

# Vocational Rehabilitation

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Chapter 112, Sec.936, Wis. Stats.

## Introduction

The services available through Wisconsin's vocational rehabilitation (VR) system can play a critical role in assisting people with disabilities to enter the work force. In Wisconsin, VR services are provided by the Division of Vocational Rehabilitation (DVR) in the State Department of Workforce Development. The VR program is authorized through the federal Rehabilitation Act and the Workforce Investment Act of 1998 (WIA).

### Mission

29 USC § 701 et seq.;  
 34 CFR Part 361.

Congress has stated that VR services are to empower individuals to maximize employability, economic self-sufficiency, independence and integration into the work place and the community through comprehensive and coordinated state-of-the-art programs. Title I of the Rehabilitation Act gives money to states to provide VR services to persons with disabilities. To receive funding, a state must submit a plan consistent with the law. It must designate a single state agency to administer the plan, unless it designates a second agency to provide services to individuals who are blind.

## Eligibility

34 CFR § 361.5(b)(15)

To receive services, an individual must be disabled and require VR services to prepare for, secure, retain or regain employment. Employment outcomes may include full or part-time competitive employment, supported employment or other employment consistent with the individual's strengths, abilities, interests and informed choice. Self-employment, telecommuting and business ownership are also considered as successful employment outcomes.

29 USC § 705(11)(C)

### Degree of disability

Persons must have a mental, physical or learning disability that interferes with the ability to work. The disability need not be so severe as to qualify the person for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits. The disability must only be a substantial impediment to employment. Recipients of SSDI or SSI are presumed to be eligible for VR services, as individuals with a significant disability, provided they intend to achieve an employment outcome.

Id. § 722(a)(2);  
 34 CFR § 361.42(a)(2)

Although VR services may be denied if a person cannot benefit from them, a person is presumed capable of employment, despite the severity of a disability, unless the VR agency shows by clear and convincing evidence that s/he cannot benefit from services. Prior to

determining that a person with a disability is incapable of benefitting from VR services because of the severity of disability, the state VR agency must explore the individual's work potential through a variety of trial work experiences, with appropriate supports. **If a state does not have the resources to provide VR services to all eligible individuals who apply, it must specify in its state VR Plan the order to be followed in selecting those individuals who will receive services.** This is called the "Order of Selection." It must also provide justification for the Order of Selection it establishes, and must ensure that individuals with the most significant disabilities are selected first.

#### **Order of selection**

#### **Referral elsewhere**

Persons not served under Order of Selection are entitled to an appropriate referral to other state and federal programs, including other providers within the state workforce investment system such as Wisconsin's "one-stop" employment centers operated by the Department of Workforce Development. The state VR agency must enter into an agreement with such providers, with the goal of ensuring program accessibility; the use of nondiscriminatory policies and procedures; the provision of reasonable accommodations, auxiliary aids and services; and rehabilitation technology, for individuals with disabilities.

#### **Determination process**

29 USC § 722(a)(6)

The state VR agency must determine eligibility within a reasonable period of time, not to exceed 60 days, after the individual submits an application for services. The VR agency can exceed 60 days for its determination if the individual requires an extended evaluation to determine eligibility, or if the individual is notified that exceptional and unforeseen circumstances beyond the control of the agency preclude it from completing the determination within 60 days and the individual agrees that an extension of the time is warranted. Information used to determine eligibility includes: (1) existing data, such as medical reports, Social Security Administration records and education records; and (2) to the extent existing data is insufficient to determine eligibility, an assessment done by or obtained by the VR agency.



*A person may choose the VR office they go to and select his/her own counselor rather than being assigned one. This provides an opportunity to ask other people for recommendations and obtain references to help make a more personal decision.*

## **The Individualized Plan for Employment**

After eligibility is established, the next step is to develop a written plan setting forth the individual's employment goal and the specific services to be provided to assist the individual to reach that goal. This plan is called the individualized plan for employment (**IPE**), and is to be developed by the consumer, with assistance from the VR counselor, and set forth on a form provided by the state VR agency.

Prior to developing the IPE, there must be a comprehensive assessment to determine the employment outcome, and the objectives, nature and scope of VR services. The assessment is to evaluate the unique strengths, resources, priorities, abilities and interests of the individual. The assessment can cover educational, psychological, psychiatric, vocational, personal, social and medical factors that affect the employment and rehabilitation needs of the individual. It may also include a referral for the provision of rehabilitation technology services.

### **Development and Content of IPE**

Id. § 701(c)(1) The policy of the VR system is that all activities are to be implemented consistent with the principles of “respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities.”

**Informed choice** Rehab’98 expands on the concept of informed choice. VR agencies must assist individuals in their exercise of informed choice throughout the VR process, including the assessment, selection of an employment outcome, the specific VR services to be provided, the entity which will provide the services, the method for procuring services and the setting in which the services will be provided. The VR agency must still approve the IPE, but the individual decides the level of involvement, if any, of the VR counselor in developing the IPE.

29 USC § 722(b)(3) Any service to be provided to meet the employment goal must be specified in the IPE. The IPE should enable the individual to achieve the agreed upon employment objectives and must include the following:

### **Content requirements**

- the specific employment outcome, chosen by the individual, consistent with the unique strengths, concerns, abilities and interests of the individual;
- the specific VR services to be provided, in the most integrated setting appropriate to achieve the employment outcome, including appropriate assistive technology (**AT**) and personal assistance services;

Note: A 1997 policy directive from the federal Rehabilitation Services Administration clarified that the extent or cost of VR services an individual may need to achieve a particular employment goal should not be considered in identifying the goal in the IPE.

29 USC § 2201 et seq.;  
34 CFR § 361.48(b)

The Rehabilitation Act uses the definitions of AT devices and services contained in the Technology-Related Assistance for Individuals with Disabilities Act. (*See Assistive Technology chapter, pg. 96.*) The state VR Plan as well as the IPE must describe the manner in which rehabilitation technology services will be provided, including training and the provision of AT.

- the timeline for initiating services and for achieving the employment outcome;
- the specific entity, chosen by the individual, to provide the VR services and the method chosen to procure those services;
- the criteria for evaluating progress toward achieving the employment outcome;
- the responsibilities of the VR agency, the individual, and any other agencies;
- any costs for which the individual will be responsible via the financial need test (*see pg. 228*);
- for individuals with the most significant disabilities that are expected to need supported employment, the extended services to be provided; and
- the projected need for post-employment services, if necessary.

The IPE must be reviewed at least annually and, if necessary, amended if there are substantive changes in the employment outcome, the VR services to be provided or the service providers. Any changes will not take effect until agreed to by the individual and the VR counselor.

**Services available** VR services are defined as any services, described in an IPE, which are necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome. Essentially, whatever an individual with a disability needs to overcome a barrier to employment can be covered. Consequently, the services available from the VR system are broad and varied and include, but are not limited to, the following:

1. Assessment to determine eligibility and needs, including, if appropriate, by someone skilled in rehabilitation technology.
2. Counseling, guidance and job placement services and, if appropriate, referrals to the services provided by WIA providers.
3. Vocational and other training, including higher education and the purchase of tools, materials and books.
4. Diagnosis and treatment of physical or mental impairments to reduce or eliminate impediments to employment, to the extent financial support is not available from other sources, including health insurance or other comparable benefits. This may include corrective surgery, therapeutic treatment,

necessary hospitalization, prosthetic and orthotic devices, eyeglasses and visual services, services for individuals with end-stage renal disease, including dialysis, transplants and artificial kidneys, and diagnosis and treatment for mental or emotional disorders.

5. Maintenance for additional costs incurred during rehabilitation.
6. Transportation, including adequate training in the use of public transportation vehicles and systems, that is provided in connection with the provision of any other service. Transportation may include vehicle purchase or modification.
7. Personal assistance services while receiving VR services.
8. Interpreter services for individuals who are deaf, and readers, rehabilitation teaching, and orientation and mobility services for individuals who are blind.
9. Occupational licenses, tools, equipment, initial stocks and supplies.
10. Technical assistance for those who are pursuing telecommuting, self-employment or small business operation.
11. Rehabilitation technology, including vehicle modification, telecommunications, sensory, and other technological aids and devices.
12. Transition services for students with disabilities to facilitate the achievement of the employment outcome(s) identified in the IPE.
13. Supported employment.
14. Services to the family to assist an individual with a disability to achieve an employment outcome.
15. Post-employment services.

### **Post-Employment Services**

34 CFR § 361.5(b)(37)

Post-employment services are defined as services provided after the person has achieved an employment outcome, which are necessary for the individual to maintain, regain or advance in employment. Examples of post-employment services might be the provision of mental health services and counseling to maintain the employment; and new placement services needed to regain employment, if for example, the individual's job is eliminated through reorganization.

- Id. § 361.5(b)(37) Each IPE must indicate the expected need for post-employment services. Prior to a decision that an individual has achieved an employment outcome, there must be a reassessment of the need for post-employment services. Since post-employment services are to be provided under an amended IPE, there is no need for a re-determination of eligibility.

## Financial Need Criteria

- Wisconsin performs a financial needs test for all eligible VR consumers. This test determines the amount of financial contribution, if any, that can be expected by the consumer toward meeting his/her vocational goal. The financial needs test must take into account the individual's disability-related expenses, and the level of the individual's participation must not be so high as to effectively deny the individual a necessary service. The following services must be provided without regard to financial need: diagnostic services; counseling, guidance and referral services; and job placement.
- Id. § 362.54(b)(2)(v)(C)
- Id. § 361.54(b)(3)

## Out-of-State Services

- Id. § 361.50(a)(1) If a VR consumer needs to attend a program out-of-state because there is no program within the state to prepare the individual for the agreed upon employment goal, or if there is a program within the state, but the individual prefers to attend the out-of-state program, the VR agency may not automatically refuse to fund the program. The regulations state that a VR agency cannot establish policies that effectively prohibit the provision of out-of-state service. However, a state may establish a preference for in-state services, as long as there are exceptions to ensure that an individual is not denied a necessary service.

## Maximization of Employment

The federal government requires VR services to “maximize the employment” of VR consumers. Under this policy, the state VR program is not intended solely to place individuals with disabilities in entry-level jobs, but rather to assist eligible individuals to obtain employment appropriate for their unique strengths, resources, priorities, concerns, abilities, and capabilities. This policy allows a person who is currently employed to be eligible for VR services to allow for career advancement.

## Comparable Services Requirement

- 9 USC § 721(a)(8)2  
**Payer of last resort** VR agencies are considered the payer of last resort for many services, and will not pay for a service if a similar benefit is available through some other agency or program. For example, if an applicant qualifies for personal assistance services through Medicaid, the VR agency will not provide those services. By contrast, the VR agency cannot deny payment for college tuition because an individual could obtain student loans. Student loans, which must be repaid, are not “similar benefits.”

Id. § 721(a)(8)(A)(i);  
34 CFR § 361.54(b) and (c)

A person does not have to exhaust similar benefits in the following circumstances:

1. If consideration of the similar benefit would interrupt or delay the progress of an individual toward achieving the employment outcome, an immediate job placement, or services to an individual at extreme medical risk; or
2. If diagnostic services, VR counseling, referral to other services, job placement or rehabilitation technology is involved.

29 USC § 721(a)(8)(B)  
**Coordination among systems**

Id. § 722(b)(3)(E)

To expedite the process of determining responsibility for paying for a benefit, states must develop a comprehensive plan involving all of the public agencies providing what could be considered VR services, including the state's Medicaid agency, public colleges and the workforce investment system. The plan must ensure the coordination and timely delivery of services. If another agency refuses to fulfill its obligations, the VR agency must provide the services, but may seek reimbursement from that agency.

### **Transition Obligations Under the Rehabilitation Act**

29 USC § 721(a)(11)(D)

The state VR Plan must include procedures to facilitate the transition of students with disabilities from the special education system to the VR system, including: (1) consultation and assistance to the educational agencies in preparing the transition plan in the special education IEP; and (2) definitions of the relative roles and financial responsibilities of the special education and VR systems to provide services. Available VR services now also include funding transition services to students with disabilities to facilitate an employment outcome, when appropriate.

### **Confidentiality of Information**

Except for use within DVR which is necessary for providing services, information about a client will not be released without the consent of the client or an appropriate representative, e.g., a parent or guardian. However, all information in the client's file must be released to the client or an authorized representative on request, unless DVR determines that the information could be harmful. Then the information must be released to the individual's doctor who can decide to release it to the individual. A decision not to release information can be appealed.

### **Client Assistance Program**

Federal law requires that states provide a Client Assistance Program (CAP). This program provides assistance to applicants for VR services by advising them of all benefits and rights available under the program. At the request of a client, CAP staff can work directly with the providers of vocational services and vocational counselors to ensure that the client's rights and benefits are protected. In other words, CAP

will help clients to resolve any problems or disagreements which they might have anywhere in the VR system. An example would be helping a client to resolve questions about the individualized plan which is being suggested by a counselor. CAP staff can also provide direct assistance in using legal remedies, including the agency appeals available to all applicants. In order to increase the effectiveness of the program, federal law requires that the Client Assistance Program have no direct association with service providers or the Division of Vocational Rehabilitation. For more information call the CAP at 1-800-362-1290.

## **Appeal Rights**

### **Timelines**

Any decision or other action with which a client is not satisfied can be appealed. Once the client is certain that a counselor will not agree with their position, the client should request that the counselor's supervisor review the decision. The request is made directly to the supervisor, but the counselor is required to explain how the client can start the process. Within 10 days of the request the supervisor will meet with the counselor and client to review the decision. Within 10 days of this meeting the supervisor will write to the client to explain the decision and how to appeal further if the client still is not satisfied with the result. There are two more levels of appeal within state government. First, a DVR regional administrator will meet with the client, counselor and supervisor and write the client within 10 days of the meeting to explain the decision made after the meeting. An explanation of how to appeal further will be included. Second, the client may request a decision by the Administrator of DVR, who makes the final state level decision. A final appeal can be directed to the Secretary of Education in Washington, D. C. Most clients should seek the assistance of the Client Assistance Program staff or another knowledgeable advocate before asking for a hearing or review at the federal level.