, the individual's most recent date of application shall determine their priority for service under section (2) of this rule.

Note that this rule would not apply if the individual challenges the termination in a hearing and the case is ordered reopened. In such a case, the individual would resume their current priority position.

(4) Students or Youths with Disabilities: Except as provided in subsection (1)(b) of this rule, the order of selection rules applies to pre-employment transition services provided to eligible students or youths with disabilities.

(a) For an eligible student or youth with a disability, who has been determined eligible for Program services and who will be served under the order of selection, the Program shall request the development and approval of an IPE before the student or youth leaves the school setting.

(b) For an eligible student or youth with a disability, who has been determined eligible for Program services and who will not receive services under the order of selection, the Program may provide the student or youth with general transition services, benefiting a group of students with disabilities, to ensure the continuation of beneficial services. However, the Program shall not provide pre-employment transition services to them.

(5) The Program shall keep track of the number of eligible individuals who could not receive services under the order of selection but did receive information and referral services. The Program shall develop an annual report with estimates of the number of individuals in the state eligible for services, the number of eligible individuals to be served under each priority category, the number of eligible individuals who are not receiving services due to the order of selection, and the service costs for each priority category.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 5-2020, adopt filed 06/01/2020, effective 06/08/2020

## **582-100-0015**

### **Assignment of Priority Categories**

(1) Priority Category One. The Program shall assign an individual to priority category one if the individual

- (a) Has been determined eligible for services under OAR chapter 582, division 50;
- (b) Is classified with a Most Significant Disability as defined in OAR 582-001-0010;
- (c) Has a severe mental or physical impairment that seriously limits three or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and
- (d) Is expected to require three or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.

(2) Priority Category Two. The Program shall assign an individual to priority category two if the individual:

- (a) Has been determined eligible for services under OAR 582 Division 50
- (b) The individual is classified as a person with a Significant Disability as defined in OAR 582-001-0010;
- (c) The individual has a severe mental or physical impairment that seriously limits one or two functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(d) The individual is expected to require two or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.

(3) Priority Category Three. The Program shall assign all other individuals, who do not qualify for the other priority categories and who have been determined eligible for services under OAR 582 Division 50, to priority category three.

(4) In order to determine an eligible individual's priority under an order of selection, the Program shall use the data gathered in the assessment of the individual's eligibility for Program services. The Program may also require the individual to provide additional information and participate in trial work experience or other evaluations if the Program counselor determines it is necessary to assign a priority category to the individual.

(5) The Program shall not consider the following factors in the order of selection: duration of residency provided the individual is present in the state, type of disability, age, sex, race, color, national origin, source of referral, type of expected employment outcome, the need for specific services except as provided for in OAR 582-100-0020, anticipated cost of services, or income level of the individual or individual's family.

(6) The Program shall provide notice to an applicant regarding his or her eligibility for Program services under to OAR chapter 582, division 20, and if determined to be eligible, the individual's assignment to a priority category. The Program shall provide information on the eligible individual's dispute resolution rights related to their assignment to a priority category pursuant to OAR chapter 582, division 20.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 5-2020, adopt filed 06/01/2020, effective 06/08/2020

## **582-100-0021**

### **Limited Exception for Maintenance of Employment**

(1) Applicants or eligible individuals, who would not otherwise be able to receive services under an order of selection, may apply to receive specific services or equipment to maintain their current employment under OAR 582-100-0011(1)(c).

(2) In order to qualify for services or equipment under OAR 582-100-0010(1)(c), the individual must:

- (a) Be eligible for services under OAR 582 Division 50;
- (b) Not otherwise be able to receive Program services or equipment under the order of selection; and
- (c) Be at immediate risk of losing their current job if not provided with specific services or equipment in the near future, which means no more than two months or 30 calendar days.

(3) The Program shall only provide the specific services or equipment necessary for the eligible individual to maintain their current employment. The Program shall not provide the full scope of Program services, unless otherwise authorized by rule.

(4) The Program counselor shall document in the eligible individual's file:

- (a) Evidence of the immediate risk of the individual losing their current employment; and,
- (b) The specific services or equipment necessary to maintain the individual's employment.

(5) The Program shall not determine that an eligible individual is at immediate risk of losing their current job under subsection (2)(c) of this rule, if that risk is based on the individual choosing to voluntarily leave their current employment.

(6) The Program shall determine whether an individual qualifies for this limited exception under this rule within 30 days of an eligible individual's request for services under the exception.

(7) An individual who requests the limited exception under this rule during an order of selection is entitled to notice of the Program's determination and dispute resolution rights to challenge that determination, as described in OAR chapter 582, division 20.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 5-2020, adopt filed 06/01/2020, effective 06/08/2020

## **582-100-0040**

### **Waitlist during Order of Selection**

- (1) The Program shall maintain a single, statewide waitlist to track eligible individuals, who are not receiving full Program services under an order of selection, consistent with the provision of services described in OAR 582-100-0011.
- (2) The eligible individual on the waitlist shall be responsible for ensuring their contact information is kept current with the Program.
- (3) The Program shall notify an eligible individual when they are selected from the waitlist.
  - (a) Contact with the eligible individual shall be in the manner most appropriate to their communication style and need.
  - (b) If the selected individual does not contact the Program within 10 business days, the Program shall move to the next name on the waitlist.
  - (c) If the individual fails to respond, he or she shall exit from the program. An individual who fails to respond to an invitation to move off the waiting list during an order of selection is entitled to notice of the Program's determination and dispute resolution rights to challenge that determination, as described in OAR chapter 582, division 20.
  - (d) If the individual is contacted to initiate services and is not ready to begin working with the Program, the counselor shall assist the individual to make an informed decision about how to proceed. The counselor and participant have 60 days to determine whether or not to move forward with vocational rehabilitation services.
- (A) The Program shall not hold a spot on the waitlist or place the participant at the top of the list.
- (B) If 60 days to plan is insufficient to accommodate the need for the individual's delay to engage in vocational rehabilitation services, the individual shall exit from the program and submit a new application at a later date.
- (C) Information and referral shall be provided to any individual who exits because they were not ready to participate when notified during order of selection.
- (e) A closed case service file shall not be reopened. There are no exceptions.

Statutory/Other Authority: ORS 344.540

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 5-2020, amend filed 06/01/2020, effective 06/08/2020; VRS 2-2009, f. & cert. ef. 3-27-09; VRS 5-2008(Temp), f. 12-18-08, cert. ef. 12-19-08 thru 6-16-09<br>

VRS 2-2005, f. 4-20-05, cert. ef. 7-1-05<br>

VRS 5-2004, f. & cert. ef. 8-5-04<br>

VRD 2-1993, f. & cert. ef. 9-15-93<br>

VRD 3-1991, f. & cert. ef. 9-11-91<br>

VRD 3-1980, f. & cert. ef. 7-2-80

### **DIVISION 115**

#### **SERVICES TO PERSONS WITH DISABILITIES OF ANY AGE RECEIVING SUBMINIMUM WAGE**

##### **582-115-0005**

##### **Definitions**

- (1) "Career counseling for limitation on subminimum wage" means a service provided by the Program or its contractor that:
  - (a) Pertains to the body of subject matter and related techniques and methods organized for the development in individuals of career awareness, career planning, career decision making, placement skills, and knowledge and understanding of local, state, and national occupational educational, and labor market needs, trends and opportunities; and
  - (b) Assists individuals with disabilities in making and implementing informed educational and occupational choices.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 6-2020, adopt filed 07/01/2020, effective 07/15/2020

##### **582-115-0010**

## **General provisions**

(1) The Program shall support placement of Program clients only in work that is competitive integrated employment.

(2) The Program shall assure that career counseling and information and referral shall be available to individuals known by the Program:

(a) An individual with a disability may become "known" to the Program through self-identification by the individual with a disability, referral by a third-party (including an entity as defined in 34 CFR §397.5(d)), through the individual's involvement with the vocational rehabilitation process, or any other method:

(A) Who are working at less than the federal minimum wage, or,

(B) Who are youths with a disability, known to be considering pursuing employment paying less than the federal minimum wage.

(b) These individuals shall not be required to be, or have applied to be, a Program participant.

(c) If the individual is a current Program participant, or has applied to the Program, they shall receive limitation on subminimum wage services if they wish to remain in subminimum wage employment while working with the Program.

(d) Limitation on subminimum wage services shall be based on vocational rehabilitation counseling strategies that facilitate informed choice.

(e) These services shall be provided twice in the first year of employment at subminimum wage and annually thereafter.

(3) The Program may employ contractors to provide limitation on subminimum wage services.

(a) The contractors shall be chosen only through the Oregon Department of Administrative Services (DAS) and Department of Human Services (DHS) contracting process.

(b) The services shall not be provided by an entity.

(4) Individuals who are not Program participants shall receive an Oregon Vocational Rehabilitation Brochure. Referral to other Federal, State, and local resources shall be provided as applicable to each individual.

(5) All individuals shall receive Client Assistance Program (CAP) information to guide them if they have a grievance regarding this specific vocational rehabilitation service.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 6-2020, adopt filed 07/01/2020, effective 07/15/2020

## **582-115-0015**

### **Services to individuals of any age who are employed at a subminimum wage**

(1) The Program shall provide career counseling and information and referral to individuals with disabilities regardless of age, or the individual's representative as appropriate, who are known by the Program to be employed at a subminimum wage.

(2) Career counseling and information and referral services may include benefits planning materials and information.

(3) The Program shall upon referral of an individual with a disability employed at subminimum wage by an entity with fewer than 15 employees:

(a) Inform the individual about self-advocacy, self-determination, and peer mentoring training opportunities in the community;

(b) Provide the information within 30 days of the referral by the entity.

(4) Required services shall:

(a) Be carried out once every six months for the first year of subminimum wage employment;

(b) Be carried out annually after the first year, for the duration of such employment.

(c) The applicable intervals shall be calculated based upon the date the individual becomes known to the Program.

(5) The Program shall provide documentation to the individual:

(a) No later than 45 calendar days after completion of service; or 90 days with extenuating circumstances.

(b) Documentation shall contain:

(A) Name of the individual;

- (B) Description of service;
- (C) Name of the provider of the required service or activity;
- (D) Date required service completed;
- (E) Signature of individual; documenting completion of service;
- (F) Date of signature;
- (G) Signature of Program personnel transmitting documentation to the individual; and
- (H) Date and method of transmittal to individual.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 6-2020, adopt filed 07/01/2020, effective 07/15/2020

## **582-115-0020**

### **Refusal to participate in a required activity**

(1) When the individual refuses to participate in a required activity, documentation of that refusal shall be provided within 10 calendar days and shall at a minimum contain:

- (a) Name of the individual;
- (b) Description of the refusal including reason for refusal;
- (c) Signature of the individual or individual's representative;
- (d) Signature of Program personnel documenting the individual's refusal;
- (e) Date of signatures; and
- (f) Date and method of transmittal of documentation of refusal to the individual.

(2) The Program shall retain a copy of all documentation in a manner consistent with the Program's case management system.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 6-2020, adopt filed 07/01/2020, effective 07/15/2020

## **582-115-0030**

### **Semi-annual and annual review in extended employment and other employment under special certificate provisions of the Fair Labor Standards Act**

(1) The Program shall conduct semi-annual review and reevaluation for the first two years of such employment and annually thereafter in accordance with the requirements in paragraph (2) of this section for an individual who has a record of service as either an applicant or eligible individual under the Program; who:

- (a) Has achieved employment in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act; or
- (b) Is in extended employment including those individuals whose record of service is closed while the individual is in extended employment on the basis that the individual is unable to achieve competitive integrated employment or the individual made an informed choice to remain in extended employment.

(2) For each individual who meets the criteria in paragraph (1), the Program shall semi-annually review and reevaluate the status of each individual for two years after the individual's record of service is closed, and annually thereafter, to:

- (a) Determine the interests, priorities, and needs of the individual with respect to competitive integrated employment or training for competitive integrated employment; and
- (b) Enable the individual, or if appropriate, the individual's representative to provide input into the review and reevaluation and shall document that input in the record of services, with the individual's or, as appropriate, the individual's representative's signed acknowledgement that the review and reevaluation have been conducted, and
- (c) Make maximum efforts, including identifying and providing vocational rehabilitation services, reasonable accommodations, and other necessary support services to assist the individual in engaging in competitive integrated employment.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 6-2020, adopt filed 07/01/2020, effective 07/15/2020

## **582-115-0040**

### **Services to youth with disabilities requesting subminimum wage employment**

The Program shall provide youth with disabilities documentation upon the completion of the following actions:

(1) Provision of pre-employment transition services as needed by the student with disability and are available to the student with a disability under 34 CFR §361.48; and

(2) Documentation of the completion of School Transition services received by the youth that are provided by local education agency under the Individuals with Disabilities Education Act (20 U.S.C. 1414 (d)); and,

(3) Application for vocational rehabilitation services, in accordance with 34 CFR §361.41(b), with the result that the individual was determined:

(a) Ineligible for vocational rehabilitation services, in accordance with 34 CFR §361.43; or

(b) Eligible for vocational rehabilitation services, in accordance with 34 CFR §361.42; and

(A) The youth with a disability had an approved individualized plan for employment, in accordance with 34 CFR §361.46;

(B) The youth with a disability was unable to achieve the employment outcome specified in the individualized plan for employment, as described in 34 CFR §361.5(c)(15) and §361.46, despite working toward the employment outcome with reasonable accommodations and appropriate supports and services, including supported employment services and customized employment services, for a reasonable period of time; and

(C) A reasonable period of time utilized in the youth's attempt to achieve their employment outcome in their individualized plan for employment (IPE), is considered to be up to 24 months if the individual needs supported employment services, and,

(D) The youth with a disability's case record, which meets all the requirements of 34 CFR §361.47, is closed.

(4)(a) Regardless of the determination made under paragraph (3) of this section, the youth with a disability has received career counseling, and information and referrals to Federal and State programs and other resources in the individual's geographic area that offer employment-related services and supports designed to enable the individual to explore, discover, experience, and attain competitive integrated employment.

(b) The career counseling and information and referral services provided in accordance with paragraph (4)(a) of this section shall:

(A) Be provided in a manner that facilitates informed choice and decision-making by the youth, or the youth's representative as appropriate; and

(B) Not be for subminimum wage employment by an entity defined in §397.5(d), and such employment related services are not compensated at a subminimum wage and do not directly result in employment compensated at a subminimum wage provided by such an entity.

(5) The following special requirements apply:

(a) For purposes of this part, all documentation provided by the Program shall satisfy the requirements for such documentation under 34 CFR part 361.

(b) The individualized plan for employment, required in paragraph (3)(b)(A) of this section, shall include a specific employment goal consistent with competitive integrated employment, including supported or customized employment.

(c)(A) For purposes of paragraph (3)(b)(B) of this section, a determination as to what constitutes "reasonable period of time" shall be consistent with the disability-related and vocational needs of the individual, as well as the anticipated length of time required to complete the services identified in the individualized plan for employment.

(B) For an individual whose specified employment goal is in supported employment, such reasonable period of time is up to 24 months, unless under special circumstances the individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 6-2020, adopt filed 07/01/2020, effective 07/15/2020

#### **582-115-0050**

##### **Documentation of service completion for youth seeking subminimum wage employment**

(1) The Program shall provide documentation of services within 45 days after completion of the activity or service; or 90 days if extenuating circumstances make the extra time necessary. The documentation shall be given to the youth in an accessible format.

(2) Such documentation shall, at a minimum include:

(a) Youth's name;

(b) Determination made including summary of reason for the determination or description of service or activity completed;

(c) Name of the individual making the determination or provider of the required service or activity;

(d) Date determination made or required service or activity completed;

(e) Signature of the Program or educational personnel making determination or documenting completion of required service or activity;

(f) Date of signatures;

(g) Date and method by which document was transmitted to the youth.

(3) The Program shall provide documentation of services that shall include, if available:

(a) For a student, completion of appropriate pre-employment transition services, in accordance with 34 CFR §361.48(a), and,

(b) Completion of transition services, as documented and provided by appropriate school official, and,

(c) Application to the Program, and,

(d) The Program's eligibility determination, and

(e) Career counseling and information and referral regardless of eligibility determination, and

(f) An approved individualized plan for employment (IPE) for those determined eligible, and

(g) The individual's Program case record showing either successful rehabilitation or that a reasonable period of time was utilized in attempt to achieve the employment outcome.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 6-2020, adopt filed 07/01/2020, effective 07/15/2020

#### **582-115-0060**

##### **Youth or representative refusal to participate**

(1) If a youth or, as applicable, the youth's parent or guardian, refuses to participate in the required activities, the documentation shall at a minimum, include:

(a) The Youth's name;

(b) Description of the refusal and reason for such refusal;

(c) Signature of the youth or youth's parent or guardian;

(d) Signature of Program or educational personnel documenting the youth's refusal;

(e) Date of signatures; and,

(f) Date and method by which documentation was transmitted to the youth.

(2) Documentation required when a youth refuses to participate in required activities shall be provided within 10 calendar days of the youth's refusal to participate.

(3) When transmitting documentation of the final determination or activity completed, the Program shall provide a coversheet that itemizes each of the documents that have been provided to the youth.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

## **582-115-0070**

### **Limitations on use of subminimum wage activities**

- (1) A youth with a disability shall receive documentation that they have completed requirements prior to beginning subminimum wage employment.
- (2) Anyone currently employed at subminimum wage shall receive documentation of receipt of limitation of subminimum wage services to remain in that employment.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 6-2020, adopt filed 07/01/2020, effective 07/15/2020

## **DIVISION 150**

### **TRANSITION SERVICES AND COORDINATION FOR STUDENTS AND YOUTH WITH DISABILITIES**

## **582-150-0005**

### **Definitions**

- (1) "Authorized activities" means that funds available and remaining after the Program provides the required activities described in OAR 582-150-0005 (4) may be used to improve the transition of students with disabilities from school to postsecondary education or an employment outcome by:
  - (a) Implementing effective strategies to increase the likelihood of independent living and inclusion in communities and competitive integrated workplaces;
  - (b) Developing and improving strategies for individuals with intellectual disabilities and individuals with significant disabilities to live independently, participate in postsecondary education experiences, and obtain, advance in and retain competitive integrated employment;
  - (c) Providing instruction to vocational rehabilitation counselors, school transition personnel, and other individuals supporting students with disabilities;
  - (d) Disseminating information about innovative, effective, and efficient approaches to achieve the goals of these rules;
  - (e) Coordinating activities with transition services provided by local educational agencies under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);
  - (f) Applying evidence-based findings to improve policy, procedure, practice, and the preparation of personnel, in order to better achieve the goals of these rules;
  - (g) Developing model transition demonstration projects;
  - (h) Establishing or supporting multistate or regional partnerships involving states, local educational agencies, the Program, developmental disability agencies, private businesses, or other participants to achieve the goals of these rules; and
  - (i) Disseminating information and strategies to improve the transition to postsecondary activities of individuals who are members of traditionally unserved and underserved populations.
- (2) "Potentially eligible" means all students with disabilities, regardless whether they have applied or been determined eligible for vocational rehabilitation services. The term is applicable only when implementing the requirements governing pre-employment transition services.
- (3) "Pre-employment transition coordination" means that each local branch of the Program shall carry out responsibilities consisting of the following:
  - (a) Attending individualized education program (IEP) meetings for students with disabilities, when invited;
  - (b) Working with the local workforce development boards, one-stop centers, and employers to develop work opportunities for students with disabilities, including internships, summer employment and other employment opportunities available throughout the school year, and apprenticeships;
  - (c) Working with schools to coordinate and ensure the provision of pre-employment transition services; and



(d) When invited, attending person-centered planning meetings to individuals receiving Medicaid.

(4) "Required activities" means the Program shall coordinate the following pre-employment transition services for students:

(a) Job exploration counseling;

(b) 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;

(c) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;

(d) Workplace readiness training to develop social skills and independent living; and

(e) Instruction in self-advocacy including instruction in person-centered planning, which may include peer mentoring, including peer mentoring from individuals with disabilities working in competitive integrated employment.

Statutory/Other Authority: ORS 344.530, ORS 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 7-2020, adopt filed 10/29/2020, effective 11/12/2020

## **582-150-0015**

### **General Provisions for Students and Youth with Disabilities in Transition**

(1) The Program shall use evidence-based and best practices to serve students and youth with disabilities, including those with the most significant disabilities, who are in transition.

(2) To accomplish this, the Program shall collaborate with other agencies at the state administrative levels, regional and local levels, including but not limited to: the Oregon Department of Education, Oregon Department of Human Services, Office of Developmental Disabilities, Oregon Health Authority Health Systems Mental Health Services and Addiction Services, Oregon Youth Authority, local school districts, and federally recognized Tribal Rehabilitation Programs.

(3) General provision of pre-employment transition services (Pre-ETS) and coordination to students with disabilities is:

(a) Governed by the Program's rules and procedures;

(b) Made available to all students with disabilities who may need them statewide; and

(c) In accordance with:

(A) State and federal law and regulation; and

(B) The statewide educational cooperative agreement developed between the Oregon Department of Education and the Department, and an intra-agency cooperative agreement between the Program, Office of Developmental Disability Services; and

(C) The Program administers a range of statewide pre-employment transition services and transition services through contracts and interagency agreements with school districts and community-based service providers to perform liaison and coordination work between the Program and schools, at local and regional levels, including other local service providers and through Pre-ETS, comprehensive transition services, and summer youth employment services.

(4) Outreach to and engagement of families

(a) The Program shall inform school transition programs, students, and families about Program services.

(b) Outreach to and engagement of families shall be provided through local Program branches and services through contracts and interagency agreements with school districts and community-based service providers.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 7-2020, adopt filed 10/29/2020, effective 11/12/2020

## **582-150-0030**

### **Pre-Employment Transition Services**

The Program shall provide pre-employment transition services to all students with disabilities who may need them and request them.

(1) Students with disabilities shall not be required to apply or be determined eligible for Program services before receiving pre-employment transition services.

(2) The Program shall provide pre-employment transition services to students with disabilities who:

(a) Are eligible for an individual education plan (IEP), or have a documented disability, or is an individual with a disability under Section 504 under the Act; and

(b) Age 14 to 21, in school, and participating in a secondary or post-secondary school leading to recognized credentials.

(3) The Program shall coordinate and provide, with schools and contractors, individualized and appropriate pre-employment transition required activities to students who request specific services. Students may not receive all services depending on their individualized needs.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 7-2020, adopt filed 10/29/2020, effective 11/12/2020

## **582-150-0040**

### **Program application and eligibility for students and youth**

(1) A student may receive pre-employment transition services (Pre-ETS) before applying for individualized services from the Program.

(2) A student with a disability who needs individualized services from the Program, in addition to Pre-ETS or stand-alone services, shall apply and be determined eligible for the Program.

(3) The Program application and eligibility determination requirements and process shall be the same for all Program applicants including students and youth with disabilities.

(4) Every student and youth, regardless of the severity of their disability, is presumed able to benefit in terms of an employment outcome from Program services.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 7-2020, adopt filed 10/29/2020, effective 11/12/2020

## **582-150-0045**

### **Individualized Plan for Employment (IPE) for student or youth**

(1) An individualized plan for employment (IPE) for an eligible student or youth with a disability shall:

(a) Contain a description of the employment goal or may include a description of the individual's projected post-school employment and include documentation of the educational goals and subsequent educational outcomes to be attained which are directly tied to the employment goal;

(b) The employment goal must be consistent with the general goal of competitive integrated or supported employment; and

(c) Include the specific transition services and supports needed by the student or youth for the achievement of the employment goal or projected post-school employment goal; and

(d) Be developed as early as possible and no later than 90 days after determination of eligibility.

(2) During the course of training or education, the counselor and participant shall meet at the end of each educational term (quarterly, semester, or other, as designated by the training or educational organization). During these meetings, the participant shall review and share with the counselor at a minimum:

(a) Grades;

(b) Credits successfully achieved;

(c) Progress made toward skill, certificate, or degree attainment, and if appropriate,

(d) Financial aid; and

(e) Complete or review the financial needs test.

(3) Develop an individualized plan for employment with substantial services needed by the student or youth that are not generally available to all students or youth in the local education agency; and

- (a) Coordinate the IPE with the individualized education program or 504 services plans for the individual in terms of goals, objectives, and services identified in the education program; and
- (b) Any pre-employment transition services a student with a disability receives shall be included in the IPE as a part of the overall plan; and
- (c) Shall include any coordinated services.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 7-2020, adopt filed 10/29/2020, effective 11/12/2020

## **582-150-0050**

### **Services for students and youth provided as individual or group services**

- (1) Required services may be provided to students as individual or group services.
- (2) The Program may provide the five required pre-employment transition services, to groups of students:
  - (a) Who are eligible or potentially eligible for the Program's services, and
  - (b) Are not services directly related to an individual's IPE goal; and
  - (c) Provided by, or in concert with the Program, including but not limited to:
    - (A) State agencies;
    - (B) Educational agencies;
    - (C) Service providers for job training programs;
    - (D) Providers of services under Medicaid program under title XIX of the SSA;
    - (E) Entities designed by the state to provide services for individuals with intellectual or developmental disabilities;
    - (F) Centers for Independent Living;
    - (G) Housing and transportation authorities;
    - (H) Workforce development systems; and
    - (I) Businesses and employers.
- (3) If a student with disabilities requests Program services other than pre-employment transition services, the student:
  - (a) Shall apply and be determined eligible for Program services.
  - (b) May receive supported employment services if the Program assessment determines it is appropriate for the student because they:
    - (A) Experience a most significant disability; and
    - (B) Require supported employment services to gain or maintain employment.
- (4) The Program may provide extended services (see OAR 582 Division 72 Supported Services) to a youth who is most significantly disabled and eligible for Program supported employment services.
- (5) Program services for any eligible student or youth, during transition shall:
  - (a) Be vocational rehabilitation in nature; and
  - (b) Support and be designed to lead to achievement of the vocational goal in the individualized plan for employment;
  - (c) Consistent with the student's or youth's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;
  - (d) Be provided to the maximum extent possible, in an integrated, community setting; and
  - (e) Not be services that are the responsibility of the school district, Department programs including Developmental Disabilities Services, or Oregon Health Authority programs including Addiction and Mental Health services, or of any other agency or program.
- (6) The Program in collaboration with the local education agencies or other programs and agencies may provide other necessary support services.
  - (a) Funding of other necessary support services shall be determined in collaboration with the local school system.
  - (b) If a student with a disability requires an auxiliary aid or service to access or participate in any of the pre-employment transition services, the Program shall pay for the costs if no other public entity is required to provide the aid or service.

- (c) Expenditures incurred for the purchase or acquisition of auxiliary aids and services
- (A) Constitute an allowable pre-employment transition services cost; and
- (B) The Program may use funds reserved for the provision of pre-employment transition services to pay for those auxiliary aids and services.
- (d) Personal devices and services that do not meet the definition of auxiliary aids and services include:
  - (A) Individually-prescribed devices, such as prescription eyeglasses or hearing aids, readers for personal use or study; or
  - (B) Services of a personal nature.
- (e) If a student with a disability requires personal devices or services or individually-prescribed assistive technology, the Program shall:
  - (A) Work with the student to determine whether they meet the eligibility criteria of the Program; and
  - (B) If so, develop an individualized plan for employment for the provision of those additional services.
  - (C) The Program shall have primary financial responsibility for Program services but it shall use comparable benefits when that does not impede the progress of plan activities as described in the individualized plan for employment.
  - (D) The student shall participate in the financial needs test as appropriate.
- (f) Services not constituting pre-employment transition services or auxiliary aids and services necessary for a student to access or participate in those services:
  - (A) Shall not be paid with funds reserved under section 110(d)(1) for the provision of pre-employment transition services.
  - (B) Shall be paid with non-reserved Program funds.
- (g) When a student requires a personal device to participate in pre-employment transition services only, the Program may loan the device, contingent on availability. The student shall return the device when it is no longer required for participation in services.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 7-2020, adopt filed 10/29/2020, effective 11/12/2020

## **582-150-0055**

### **Pre-employment transition coordination activities**

- (1) Pre-employment transition coordination activities include:
  - (a) Attending individualized education plan (IEP) meetings, when invited;
  - (b) Working with the local workforce development boards, one-stop centers, and employers to develop work opportunities for students with disabilities;
  - (c) Working with schools to coordinate and ensure the provision of pre-employment transition services; and
  - (d) Attending person-centered planning meetings for students with disabilities receiving Medicaid services, when invited.
- (2) Each local office of the Program shall carry out pre-employment transition coordination activities:
  - (a) Attend individualized education program meetings for students with disabilities, when invited;
  - (b) Work with the local workforce development boards, one-stop centers, and employers to develop work opportunities for students with disabilities, including internships, summer employment and other employment opportunities available throughout the school year, and apprenticeships;
  - (c) Work with local education agencies, including carrying out activities under section 614(d) of the IDEA, to coordinate and ensure the provision of pre-employment transition services under 34 CFR §361.48(4)(a);
  - (d) When invited, attend person-centered planning meetings for individuals receiving Medicaid services;
  - (e) Pre-employment transition coordination activities may be tracked to a specific student. Program staff may attend individual education program or person-centered planning meetings for students whom they have not yet received a referral or application for services and join to provide basic information.
- (A) These specific transition services shall benefit a group of students with disabilities or youth with disabilities that are

not individualized services directly related to an individualized plan for an employment goal.

(B) Services may include, but are not limited to, group tours of universities and vocational training programs, employer or business site visits to learn about career opportunities, career fairs coordinated with workforce development and employers to facilitate mock interviews and resume writing, and other general services applicable to groups of students with disabilities and youth with disabilities.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 7-2020, adopt filed 10/29/2020, effective 11/12/2020

#### **582-150-0065**

##### **Program service records for students receiving pre-employment transition or transition coordination services**

(1) Program service records about participants in Pre-ETS shall include:

(a) Date of birth;

(b) Race and ethnicity, and

(c) Verify disability by:

(A) Medical documentation signed by a medical provider or a copy, or examine a copy of the individualized education plan (IEP) or 504 Plan or verification from Oregon Department of Education that the individual is a student with a disability; or

(B) Working with families of participants to verify medical documentation of disability for any person not reported by the local education agencies.

(d) Pertinent and available school-based assessment information, IEP;

(e) Verify enrollment as a student in a secondary, postsecondary, or other educational program;

(f) Student identification number, if available;

(g) Information about their previous employment related experiences in and out of school, if any; and

(h) Documentation of any Pre-ETS participation shall:

(A) Describe a documented need to include which of the five required services the student receives;

(B) The start date;

(C) Provided directly by Program staff or purchased; and,

(D) If purchased, the cost of the required activity.

(i) Document parental or guardian's consent to participate in Pre-ETS, as appropriate.

(2) This documentation does not constitute an application for Program services as in OAR Division 50 Referral, Application, and Eligibility for Vocational Rehabilitation Services.

(3) The Program shall store service records for pre-employment transition services in the Program's electronic case management system.

(4) Non-identifying information may be used in research projects by the Program to improve services to students and youth with disabilities.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 7-2020, adopt filed 10/29/2020, effective 11/12/2020

#### **582-150-0070**

##### **Client Assistance Program Information**

At the time the student or youth requests pre-employment transition services or transition services provided by the Program or through contracts and interagency agreements with school districts and community-based service providers, information about the Client Assistance Program (CAP) shall be given to each potentially eligible individual, applicant, participant, or their representative.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 7-2020, adopt filed 10/29/2020, effective 11/12/2020

#### **582-150-0075**

##### **Limitations**

(1) When the student is no longer considered a student with a disability Pre-ETS services shall cease. This includes a student who:

(a) Has reached the age of 22, or,

(b) Has aged out of secondary services without enrolling in a post-secondary education system.

(2) Transition coordination services may not be provided for a youth who is older than 24 years of age.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 7-2020, adopt filed 10/29/2020, effective 11/12/2020

#### **582-150-0080**

##### **Restrictions**

Except as noted in this section, students or youth with disabilities may not be exempt from:

(1) Program's rules or procedures for all students who are potentially eligible or eligible for receiving Pre-ETS or transition coordination and make application for Program services beyond pre-employment transition services or transition coordination.

(2) Any order of selection requirements for either Program or pre-employment transition services apply (see OAR 582 Division 100 Order of Selection).

(3) This is not meant to be a service to a specific student.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, 344.710 - 344.730

History: VRS 7-2020, adopt filed 10/29/2020, effective 11/12/2020

### **DIVISION 190**

#### **EMPLOYER SERVICES AND TRAINING**

#### **582-190-0005**

##### **Services and Training to Employers**

(1) The Program may expend funds to educate and provide services to employers who:

(a) Have hired individuals with disabilities; or

(b) Are interested in hiring individuals with disabilities (section 109 of the Rehabilitation Act).

(2) Pursuant to Section 109(1) of the Rehabilitation Act the Program may provide:

(a) Training and technical assistance to employers regarding the employment of individuals with disabilities, including disability awareness, and the requirements of the Americans with Disabilities Act of 1990 (ADA) and other employment-related laws;

(b) Employers receiving training and technical assistance shall also comply with requirements to provide reasonable accommodations that may be required under the ADA or other employment-related laws.

(3) The Program may work with employers to:

(a) Provide opportunities for work-based learning experiences including but not limited to internships, short-term employment, and apprenticeships, and opportunities for pre-employment transition services;

(b) Recruit qualified applicants who are individuals with disabilities;

(c) Train employees who are individuals with disabilities; and

(d) Promote awareness of disability-related obstacles to continued employment.

(4) The Program may:

(a) Provide consultations, technical assistance, and support to employers on workplace accommodations, assistive

technology, facilities and workplace access, and customized employment and supported employment, through collaboration with community partners and employers or Program contractors, across States and nationally, to enable the employers to recruit, job match, hire, and retain qualified individuals with disabilities who are Program applicants or participants; and

(b) Assist employers with utilizing available financial support for hiring or accommodating individuals with disabilities.

(5) The Program may provide the following vocational rehabilitation services to employers for the benefit of groups of individuals with disabilities:

(a) Technical assistance to businesses that are seeking to employ individuals with disabilities in competitive integrated employment (see section 103(b)(5) of the Rehabilitation Act and 34 CFR §361.49(a)(4)); and

(b) The establishment, development, or improvement of assistive technology demonstration, loan, reutilization, or financing programs in coordination with activities authorized under the Assistive Technology Act of 1998 to promote access to assistive technology for individuals with disabilities and employers (see section 103(b)(8) of the Rehabilitation Act and 34 CFR §361.49(a)(8)).

(c) The Program may provide technical assistance to all businesses interested in hiring individuals with disabilities in competitive integrated employment (see section 103(b)(5) of the Rehabilitation Act and 34 CFR §361.49(a)(4)).

(6) The Program may expend federal grant funds for:

(a) The establishment, development, or improvement of assistive technology demonstration, loan, reutilization, or financing programs in coordination with activities authorized under the Assistive Technology Act of 1998 to promote access to assistive technology for individuals with disabilities and employers (section 103(b)(8) of the Rehabilitation Act and 34 CFR §361.49(a)(8)).

(b) The authority to provide these services is for the benefit of groups of individuals with disabilities, not to meet individual needs of any one person.

(c) The purpose of the provision of federal grant funds is to "promote access" to assistive technology for individuals with disabilities, not to provide the actual assistive technology devices.

(d) If an individual with a disability needs an assistive technology device to obtain, maintain, or regain employment, the Program must work with the employer to determine the appropriate entity to pay for the device. If the Program pays for the assistive technology device, it must do so in accordance with the individual's approved individualized plan for employment.

Statutory/Other Authority: ORS 344.530, 344.570

Statutes/Other Implemented: ORS 344.511 - 344.690, ORS 344.710 - 344.730

History: VRS 1-2020, adopt filed 01/23/2020, effective 02/03/2020