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CHAPTER 582

DEPARTMENT OF HUMAN SERVICES

VOCATIONAL REHABILITATION SERVICES

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FILING CAPTION: Oregon Vocational Rehabilitation Rule Updates OAR 582 Division 100 Order of Selection (wait list services)

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RULES:

582-100-0000, 582-100-0005, 582-100-0011, 582-100-0015, 582-100-0018, 582-100-0021, 582-100-0040

AMEND: 582-100-0000

REPEAL: Temporary 582-100-0000 from VRS 2-2025

RULE TITLE: Order of Selection

NOTICE FILED DATE: 07/10/2025

RULE SUMMARY: 582-100-0000 has been amended to clarify that Order of Selection when the Vocational Rehabilitation Program anticipates that it will not have sufficient fiscal or personnel resources to fully serve all eligible individuals. Order of Selection means that the Program serves individuals with the most significant disabilities (MSD) first when there are not enough resources to serve everyone who is eligible for Program services. Individuals with the most significant disabilities must be given priority for services.

The rules for this division apply only when the following requirements are met. The Program determines Order of Selection is required due to lack of resources. The decision to enact the Order of Selection is reflected in the State Plan. The Program determines the priority groups that shall be served under the order. A request to enter Order of Selection is approved by the Rehabilitation Services Administration (RSA).

RULE TEXT:

(1) The Program is required to implement an Order of Selection when it anticipates that it will not have sufficient fiscal or personnel resources to fully serve all eligible individuals.

(2) The Rehabilitation Act, as amended by the Workforce Innovation and Opportunity Act (WIOA), requires the Program to serve individuals with the most significant disabilities (MSD) first when there are not enough resources to serve everyone who is eligible for Program services. Individuals with the most significant disabilities shall be given priority over those with less significant disabilities. (34 CFR § 361.36)

(3) The purpose of these rules is to:

- (a) Describe the procedures and criteria that shall be used to determine the need for an Order of Selection;
 - (b) Determine the basis for the assignment of eligible individuals to priority categories;
 - (c) Identify exceptions to the priority categories; and
 - (d) Describe the administration of the Order of Selection.
- (4) These rules shall only apply if:
- (a) The Program determines that an Order of Selection is required;
 - (b) The decision to enact the Order of Selection is reflected in the State Plan;
 - (c) The Program determines the priority categories that shall be served under the order; and
 - (d) A request to enter Order of Selection is approved by the Rehabilitation Services Administration (RSA).

STATUTORY/OTHER AUTHORITY: ORS 344.530, 344.570

STATUTES/OTHER IMPLEMENTED: ORS 344.511 - 344.690, 344.710 - 344.730

AMEND: 582-100-0005

REPEAL: Temporary 582-100-0005 from VRS 2-2025

RULE TITLE: Determination of Need for an Order of Selection

NOTICE FILED DATE: 07/10/2025

RULE SUMMARY: OAR 582-100-0005 provides the details of the process the Program follows to assure it is appropriate to implement an Order of Selection.

The Program must show that it cannot provide the full range of vocational rehabilitation services to all eligible individuals. This may occur before the start of each federal fiscal year, or due to changed circumstances within the current federal fiscal year.

The purposes the Program consults with the State Rehabilitation Council are provided.

RULE TEXT:

- (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 eligible to be served by the Program.
- (2) The Program shall determine whether an Order of Selection is necessary (in accordance with 34 CFR § 361.36):
 - (a) Prior to the beginning of each federal fiscal year; or
 - (b) Due to changed circumstances within the current federal fiscal year.
- (3) The Program must consult with the State Rehabilitation Council (34 CFR 361.36(f)) regarding:
 - (a) Need to establish an order of selection, including any reevaluation of the need;
 - (b) Priority categories of the particular order of selection;
 - (c) Criteria for determining individuals with the most significant disabilities; and
 - (d) Administration of the order of selection.

STATUTORY/OTHER AUTHORITY: ORS 344.530, 344.570

STATUTES/OTHER IMPLEMENTED: ORS 344.511 - 344.690, 344.710 - 344.730

AMEND: 582-100-0011

REPEAL: Temporary 582-100-0011 from VRS 2-2025

RULE TITLE: Provision of Services under an Order of Selection

NOTICE FILED DATE: 07/10/2025

RULE SUMMARY: 582-100-0011 describes how services are provided when the Program operates under Order of Selection.

On and after the effective date of the Order of Selection, the Program must provide services, within available funding and following order of priority, based on the individual's date of application. Three categories of priority are defined. Priority Category One, Priority Category Two and Priority Category Three are defined.

Under an Order of Selection, program funding for services may be renegotiated.

When an Order of Selection is in place, the rule defines what services are provided to:

- * An eligible individual with an individualized plan of care when services have begun (before the Order was implemented).
- * An eligible individual with specific services or equipment necessary to maintain their current employment.
- * An applicant with assessment services that are necessary to determine Program eligibility and priority category.
- * An eligible individual employed in subminimum wage employment.
- * An eligible individual, who is not receiving services under the Order of Selection.

The rule defines that an eligible individual's date of application is the date that the Program received the individual's most recent completed application.

Students with disabilities are not exempt from any of the Order of Selection requirements for Program services. The rule defines the type of services a student with disabilities might receive given their circumstances.

RULE TEXT:

Provision of services under order of selection shall be provided with these considerations.

- (1) 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.
- (d) If the Program establishes an Order of Selection, in these instances, individuals receiving Social Security benefits under Title II or Title XVI of the Social Security Act and presumed eligible may be on waiting lists (34 CFR 361.36(c)(3)). Individuals receiving Social Security benefits under Title II or Title XVI of the Social Security Act are assigned to Priority Category Two unless additional documentation supports their placement in Priority Category One.
- (2) Program funding for services:
 - (a) Ensure that Program funding arrangements for providing services under the vocational rehabilitation services portion of the combined state plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection (34 CFR 361.36(e)(4)).
 - (b) If any funding arrangements are inconsistent with the order of selection, the Program must renegotiate these funding arrangements so that they are consistent with the order of selection.
- (3) Provision of Services: 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 individualized plan for employment services prior to the effective date of the Order of Selection.

(b) Provide an eligible individual with specific services or equipment necessary to maintain their current employment pursuant to 34 CFR 361.36. (See OAR 582-100-0021.)

(c) Provide an applicant with assessment services that are necessary to determine Program eligibility and priority category.

(d) 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

(e) Provide an eligible individual, who is not receiving services under the Order of Selection, with information and referral services.

(4) Application and eligibility: An eligible individual's date of application is the date that the Program received the individual's most recent completed application, as provided in 34 CFR 361.41.

(5) Students with disabilities and Order of Selection:

(a) Students with disabilities are not exempt from any of the Order of Selection requirements for Program services.

(b) Students who apply and are determined eligible for Program services are assigned to a disability priority category in accordance with the Program's Order of Selection policies and procedures. (See OAR 582-100-0011 Provision of Services under an Order of Selection).

(c) Students who have not yet applied for or been determined eligible (potentially eligible) for the Program are:

(A) Not subject to the Order of Selection requirements; and

(B) May receive any of the five required pre-employment transition services they may need so long as they continue to meet the definition of a student with a disability.

(d) However, if a student with a disability needs individualized Program services, in addition to pre-employment transition services, the student:

(A) Must apply, be determined eligible, and assigned a disability priority category; and

(B) Is subject to the Order of Selection requirements.

(e) Assignment to an open disability priority category. Eligible students assigned to an open disability priority category may:

(A) Receive pre-employment transition services and any other Program service they may need on their approved individualized plan for employment.

(B) Continue to receive pre-employment transition services as long as the individual continues to meet the definition of a student with a disability.

(f) Assignment to a closed disability priority category. Eligible students assigned to a closed disability priority category and placed on a waiting list for Program services:

(A) Continue to receive any of the five required pre-employment transition services (Pre-ETS) they may need while on the wait list so long as they began to receive at least one pre-employment transition services prior to their eligibility determination being made and assignment to a closed disability priority category. (34 CFR §361.36(e)(3)(i))

(B) Eligible students assigned to a closed Order Of Selection category and placed on a waiting list for Program service before receiving at least one pre-employment transition services service may not receive pre-employment transition services until:

(i) Their disability priority category is open; and

(ii) They are removed from the waitlist and an individualized plan for employment (IPE) is be developed.

(6) Data collection. The Program shall:

(a) Track of the number of eligible individuals who could not receive services under the Order of Selection but did receive information and referral services.

(b) The following information must be reported in the State Plan in accordance with 34 CFR 361.37(d).

(A) Number of eligible individuals that applied for services and did not meet the Program's Order of Selection for receiving services during the previous fiscal year.

(B) Number and priority category of individuals on the Program's waiting list.

(C) Number of eligible individuals receiving services, including students receiving pre-employment transition services in accordance with 34 CFR 361.48(a).

(D) Estimates of the number of individuals in the state eligible for services.

(E) 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

AMEND: 582-100-0015

REPEAL: Temporary 582-100-0015 from VRS 2-2025

RULE TITLE: Requirements for Assignment of Priority Categories

NOTICE FILED DATE: 07/10/2025

RULE SUMMARY: 582-100-0015 Requirements for Assignment of Priority Categories has been changed to reflect the requirements to assign priority categories of service in an Order of Selection.

The process to determine an individual's eligibility for Vocational Rehabilitation requires that data or information be collected. This information is used to determine the priority category for service under Order of Selection.

In some cases, additional information, or the need for the individual to participate in trial work experiences or other evaluations, may be required to determine the priority category.

RULE TEXT:

(1) In order to determine an eligible individual's priority under an Order of Selection, the Program:

(a) Shall use the data gathered in the assessment of the individual's eligibility for Program services.

(b) May require the individual to provide additional information or participate in trial work experiences or other evaluations, if the Program counselor determines it is necessary to assign an accurate priority category to the individual.

(2) The Program shall not consider the following factors to determine an Order of Selection priority category.

(a) Duration of residency provided the individual is present in the state. The state may not require residency as part of the eligibility for services.

(b) Type of disability.

(c) Age, sex, race, color, national origin.

(d) Source of referral.

(e) Type of expected employment outcome.

(f) The need for specific services except as provided for in OAR 582-100-0021.

(g) Anticipated cost of services; or

(h) Income level of the individual or individual's family.

STATUTORY/OTHER AUTHORITY: ORS 344.530, 344.570

STATUTES/OTHER IMPLEMENTED: ORS 344.511 - 344.690, 344.710 - 344.730

ADOPT: 582-100-0018

REPEAL: Temporary 582-100-0018 from VRS 2-2025

RULE TITLE: Assignment of Priority Categories

NOTICE FILED DATE: 07/10/2025

RULE SUMMARY: There are three priority categories for service under Order of Selection.

Priority category one is defined and has the "top" priority for service. It includes persons designated as having the most significant disabilities.

Priority category two is the next priority for service. It includes persons with significant disabilities.

Priority three is the next priority for service. It includes persons with a disability and do not qualify to be in priority category one or two.

Every individual is provided with notice of their eligibility and priority category for service under an Order of Selection.

RULE TEXT:

(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 34 CFR 361.42.

(b) 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

(c) Is expected to require multiple vocational rehabilitation services over an extended period in order 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 34 CFR 361.42.

(b) Has severe mental or physical impairments that seriously limit 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; and

(c) The individual is expected to require multiple vocational rehabilitation services over an extended period in order 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 34 CFR 361.42, to priority category three.

(4) The Program shall:

(a) Provide notice to an applicant regarding their eligibility for Program services under Oregon Administrative Rules (OAR) Chapter 582, Division 20; and

(b) If determined to be eligible, the individual's assignment to a priority category.

(c) The Program shall provide the eligible individual a copy of the Dispute Resolution Rights related to their priority category under an Order of Selection 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

AMEND: 582-100-0021

REPEAL: Temporary 582-100-0021 from VRS 2-2025

RULE TITLE: Limited Exception for Maintenance of Employment

NOTICE FILED DATE: 07/10/2025

RULE SUMMARY: An applicant to the Program or an eligible individual, who is not otherwise be able to receive services under an Order of Selection, may request to receive specific services or equipment to maintain their current employment. Under this exception the individual may only receive services or equipment needed to maintain their current employment.

The rule explains the reasons a person may be eligible for this exception. A person who voluntarily leaves their employment is not eligible for this service.

The services that the person may receive are limited. To qualify for these limited services the individual must be at immediate risk of losing their current job related to a disability related barrier if not provided with specific services or equipment in the near future (no more than two months or 60 calendar days).

The Program must decide if an individual qualifies for this limited exception under this rule within 15 calendar days of an eligible individual's request. The individual must provide documentation they are eligible for services under the exception.

An individual who requests the limited exception receives notice of the Program's decision. They may engage in dispute resolution rights to challenge that determination.

RULE TEXT:

(1) Applicants or eligible individuals, who are not otherwise able to receive services under an Order of Selection, may request to receive specific services or equipment to maintain their current employment under OAR 582-100-0011(3)(b).

(2) Only services or equipment that an individual needs to maintain current employment may be provided under this exception. This means that if the individual needs services not directly tied to maintaining current employment, the individual's ability to receive those services from the Program depends on the individual's placement in the State's Order of Selection. (Section 101(a)(5)(D) of the Rehabilitation Act and 34 CFR 361.36(a)(3)(v))

(3) In order to qualify for services or equipment under OAR 582-100-0011, the individual must:

(a) Be eligible for services under 34 CFR 361.42.

(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 related to a disability related barrier if not provided with specific services or equipment in the near future, which means no more than two months or 60 calendar days.

(4) The Program shall only provide the specific services or equipment necessary for the eligible individual to maintain their current employment.

(5) 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.

(6) The Program shall not determine that an eligible individual is at immediate risk of losing their current job under subsection (3)(c) of this rule, if that risk is based on the individual choosing to voluntarily leave their current employment.

(7) The Program shall determine whether an individual qualifies for this limited exception under this rule within 15 calendar days of an eligible individual's request and providing documentation that they are eligible for services under the exception. Individual requests for limited exception may occur while the individual applies for Program services or

on the Order of Selection waiting list and at risk of employment loss (see (3)(c) of this rule.

(8) 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

AMEND: 582-100-0040

REPEAL: Temporary 582-100-0040 from VRS 2-2025

RULE TITLE: Waitlist during Order of Selection

NOTICE FILED DATE: 07/10/2025

RULE SUMMARY: 582-100-0040 describes how the Order of Selection wait list works. The Program must maintain a single, statewide waiting list to track eligible individuals who are not receiving full Program services. Eligible individuals on the waiting list must ensure the Program has their current contact information.

The Program must notify an eligible individual when they are moving off the waiting list and invited to be served. That individual is notified in manner they request.

If the Program is unable to contact the individual, follow the process required for being unable to contact a program participant under the Program's notice of proposed action process.

An individual who does not respond to the invitation to move off the waiting list and receive services is provided with a notice of determination and dispute resolution rights to challenge that determination.

The counselor must assist the individual to make an informed decision about how to proceed if the individual is contacted to initiate services and is not ready to begin working with the Program. If the individual is not available to participate or does not want to engage in competitive integrated employment, as required, the case must be closed. They may apply in the future.

Individuals may be provided information and referral. The Program does not hold spots on the waiting or alter the individual's place on the waiting list.

The Vocational Rehabilitation Counselor and the individual must write the individualized plan for employment 90 days after the individual's name is removed from the Order of Selection waiting list. The Vocational Rehabilitation Counselor and the individual may agree to an extension.

A closed case service file shall not be reopened. There are no exceptions.

RULE TEXT:

- (1) The Program shall maintain a single, statewide waiting list 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 waiting list 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 waiting list.
 - (a) Contact with the eligible individual shall be in the manner most appropriate to the manner that the individual requests.
 - (b) If an individual is eligible to be removed from the waiting list, and the Program is unable to locate that individual for service, the Program shall follow the process required for being unable to contact a program participant under the Programs Notice of Proposed Action.
 - (c) 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 must determine whether to move forward with vocational rehabilitation services.

(A) To remain eligible for services, the individual must be available to participate in services and be interested and willing to participate in competitive integrated employment.

(B) If the individual is not willing or able to participate in services when contacted, the individual's file shall be closed, and the client is eligible to reapply for services at a later date.

(C) Information and referral shall be provided to any individual who exits the Program because they were not ready to participate when notified during the Order of Selection.

(D) The Program shall not hold a spot on the waiting list nor alter a client's number on the waiting list. Waiting list order is determined by priority category and application date only.

(e) An individualized plan for employment must be written in 90 days from when the individual's name is removed from the Order of Selection waiting list unless the Vocational Rehabilitation counselor and the individual agree to an extension.

(f) 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