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## Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

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**Revision Type (check all that apply):**

☒ Amendment  
☒ New  
☒ Repeal

☐ Content based on previous emergency rule filed on \_\_\_\_\_  
☐ Content is identical to the emergency rule

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1240-08-01	Dog Guide Certification for the Hearing Impaired
Rule Number	Rule Title
1240-08-01-.01	Dog Guide Certification by the Tennessee Council for the Hearing Impaired

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<b>Chapter Number</b>	<b>Chapter Title</b>
1240-08-12	Independent Living
<b>Rule Number</b>	<b>Rule Title</b>
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1240-08-12-.05	Case Closure

Chapter 1240-08-01  
Dog Guide Certification for the Hearing Impaired  
Repeals

Rule 1240-08-01-.01 Dog Guide Certification by the Tennessee Council for the Hearing Impaired is repealed in its entirety.

Authority: T.C.A § 62-7-112.



Chapter 1240-08-02  
General Rules  
Amendments

Rule 1240-08-02-.01 Purpose is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

The Department of Human Services, Division of Rehabilitation Services is the designated State unit that is primarily concerned with vocational and other rehabilitation of individuals with physical, cognitive, mental, and sensory disabilities. The Division of Rehabilitation Services (the Division or DRS) is responsible for the Vocational Rehabilitation (VR) Program which includes the determination of eligibility, the determination of the nature and scope of VR services, and the provision of services for individuals consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice so that they may prepare for, secure, retain, advance in, or regain employment.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, and 71-1-105(a)(12); 34 C.F.R. Part 361; and Executive Order No. 43 (1983).

Rule 1240-08-02-.02 Definitions is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

The words and terms as used herein have the following meanings:

- (1) "Act" means the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014, 29 U.S.C. §§ 720 et seq. Words and terms defined in federal law and regulations are adopted by reference into these rules.
- (2) "Applicant" means an individual who applies to the VR Program for vocational rehabilitation (VR) services.
- (3) "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, Braille and large print materials, foreign language interpreters, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.
- (4) "Blind" means a person who has been determined to have not more than 20/200 vision acuity in the better eye with best correction, or an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.
- (5) "Business licenses" are defined as any license, permit, or other written authority required by a state, city, or other governmental entity in order to enter into an occupation or operate a business.
- (6) "CART (Communication Access Realtime Translation)" is defined as the instant translation of the spoken word into English text using real-time software to display text on a television, video screen, or other visual display.
- (7) "Client Assistance Program (CAP)" means a program available to help an individual understand the services and benefits available from VR services; request and pursue an appeal of a decision made by VR that affects the provision of VR services; and understand his or her rights and responsibilities under the law. The CAP is provided by Disability Rights Tennessee. Contact the CAP by mail at 2 International Plaza, Suite 825, Nashville, TN 37217; by phone (1-800) 342-1660 or TTY (1-888) 852-2852; or by email [GetHelp@disabilityrightstn.org](mailto:GetHelp@disabilityrightstn.org).
- (8) "Combined/Unified State Plan" means the plan for VR services submitted by the Division to the Rehabilitation Services Administration in compliance with Title I, Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014.
- (9) "Commissioner" means the executive head of the Department of Human Services.
- (10) "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:
    - 1. 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;
    - 2. 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
    - 3. 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
    - 4. Is eligible for the level of benefits provided to other employees; and
  - (b) Is at a location:
    - 1. Typically found in the community; and
    - 2. Where the employee with a disability interacts for the purpose of performing the duties of the position with the employees with 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 interacts 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.
- (11) "Contributing Services" means VR services that help or cause to bring about the rehabilitation of an individual's functional limitations in order to achieve an employment objective but does not include VR support services.
  - (12) "Counselor" means an employee of the Division who is designated in the job description as a VR Counselor.
  - (13) "Customer" or "Individual" means a person who has been referred or has applied for VR services or has been determined eligible for and receives services from VR.
  - (14) "Customized Employment" means competitive integrated employment, for an individual with a significant disability, that is:
    - (a) Based on an individualized determination of the unique strengths, needs, and interests of the individual with a significant disability;
    - (b) Designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer; and
    - (c) Carried out through flexible strategies, such as:
      - 1. Job exploration by the individual; and
      - 2. 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.
- (15) "Department" means the Tennessee Department of Human Services.
- (16) "Designated State Unit" means the Division of Rehabilitation Services, which is primarily concerned with vocational and other rehabilitation of individuals with disabilities and is responsible for the administration of the State's VR Program.
- (17) "Disability" means any physical, cognitive, mental, or sensory impairment that limits an individual's work activities and interaction with the world around them.
- (18) "Disability Priority" means the order to be followed in determining eligible individuals to be provided VR services when an order of selection has been implemented.
- (19) "Division" or "DRS" means the Division of Rehabilitation Services.
- (20) "Due Process" means a course of informal or legal proceedings according to established rules and regulations for the enforcement and protection of customer rights.
- (21) "Eligible Individual" means a person who meets the basic requirements for eligibility and whose disability priority has been determined to be in an open priority category.
- (22) "Eligible Student" means a student that meets the definition of a Student with a Disability and is eligible for VR services under an Individualized Plan for Employment (IPE).
- (23) "Employment Outcome" means entering or retaining full-time or, if appropriate, part-time competitive employment in an integrated labor market to the greatest extent practicable; that meets the definition for competitive integrated employment; including supported employment, customized employment, and self-employment; or any other type of employment that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- (24) "Fair Hearing" means a contested case proceeding before an impartial hearing officer designated by the Commissioner of the Department of Human Services who shall afford the individual and the Division, or their authorized representatives, the opportunity to present their case, with or without witnesses, to determine whether action or inaction by the county, area, regional, district, or state office is erroneous and should be corrected. Each party has an opportunity to disclose all relevant facts and issues, respond to and present evidence, conduct cross-examination, and submit rebuttal evidence as permitted under the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq. Hearings may be conducted by telephone, television, or other electronic means, and shall be open to public observation unless otherwise provided by state or federal law. Hearings are conducted in accordance with the Uniform Administrative Procedures Act codified at T.C.A. §§ 4-5-101 et seq. An aggrieved party may obtain a review of any final order by appealing to the chancery court in Davidson County, the county of the official residence of the commissioner, or the county where one or more of the petitioners resides, in accordance with T.C.A. § 4-5-322. If dissatisfied with the chancery court's decision, the individual may appeal further to the court of appeals of Tennessee, in accordance with T.C.A. § 4-5-323.
- (25) "Full- or Part- Time Employment" means the number of hours considered by an employer to be full-time or part-time.
- (26) "Impartial Hearing Officer" 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 for the designated State unit;
  - (c) Has not been involved previously in the vocational rehabilitation of the applicant or recipient of services;

- (d) Has knowledge of the delivery of VR services, the VR services 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 objectivity of the individual.
- (27) "Individual with a Significant Disability" means an individual:
- (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 VR 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.
- (28) "Informed Choice" means an ongoing counseling and guidance and person-centered practice that ensures an individual or, as appropriate, the individual's representative has a range of options from which to make decisions and has the skills or, to the extent possible, the opportunity to develop such skills or support for evaluating options and for making decisions that reflect the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests, including the consequences of choosing various options, in a manner that is understandable to the individual.
- (29) "Individual's Representative" means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, 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.
- (30) "Legal Representative" means a court-appointed representative or parent of an individual under 18 years of age.
- (31) "Maximum Effort" means a specific method or action to achieve a particular benefit to pay for specified VR services. It may consist of a set policy or process which may be applied in appropriate cases. For example, the Division could have a cooperative agreement with State university officials for financial assistance officers to interview and evaluate the financial need of all VR sponsored students.
- (32) "Most Significantly Disabled" means an individual with a significant disability who meets VR's criteria for an individual with a most significant disability.
- (33) "Non-significantly Disabled" means an individual who does not have a significant disability.
- (34) "Potentially Eligible" means a student that meets the definition of a Student with Disability and is receiving Pre-employment Transition Services.
- (35) "Qualified Personnel" means personnel possessing those specific qualifications and/or credentials for persons providing a function for which such qualifications are required.
- (36) "Student with a Disability" means an individual with a disability who is no younger than 14 and no older than 22 and is eligible for, and receiving, special education or related services under Part B of the Individuals with

Disabilities Education Act (IDEA) or is a student who is an individual with a disability for purposes of section 504 of the Rehabilitation Act.

- (37) "Unsupervised Access" means the right or ability of a person to be unattended with funds, personal property, or personal identification information of a VR customer or program participant with no other adults present and includes those whose employment duties include direct supervisory responsibility for individuals with such access.
- (38) "Unsupervised Contact" means the right or ability of a person to meet with or be unattended with a VR customer or program participant one-on-one with no other adults present and includes those whose employment duties include direct supervisory responsibility for such individuals.
- (39) "Vocational Rehabilitation Counselor" or "VR Counselor" means qualified staff that assist individuals with disabilities to overcome barriers to employment and meet their employment goals by preparing for entry or re-entry into competitive integrated employment.
- (40) "Vocational Rehabilitation Director" or "VR Director" means the individual who has been appointed in accordance with the hiring directives of the State's Department of Human Resources as the head of the VR Program.
- (41) "Vocational Rehabilitation (VR) Program" or "VR Program" or "VR" means the publicly funded program authorized by the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014, 29 U.S.C. §§ 720 et seq., including the Tennessee Rehabilitation Center at Smyrna (TRCS), the VR Community Services Unit (CSU), and those funded wholly or in part through this authorization to provide employment related services consistent with the abilities, skills and interest of individuals with disabilities in a competitive, integrated setting.
- (42) "Youth with a Disability" means an individual with a disability who is no younger than 14 and no older than 24. The individual may or may not be eligible for an educational program under IDEA.

Authority: T.C.A. §§ 4-3-1208, 4-5-202, 4-5-301, et seq., 49-11-601, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. Part 361; 34 C.F.R. §§ 370.1, et seq.; and Executive Order No. 43 (1983).

Rule 1240-08-02-.04 Procedures is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Procedures are developed by VR in accordance with the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, and federal regulations.
- (2) Procedures define the requirements for service delivery and associated case management practices including allowable fees and specific requirements for authorizing services.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; and 34 C.F.R. Part 361.

Rule 1240-08-02-.05 Legal Basis is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

The Department of Human Services, Division of Rehabilitation Services has designated the State's VR Program as the sole State agency to administer the VR Services portion of the Unified or Combined State Plan and as such is authorized to submit the VR Services portion of the combined/unified plan as a condition for receipt of federal funds under Title I and Title VI of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, and agrees to administer the VR Program in accordance with the Combined/Unified State Plan, the Act, and all applicable regulations, policies, and procedures established by the Secretary.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. § 361.13; and Executive Order No. 43 (1983).

Chapter 1240-08-03  
Administration  
Amendments

Rule 1240-08-03-.01 State and Local Organization and Administration is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) It is the responsibility of the Division's VR Program to provide services necessary for the rehabilitation of individuals with disabilities of Tennessee for the purpose of achieving competitive integrated employment.
- (2) The authority and responsibility for administration of the VR Program affecting eligibility for the nature and scope of VR services and the provision of these services is vested in the head of the Division and the VR Program. This responsibility may not be delegated to any other entity or individual.
- (3) Supervisory staff are assigned to supervise the work of VR Counselors, Pre-employment Transition Specialists, TRCS and CSU staff, and other appropriate staff.
- (4) Qualified staff in accordance with VR requirements have assigned responsibilities for determining eligibility for and the provision of services in accordance with VR Program policies and procedures.
- (5) Any applicant or individual who is eligible for VR services may contact any VR office or employee for assistance and may also seek assistance from the Client Assistance Program (CAP) established under 34 C.F.R. §§ 370.1 et seq.
- (6) Services of the Division are provided on a non-discriminatory basis without regard to disability, race, color, sex, religion, creed, or national origin in compliance with Title VI of the Civil Rights Act of 1964 and Title V of the Vocational Rehabilitation Act of 1973, as amended.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); 34 C.F.R. Part 361; 34 C.F.R. § 370.1, et seq.; and Executive Order No. 43 (1983).

Chapter 1240-08-03  
Administration  
Repeals

Rule 1240-08-03-.02 Financial Need Assessment is repealed in its entirety.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; and 34 C.F.R. § 361.54.



Chapter 1240-08-04  
Services to Individuals  
Amendments

Chapter 1240-08-04 Services to Individuals is amended by deleting the chapter in its entirety and by substituting instead the following language, so that as amended, Chapter 1240-08-04 shall read as follows:

Chapter 1240-08-04  
Services to Individuals

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1240-08-04-.01 Referral and Application for VR Services.

- (1) The VR Program will receive referrals of individuals from any source and by any means, including individuals who believe they may be eligible for VR services. The referral source must provide appropriate contact information.
- (2) An individual is considered to have submitted an application when the individual or, as appropriate, the individual's representative:
  - (a) Has completed an agency application form;
  - (b) Has completed a common intake application form in a one-stop center requesting VR services; or
  - (c) Has otherwise requested services from VR;
  - (d) Has provided to VR information necessary to initiate an assessment to determine eligibility and priority for services; and
  - (e) Is available in the State to complete the application process.
- (3) VR must make application information widely available throughout the State, including one-stop centers under section 121 of the Workforce Innovation and Opportunity Act.
- (4) An individual's residence may be in an adjoining state. If the individual is receiving services from the VR program in the adjoining state, the VR Counselor must contact the individual's VR Counselor in that state to coordinate services to prevent duplication of services.
- (5) Individuals seeking VR services who are minors (under 18 years of age) and who are legally emancipated from their parents or guardians must provide appropriate court documentation.
- (6) Individuals applying for services must be eligible to work in the United States. An applicant who cannot be identified as a natural citizen must provide an unexpired credential of eligibility to work on the United States. Credentials may include Permanent Resident Card (I-551), U.S. Citizen ID Card (I-197), Employment Authorization Document that contains a photograph of the individual (I-766), or Identification Card for Use of Resident Citizen in the United States (I-179). An I-9 work visa may be determined acceptable when warranted for the type of employment objective.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.30 and 361.41; and Executive Order No. 43 (1983).

#### 1240-08-04-.02 Eligibility and Disability Priority.

- (1) Following completion of the application process in Rule 1240-08-04-.01, an eligibility determination must be made within 60 days, unless:
  - (a) Exceptional and unforeseen circumstances beyond the control of VR preclude making an eligibility determination within 60 days and VR and the individual agree to a specific extension of time; or
  - (b) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out through trial work experiences in accordance with VR requirements.
- (2) An individual is eligible for VR services when the individual meets the basic requirements for eligibility and whose disability priority has been determined to be in an open priority category in accordance with Rule 1240-08-05-.01.
- (3) The basic requirements for eligibility are:
  - (a) The individual has a physical, cognitive, mental, or sensory impairment that constitutes or results in a substantial impediment to employment;
  - (b) The individual requires VR 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; and
  - (c) The individual can benefit in terms of an employment outcome from the provision of VR services.
- (4) Disability priority is based on the federal definition of an individual with a significant disability in accordance with Rule 1240-08-05-.01. Each individual who meets the basic requirements for eligibility will be placed into the highest disability priority category in accordance with Rule 1240-08-05-.01.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 49-11-604(b), 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.5 and 361.36; and Executive Order No. 43 (1983).

#### 1240-08-04-.03 Individualized Plan for Employment.

- (1) An Individualized Plan for Employment (IPE) is initiated for each eligible individual in an open priority category in a timely manner, but not later than 90 days after the date of determination of eligibility, unless VR and the eligible individual agree to the extension of that deadline to a specific date by which the IPE must be completed. VR services are provided in accordance with the approved IPE.
- (2) The IPE is developed by the eligible individual or, as appropriate, the individual's representative, with assistance available, to the extent determined appropriate by the eligible individual, from the VR Counselor or through other technical assistance. A copy of the IPE will be provided to each individual, or, as appropriate, to the individual's representative.
- (3) The IPE must be designed to achieve a specific employment outcome that is selected by the individual that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, and that will result in competitive integrated employment. It is presumed that individuals with disabilities determined eligible for VR services are capable of working in competitive integrated employment until proven otherwise.
- (4) IPE development includes determining the extent of an individual's participation in the cost of services that require such participation in accordance with Rule 1240-08-05-.02.
- (5) For eligible students with disabilities, the IPE will include coordination with the goals, objectives and pre-employment transition services identified by the IDEA program determined necessary to contribute towards a projected post-school employment outcome and may be amended subsequently as necessary for services and an employment objective that will lead to competitive integrated employment. A student's IPE must be developed, signed, and approved before the student exits the school system.

- (6) An employment outcome must meet the requirements for competitive integrated employment and be consistent with the customer's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice and where the customer is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals and services must have been provided under an IPE that contributed to the achievement of the employment outcome. An individual must maintain employment for ninety (90) days for a successful employment outcome and case closure in accordance with Rule 1240-08-04-.06.
- (7) An individual is responsible for following the terms identified in the IPE Participant Responsibilities.
- (8) The IPE must be reviewed annually to assess an individual's progress in achieving the identified employment outcome and may be amended when a change in services or service providers is warranted and approved by VR.
- (9) An individual may choose to not pursue competitive integrated employment. VR must provide an individual referral to community resources that may include extended (sheltered) employment where appropriate rehabilitation services may be provided by an entity other than VR. VR will close the case in accordance with Rule 1240-08-04-.06. An individual in extended (sheltered) employment may return to VR at any time to pursue competitive integrated employment.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 49-11-604(b), 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.5, 361.41, 361.42, 361.45, and 361.46; and Executive Order No. 43 (1983).

#### 1240-08-04-.04 Counseling and Guidance, Person-Centered Practices, and Referral Services.

- (1) The VR Program will provide counseling and guidance and person-centered practices for applicants and eligible individuals or, as appropriate, their representatives throughout the life of the case in order to facilitate informed choice and actively directing, planning, and participating in making decisions about VR services, supports, and employment outcomes.
- (2) Counseling and guidance is provided by the VR Counselor for each applicant and eligible individual or, as appropriate, the individual's representative through one-on-one discussions with the individual and by specific activities to facilitate the provision of services and achievement of competitive integrated employment and to assist the individual or, as appropriate, the individual's representatives to exercise informed choice.
- (3) Person-centered practices are provided for applicants and eligible individuals or, as appropriate, their representative to promote an ongoing person-oriented approach that empowers an individual or, as appropriate, the individual's representative to be actively involved in directing, planning, and participating in making decisions about the individual's VR program by focusing on the individual's unique strengths, abilities, capabilities, interests, personal choices, and informed choice.
- (4) Referral services are provided to direct an individual to other entities for assistance and/or services not available from VR that may contribute to achievement of an employment outcome.
- (5) The customer will be informed of his or her rights of appeal and how to contact a CAP representative in accordance with 1240-08-05-.06.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 49-11-604(b), 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.37, 361.41, 361.42, 361.43, and 361.48; and Executive Order No. 43 (1983).

#### 1240-08-04-.05 Vocational Rehabilitation Services.

- (1) The provision of VR services and support needs is based on the vocational rehabilitation and support needs of applicants and eligible individuals consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, informed choice and VR policy and procedures as determined by an appropriate assessment conducted by the appropriate staff and identified in the individual's IPE.

- (2) VR services comprise diagnostic and assessment services necessary for the diagnosis of impairments and determining rehabilitation need, services that contribute to the achievement of competitive integrated employment, and support services that enable an eligible individual to participate in diagnostic and assessment and contributing services.
- (3) VR diagnostic and assessment, contributing, and support services must be provided in accordance with VR policies and procedures.
- (4) Prior to providing VR services, a determination must be made by VR as to the availability of comparable services and benefits in accordance with Rule 1240-08-05-.04 and the extent to which the comparable services or benefits can be utilized to provide or pay for the VR services.
- (5) The provision of VR contributing and support services, with the exception of support services provided during diagnostic services, may be subject to the financial need of the individual as determined by VR in accordance with Rule 1240-08-05-.03. Based on the financial need assessment, some individuals may be required to participate in the cost of VR services that are subject to financial need. Refer to Rule 1240-08-05-.03 for services that are not subject to financial need.
- (6) Except for diagnostic and assessment services and diagnostic and assessment support services, VR services must be provided under an IPE in accordance with Rule 1240-08-04-.03.
- (7) VR has established a fee schedule for individual purchases of goods and services. Fees are authorized for payment by VR in accordance with the rules, policies, and procedures of the State's Central Procurement Office, or in accordance with fees established by the Centers for Medicare and Medicaid Services.
- (8) Goods and services may be procured through approved vendors, a federal or state funded program, contracted pre-paid services, journal voucher for another state agency, in-house service, or direct purchase by an individual by reimbursement or advanced payment in accordance with VR requirements.
- (9) Price quotes in accordance with VR requirements are required prior to the purchase of tangible (material) items that exceed \$5,000.
- (10) Any goods or equipment purchased for a customer who later becomes unable to complete a training program or achieve an employment outcome must be returned by the customer to VR.
- (11) VR services must be provided by appropriately credentialed professionals or approved service providers in accordance with VR requirements.
- (12) Some VR services cannot be provided while a customer is not participating in VR services, such as during breaks between school terms or during summer vacations or while a customer is otherwise unable to participate.
- (13) The individual may be required to participate in testing, training or an evaluation prior to receiving VR services.
- (14) Diagnostic and assessment services are not subject to financial need and are based on individual need for determining eligibility and priority for services in accordance with Rule 1240-08-04-.02 and for IPE development in accordance with Rule 1240-08-04-.03. Diagnostic and assessment services are not provided under an IPE. Diagnostic and assessment services may be needed to diagnose physical, psychological, cognitive, neuropsychological, and sensory impairments, which includes disability-related examinations and testing when existing records do not adequately describe an individual's current condition and to assess rehabilitation need.
  - (a) Diagnostic services must be provided by appropriately credentialed professionals and may not be used as a means for identifying impairments that the individual does not report.
  - (b) Assessment services to determine rehabilitation need may be provided in accordance with VR requirements by a registered Community Rehabilitation Provider (CRP).
  - (c) Financial assistance with transportation, temporary lodging, and meals necessary to participate in a diagnostic service may be provided, when justified, and is not subject to financial need.



- (15) Contributing VR services and service providers are based on individual need for achieving competitive integrated employment. Contributing VR services may be provided for physical and mental restoration, training, employment, supported and customized employment, self-employment, rehabilitation technology, students with disabilities, and other services developed by VR that have been determined necessary for an individual to achieve an employment outcome.
- (a) Physical and mental restoration may be necessary to eliminate, reduce, or modify the effects of stable or slowly progressive physical or mental or emotional disorders so that an individual can return to previous work or achieve another employment outcome and includes corrective surgery or therapeutic treatment, nursing care, hospitalization, drugs and supplies, prosthetic and orthotic devices, eyeglasses and visual services, physical, occupational, and speech or hearing therapy, other medical or medically related services, and mental health services which includes therapy, medication, and treatment for substance use by voluntary referral to treatment services provided at no cost to VR.
1. Physical and mental restoration services do not include services to prolong life, prevent premature death, alleviate pain, or reduce or prevent disease unless these services may be expected to lead to or contribute to an employment outcome.
  2. VR is not responsible for the treatment of conditions that are unrelated to the disability and the resulting impediment to employment.
  3. Physical and mental restoration services must be completed within a reasonable period of time and will not be provided for an extended period of time.
  4. Individuals who are able to return to previous work following physical and mental restoration services will not be provided post-secondary training for the purpose of changing jobs.
  5. VR may purchase prescribed medications recommended by the treating physician.
  6. Mental restoration services may include treatment for substance use by treatment programs licensed by the State. Treatment services must be paid through comparable services and benefits. VR will not pay for substance use treatment.
  7. Some contributing services for physical or mental restoration services must be prescribed by an appropriately credentialed professional.
- (b) Training includes vocational and other training services, including personal and vocational adjustment training, advanced training in, but not limited to, a field of science, technology, engineering, mathematics (including computer science), medicine, law, or business; except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing or any other post-secondary education institution) may be paid for with VR funds unless maximum efforts have been made by VR and the individual to secure grant assistance in whole or in part from other sources to pay for that training.
1. Personal adjustment training is disability-related and is provided to train or adapt an individual in the use of personal and adaptive equipment and techniques for the purpose of participating in VR services and to secure and maintain employment.
  2. Vocational adjustment training is provided to develop and maintain an individual's capacities necessary for achievement of an employment outcome.
  3. A post-secondary training institution is approved for VR funding if the institution is:
    - (i) A state-operated vocational school, two-year community college, or four-year college or university located in any of the fifty (50) U.S. states;
    - (ii) Approved by the U.S. Department of Education to disburse Federal Aid (Pell grant, FSEOG, etc.);

- (iii) Accredited by an accrediting association recognized by the Federal Department of Education;
  - (iv) Registered with the State's Higher Education Commission;
  - (v) Licensed by the appropriate State licensing agency; or
  - (vi) Approved by VR.
4. Post-secondary, graduate, and post-graduate training services may be provided based on the individual's aptitudes, abilities, capabilities, interests and work experience and the entry education level for the approved specific employment outcome. The continuing provision of post-secondary, graduate, and post-graduate training services must be based on a review of the individual's progress and participation in services.
  5. VR may not sponsor individuals in undergraduate, graduate, or post-graduate training who are in default of a Title IV school loan or who have failed to repay an overpayment of a Pell grant.
  6. VR may not sponsor training services for individuals whose disabling conditions may be or have been corrected through physical or mental restoration services and who are able to return to previous or similar employment using existing or transferable skills.
  7. VR will not sponsor any individual for classes that are not included in the curriculum approved by the school that is required for the degree that is necessary to achieve the specific employment outcome.
  8. VR probation or suspension of post-secondary, graduate, and post-graduate training services may occur when an individual does not meet certain requirements for VR funding. These requirements include maintaining a grade point average (GPA) established by the school and for the course of study, whichever is greater, or maintain satisfactory academic progress necessary to remain in good standing with the school or complying with VR requirements for attendance, completion of classes as required, and providing grade reports and class schedules.
  9. The individual must provide documentation for the purchase of any training-related items required for a course.
- (c) Employment includes job-related services, including job search and placement assistance, job retention services, and follow-up services and follow-along services after the completion of employment services. Employment services must result in full- or part-time competitive integrated employment (CIE) at a location typically found in the community.
1. With the exception of job retention services, employment services may be provided by VR staff, in accordance with VR requirements by a registered CRP, or other qualified employment service.
  2. Part-time placements of less than fifteen (15) hours per week must be approved by VR for meeting all CIE requirements.
  3. VR will determine whether a job position is typically found in the community and whether the job position is integrated for the purpose of performing the job duties.
- (d) Job retention services comprise a program of VR services in order for an individual to maintain current employment or return to employment from extended leave with the same employer. Services may include workplace adjustments, accommodations, assistive technology, or orientation and mobility training necessary to perform the essential job duties.
1. Job retention services may only be provided for eligible individuals with a disability that creates permanent functional limitations and who require such services.
  2. Job retention services are not subject to financial need and do not require a determination of comparable services and benefits.

3. An assessment to determine the nature and scope of job retention services must utilize the least intrusive method and be in accordance with customer choice.
  4. Job retention services may not be provided for physical, mental, or sensory restoration requiring surgery and/or hospitalization or counseling services for the purpose of eliminating, reducing, or modifying the effects of a stable or slowly progressive disabling condition; to replace aging assistive technology that continues to work for the intended purpose; to assist an individual with being more independent outside of work or at the individual's place of work where there is no effect on job duties; to assist an individual with getting to work or back home; or to assist an individual with changing jobs.
- (e) Supported employment will be provided in accordance with Rule 1240-08-11.
- (f) Customized employment is based on an individualized determination of the unique strengths, abilities, interests, and informed choice of an individual with a significant disability; is designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer; and is carried out through flexible strategies such as: job exploration and working with an employer to facilitate placement through task assignment, job carving, and job sharing. Customized employment services must be provided in accordance with VR requirements by a registered CRP with the appropriate training certification and must result in full- or part-time CIE at a location typically found in the community.
- (g) Self-employment may be provided for eligible individuals who want to operate and/or expand a for-profit business for the purpose of manufacturing a product or providing a service for public sale in the competitive market. Self-employment services include the purchase of goods, services, and apparatus necessary for an individual to start or expand a business based on a business plan approved by VR and the cost of goods, services and apparatus approved by VR. Self-employment services do not include investments or cash funding; the purchase of vehicles, land, or franchises; the construction of buildings; interior or exterior building improvements; underwriting of loans; funding of illegal activities; or hobby ventures.
1. An assessment of an individual requesting self-employment services and the proposed business must be conducted by VR to determine if the proposed business will more than likely result in a successful employment outcome for VR. An assessment may include but is not limited to:
    - (i) The business proposal and the individual's experiences, learned skills, and abilities to perform the major tasks needed to operate the proposed business.
    - (ii) The individual's capability of performing the majority of work required to operate the proposed business, including the number of hours required to operate similar businesses operated by individuals who do not have disabilities.
    - (iii) The business's expected income must be comparable to the income received by individuals who are not individuals with disabilities, who are self-employed in similar businesses and who have similar training, experiences, and skills.
  2. An individual must have the aptitudes, abilities and capabilities necessary for the operation of the business. VR may provide training to assist an individual with obtaining the skills necessary for the operation of the business. If an individual is unable to obtain the skills necessary for the operation of the business, VR will conduct an appropriate assessment to develop a more appropriate employment objective that will lead to CIE consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
  3. Individuals who have been determined to have the aptitudes, abilities and capabilities necessary for the operation of the business must develop a business plan. The individual must seek assistance from a Small Business Development Center; the Service Corps of Retired Executives; Chamber of Commerce; similar business owner; or other recognized community resources or business council to research and develop a business plan.



4. An individual's business plan is reviewed by a team consisting of VR staff or area professionals as determined appropriate based on the type and complexity of the business. The team will make a recommendation for approval and for developing an IPE for self-employment. After an individual's business plan is approved, changes will not be made without approval by VR.
  5. If an individual's business plan is not approved, the individual may correct identified deficiencies and re-submit the business plan for approval. If the re-submitted business plan is not approved, other types of businesses consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice may be considered or VR may determine a more appropriate employment objective other than self-employment.
  6. Costs paid by VR to purchase goods, services, and apparatus to start or expand a business are based on the specific needs of the business as documented in an approved business plan and will not exceed \$10,000 unless approved by the VR Director.
  7. VR will not purchase goods, services, or apparatus different in type, specification, quantity or use from what is approved by VR in the business plan. All goods, services and apparatus approved and purchased by VR must be included in the customer's IPE prior to VR authorizing services. The individual must coordinate with VR for the purchase and delivery of all goods, services, and apparatus.
  8. Pre-owned or used apparatus that may be used in the business operation must be included in the business plan. VR will not replace pre-owned or used apparatus unless an authorized authority has certified the equipment unusable for the approved business.
  9. VR may assist with the purchase of additional goods, services, and apparatus in accordance with the approved business plan for up to three (3) months after business operation begins.
  10. The individual must provide evidence of income for the business to VR using standard bookkeeping methods every three (3) months to document when a successful self-employment outcome is achieved.
  11. If after ninety (90) days of business operation the business's income does not meet the requirement for a successful case closure, VR will review the business's income as provided by the individual every three (3) months thereafter for up to eighteen (18) months to determine when the business's income meets the requirement for successful case closure.
  12. If after eighteen (18) months the business's gross annual income has not reached the requirement for a successful case closure, VR will consider the individual's business unsuccessful. VR will discuss with the individual the possibility of other VR services.
  13. For unsuccessful businesses, VR will determine the continuation of VR services based on a more appropriate employment objective, excluding self-employment, that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice will lead to CIE.
  14. If the individual is unable to continue with the business operation and goods and apparatus purchased by VR will no longer be used for their intended purpose, the individual is required to return the goods and apparatus to VR.
- (h) 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.
1. 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.

2. Assistive technology, devices, and services includes:
    - (i) Assistive technology designed for use in an assistive technology device or assistive technology service.
    - (ii) Assistive technology devices, equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.
    - (iii) Assistive technology services that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.
  3. Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices is exempt from a determination of the availability of comparable services and benefits.
  4. Assistive technology devices and services do not include auxiliary aids and services required for public accommodation in accordance with Rule 1240-08-05-.06.
  5. VR will evaluate an applicant's or eligible individual's need for assistive technology, devices, and services contemporaneously with its evaluation of the individual's rehabilitation potential or trial work experiences. VR will reevaluate an individual's need for assistive technology, devices, and services throughout the rehabilitation process on an annual basis.
- (i) Students with disabilities who meet the definition in Rule 1240-08-02-.02 must, with coordination with Local Education Agencies, be provided pre-employment transition services (pre-ets) that include job exploring counseling, work-based learning experiences, counseling on opportunities for enrollment in post-secondary educational programs, workplace readiness training, and instruction in self-advocacy.
1. Students with disabilities are not required to have an eligibility of determination or priority for service or an IPE in order to receive pre-employment transition services. Pre-ets cases are managed by pre-ets specialists.
  2. Students with disabilities may be referred for VR services. For students who are determined eligible for VR services, pre-ets services can continue under the pre-ets case until the IPE is completed and the provision and documentation of pre-ets services is transferred to the VR case.
  3. Recognized education programs may include but are not limited to secondary and post-secondary education programs, non-traditional or alternative secondary education programs, including home schooling, post-secondary education programs providing transitional learning or similar programs, and other recognized educational programs, such as those offered through the juvenile justice system.
  4. VR services will not take the place of academic or pre-vocational training that is the responsibility of the school system. This may include the purchase of equipment and/or assistive devices used primarily for educational purposes and/or transportation. Consideration may be given when the equipment or service is directly related to an employment service or to the achievement of an employment outcome.
  5. Auxiliary aids and services required to meet ADA and Section 504 accommodations may be provided for students with sensory and communicative disorders.
  6. Students enrolled in a secondary school system cannot also be enrolled in post-secondary training at VR's expense.
  7. A pre-ets case ends when a student ages out, graduates, is no longer enrolled or eligible for secondary school services, is no longer interested in receiving services, cannot be located, has

been determined ineligible for VR services, or has been determined eligible for VR services and an IPE has been completed.

- (j) Other services developed by VR are based on factors that have been determined necessary for an individual to participate in VR services and/or achieve an employment outcome and includes but is not limited to medical, mental, optical, speech, and audiology care and treatment and therapy, deaf-blind, surgery, hospitalization, dental, durable medical equipment, electronic equipment, job coaching, on-the-job training, physical and occupational therapy, prosthetics and orthotics, service animals, transitional and specialized services to support students in a post-secondary setting, tools and equipment, business licenses, vehicle modification, family member services, worksite and home modifications, service animals, Braille and orientation and mobility training, and comprehensive rehabilitation centers for evaluations and/or training.
  - 1. Electronic equipment includes, but is not limited to, computer systems, CCTVs, and other electronic assistive technology devices required to accommodate a disability for the purpose of participating in a VR service or for employment, including the provision of upgrades and repairs to existing equipment. Electronic equipment must be prescribed by a qualified professional or approved by VR self-employment or for educational purposes in accordance with VR policy and procedures.
  - 2. Family member services may only be provided for an individual who either is a relative or guardian of an applicant or eligible individual or lives in the same household as an applicant or eligible individual who has a substantial interest in the well-being of that individual and whose receipt of VR services is necessary to enable the applicant or eligible individual to achieve an employment outcome.
  - 3. Vehicle modification services may be provided if an individual is unable to effectively and reasonably use other modes of transportation and requires appropriate transportation to prepare for, secure, retain or regain employment.
  - 4. Worksite and home modification services may be necessary to modify a work site to permit job retention or job placement or to construct a ramp, widen a door, install handrails, etc. in an individual's home so that the individual can participate in VR services.
- (16) Support services and service providers are based on individual need for participating in contributing services as determined during IPE development or annual review of the IPE. Support services may also be provided for diagnostic services. Support services include but are not limited to:
  - (a) Transportation in-state or out-of-state in order to participate in a contributing service or secure employment. An individual's own vehicle may be used for transportation.
  - (b) Meals in-state or out-of-state necessary to participate in a contributing service or secure employment.
  - (c) Housing or lodging in-state or out-of-state necessary to participate in a contributing service or secure employment.
  - (d) Books, supplies, training materials, and wardrobe in order to participate in a training program.
  - (e) Personal supports in order to participate in a contributing service such as medication, drivers, child care, interpreters, readers and note takers, tutors, auxiliary aids, vehicle repair, professional dues, and disability-related supports.
  - (f) Drug screens for compliance with abstinence from substance use, to meet the requirements of employment, or, under certain circumstances, for an individual's attendant care provider. Drug screens require approval from the individual.
  - (g) Background checks for program planning or for employment or, under certain circumstances, for an individual's attendant care provider. Background checks require approval from the individual.

- (h) Vehicle repair for limited repair work or parts replacement in accordance with VR policy and as determined by an ASE certified mechanic necessary to return a customer's car to a drivable safe condition.
- (i) Medication required for an individual's impairment and to support participation in VR services and prescribed by a treating or other credentialed physician.
- (j) Tutorial services determined necessary by VR to provide an individual participating in post-secondary training assistance or guidance for an individual to become an independent learner and maintain a school's academic standard. A tutor will not be used to help an individual excel in an academic subject or to be an accommodation for academic deficiencies.
- (k) Uniforms or wardrobe necessary to participate in a contributing service or secure employment.
- (l) Attendant care services 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; to increase the individual's ability to perform everyday activities on or off the job; necessary to the achievement of an employment outcome; and provided only while the individual is receiving other VR services. Attendant care services are not intended to supplement or replace services that would be provided regardless of participation in VR services. Attendant care services may not be provided if the intended employment outcome on the IPE will not provide the customer the ability to pay for attendant care services with the exception that attendant care services will more than likely be available through other resources after achievement of the employment outcome.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 49-11-701, et seq., 49-11-801, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.5, 361.43, 361.47, and 361.48; and Executive Order No. 43 (1983).

#### 1240-08-04-.06 Standards for Closing Cases.

- (1) VR may close a case from applicant status prior to making an eligibility determination if the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and VR has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative, to encourage the applicant's participation.
- (2) VR may close a case if an applicant does not meet eligibility requirements for VR services, the eligible individual receiving services under an IPE is incapable of achieving an employment outcome due to the severity of the individual's disability, or the individual has chosen to not pursue competitive integrated employment.
  - (a) An individual does not meet eligibility requirements if:
    - 1. There is no diagnosable impairment;
    - 2. There is a diagnosable impairment but no substantial impediment to employment;
    - 3. There is a diagnosable impairment and substantial impediments to employment but there are no expected VR services that will reduce, eliminate, or accommodate the participant's impediment to employment and contribute to an employment outcome; or
    - 4. It is determined through trial work experiences that the individual will not benefit from VR services in terms of an employment outcome.
  - (b) A case will not be closed because an individual is unable to achieve an employment outcome due to the severity of the individual's disability without documenting by Trial Work Experiences clear and convincing evidence that the individual is incapable of benefiting from VR services in terms of an employment outcome due to the severity of the individual's disability.
  - (c) Cases that are closed due to extended employment in a non-integrated or sheltered setting or in other employment compensated in accordance with section 14c of the Fair Labor Standards Act (sub-minimum wage) must be provided career counseling and information services at the time of case closure and every

- six (6) months for the first year following case closure and annually thereafter for the duration of such employment.
- (d) Cases that are closed due to the severity of the individual's disability must be reviewed twelve (12) months from case closure and annually thereafter if requested by the individual to determine potential for competitive integrated employment.
- (3) VR may close a case of an individual who has achieved a successful employment outcome if all of the following requirements are met:
- (a) The individual has achieved competitive integrated employment described in the individual's IPE that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice and is at a location typically found in the community (in the competitive labor market) where the individual:
    - 1. Is compensated at not less than the legal minimum wage or at the customary rate for the same or similar work performed by employees who are not individuals with disabilities;
    - 2. Is eligible for the level of benefits provided to other employees who are not individuals with disabilities;
    - 3. Interacts with fellow employees for the purpose of performing the job duties within the work unit who are not individuals with disabilities;
    - 4. Has the opportunity for advancement that is similar for other employees who are not individuals with disabilities and who have similar positions; and
  - (b) The employment outcome has been maintained for an appropriate period of time, but not less than ninety (90) days, to ensure the stability of the employment outcome, and the individual no longer needs VR services; and
  - (c) At the end of the appropriate period described in (b), the individual and the VR Counselor consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment.
- (4) VR may close a case due to intervening reasons in which the individual is not available for diagnostic assessments or continuation of services because the individual has died, has moved out of state and shows no intention of continuing with the VR program, has not been contacted after required efforts, has been institutionalized for an indefinite or extended period of time, has refused services, or is no longer interested in VR services after reasonable counseling and guidance efforts by the VR Counselor.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.5, 361.44, 361.45, 361.46, 361.55, and 361.56; and Executive Order No. 43 (1983).

#### 1240-08-04-.07 Post-Employment Services.

- (1) Post-employment services are one or more VR services limited in scope and duration that are necessary subsequent to the achievement of a successful employment outcome. The services must be necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- (2) Post-employment services must be provided under the terms of an amended IPE.
- (3) Post-employment services are subject to the same requirements for services provided prior to employment in accordance with 1240-08-04-.05. Services are subject to financial need in accordance with 1240-08-05-.02, with the exception that post-employment services are exempt from a determination of the availability of comparable services and benefits.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.5, 361.37, and 361.48; and Executive Order No. 43 (1983).



Chapter 1240-08-05  
Services to Individuals: Related Provisions  
Amendments

Rule 1240-08-05-.01 Order of Selection and Priority for Services is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) When VR is unable to provide the full range of VR services to all individuals who meet the basic requirements for eligibility, VR is required to implement an Order of Selection to be followed in prioritizing individuals who meet the basic requirements for eligibility for the provision of VR services. VR determines when and if an Order of Selection will be implemented.
- (2) When an Order of Selection is implemented, individuals previously determined eligible for VR services and receiving services under an IPE are not affected. An Order of Selection does not regulate the provision or authorization of diagnostic assessments.
- (3) After implementation of an Order of Selection, each individual who meets the basic requirements for eligibility will be placed into the highest category justified according to paragraph (4).
- (4) Disability Priority Categories and definitions for an Order of Selection are determined by VR and are based on the federal definition of an individual with a significant disability and are as follows, with the lowest numerical category being the highest priority that must be considered first for the provision of services:
  - (a) Disability Priority Category 1 - Most Significantly Disabled.
  - (b) Disability Priority Category 2 - Significantly Disabled.
  - (c) Disability Priority Category 3 - Not Significantly Disabled.
  - (d) Disability Priority Category 4 - Cannot be categorized into a higher Disability Priority Category.
- (5) An individual who is eligible to receive Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) based on disability or blindness is presumed to be an individual who is Disability Priority Category 2 - Significantly Disabled.
- (6) VR determines which disability priority categories are open for the provision of services.
- (7) When an Order of Selection is implemented, those individuals who are placed into an open priority category may be served under an IPE. Those individuals who are placed in a closed priority category may not be served until the Order of Selection is lifted, the category is opened to provide services, or cases are released for the provision of services.
- (8) Individuals who are assigned a disability priority category that is closed, meaning services will not be provided, will be notified in writing and must be referred to other federal and state programs, including programs that are part of the one-stop service delivery system under the Workforce Innovation and Opportunity Act.
- (9) If VR will not continue to serve all individuals determined to be Disability Priority Category 1, services will be provided to new Disability Priority Category 1 individuals based upon date of application.
- (10) If VR is able to open a closed disability priority category or release cases to be provided services but is unable to serve all individuals in that category, services will be provided based upon the date of application.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.5 and 361.36; and Executive Order No. 43 (1983).

Rule 1240-08-05-.03, currently Consideration of Comparable Services or Benefits and Subrogation, is amended so that the title of the rule shall now be Comparable Services and Benefits and Subrogation. Additionally, Rule 1240-08-05-.03 is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:



- (1) In determining what VR services are provided to an individual and the scope of such services, the VR Program will consider the availability of comparable services or benefits from other sources to pay, in whole or in part, the cost of VR services unless such a determination would interrupt or delay:
  - (a) The progress of the individual toward achieving the employment outcome identified in the IPE;
  - (b) An immediate job placement; or
  - (c) The provision of VR services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.
- (2) The following VR services are exempt from a determination of comparable services:
  - (a) Evaluation to determine eligibility, rehabilitation needs, or priority for services;
  - (b) Counseling, guidance, and referral services;
  - (c) Vocational and other training, including vocational adjustment training, books, tools, and other training materials not provided in institutions of higher education;
  - (d) Placement services;
  - (e) Rehabilitation engineering services; and
  - (f) Post-employment services consisting of the services listed in (a) through (e) above.
- (3) Vocational and other training services in institutions of higher education may not be paid for with funds under this part unless maximum efforts have been made by VR and the individual to secure grant assistance in whole or in part from other sources to pay for the training. Institutions of higher education include universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing. Comparable benefits include Pell Grants, Supplemental Educational Opportunity Grants, Tennessee Student Assistance Awards, Tennessee post-secondary education scholarships and awards administered by the Tennessee Student Assistance Corporation, and institutional grants, awards or scholarships, including fellowships or other awards. Comparable services and benefits do not include educational awards and scholarships based on merit except when an award or scholarship is earmarked to credit a student's account.
- (4) Federal and state educational grants awarded to an individual must be used to pay for educational expenses in accordance with appropriate federal, state and institutional guidelines.
- (5) Comparable services and benefits may also be available for individuals eligible for Medicare or Medicaid (TennCare), Children's Special Services, or private health insurance.
- (6) If comparable services or benefits are not available to pay for VR services at the time needed, VR may pay for services until those comparable services and benefits become available.
- (7) If, during the provision of services, comparable services or benefits become available or an individual's circumstances change in such a way as to impact entitlement, VR will determine the extent of entitlement and availability and the effect on payment for the services.
- (8) When an individual's comparable services or benefits for a service are exhausted, VR may pay for the cost the service.
- (9) When VR funds are expended on behalf of an eligible individual for goods or services that a third party is or becomes legally obligated to pay in compensation for an accident or injury which caused or contributed to the vocational rehabilitation eligibility, VR may exercise the right of recovery of such funds through subrogation. By accepting or receiving VR funds to pay the cost of goods and services, the individual is deemed to have agreed to and authorized such subrogation.

Rule 1240-08-05-.04, currently titled Confidentiality, is amended so that the title of the rule shall now be Protection, Use, and Release of Personal Information. Additionally, Rule 1240-08-05-.04 is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

1240-08-05-.04 Protection, Use, and Release of Personal Information.

- (1) All information of individuals applying for or receiving services given or made available to VR employees, in the course of the administration of the VR Program, is confidential. Confidentiality extends to electronic information, photographs, lists of names, and personal identifiable information.
- (2) The use of such information and records is limited to purposes directly connected with the administration of the VR Program.
- (3) Information is not to be disclosed directly or indirectly, other than in the administration of the VR Program, unless the informed consent of the individual has been obtained in writing.
- (4) Upon the individual's written request, VR must release all information in the individual's record to the individual or the individual's representative, except that medical, psychological or other information deemed harmful to the individual will only be released to the individual through a designated third party. If the information comes from a separate entity, VR must follow the conditions for release of such information established by that entity.
- (5) VR may release personal identifiable information to another agency or organization, in accordance with an individual's written agreement, for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.
- (6) VR may release information to an individual or organization engaged in research when the purpose is directly connected with the administration of the VR Program, and only after the individual or organization has furnished satisfactory assurances that the information shall be used only for the purpose it was provided, and:
  - (a) It shall not be released to persons not connected with the study under consideration, and
  - (b) The final product of the research shall not reveal any information that may identify any person who did not provide written consent to release the information.
- (7) Reports, surveys, case studies, research projects, and other information released to entities/organizations and individuals by counselors and other VR personnel may contain statistical information and data essential to the advancement of the program, but no information identifiable with any individual shall be included without the written consent of that individual.
- (8) Release of Personal Identifiable Information.
  - (a) VR may release personal identifiable information to an organization, state entity, or individual engaged in an audit, evaluation, or research for purposes directly connected with the administration of the VR Program, or for purposes that would significantly improve the quality of life for applicants and eligible individuals, and only if the organization, entity, or individual assures that:
    1. The information will be used only for the purposes for which it is being provided;
    2. The information will be released only to individuals officially connected with the audit, evaluation, or research;
    3. The information will not be released to the involved individual, but will be managed in a manner to safeguard confidentiality; and

4. The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.
- (b) Personal identifiable information will be released 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.
- (c) Personal identifiable information may be released in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.
- (9) All documents containing information about the individual and possessed by the Division or VR are property of the Division.
- (10) An individual who believes that information in the record is inaccurate or misleading may request that the record be amended. If the information is not amended, the request for amendment must be documented in the record.
- (11) VR employees, contractors, service providers, cooperating agencies, and interested persons must secure all customer information in appropriate locations that is overseen by qualified personnel.
- (12) The Division may charge a reasonable fee for providing copies of records for purposes other than those of the VR Program in accordance with the rules of the Department at Chapter 1240-09 and state law.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. § 361.38; and Executive Order No. 43 (1983).

Newly renumbered Rule 1240-08-05-.07, currently titled Tennessee Rehabilitation Center, is amended so that the title of the rule shall now be Tennessee Rehabilitation Center at Smyrna. Additionally, newly renumbered Rule 1240-08-05-.07 is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

1240-08-05-.07 Tennessee Rehabilitation Center at Smyrna.

- (1) The Tennessee Rehabilitation Center at Smyrna (TRCS) is a statewide comprehensive rehabilitation and training center for applicants and eligible individuals receiving services from the Division's VR Program.
- (2) TRCS is a day and residential facility that provides services including, but not limited to, vocational training and counseling, rehabilitation services, wellness management services, and pre-employment transition services for students with disabilities.
- (3) Vocational training and counseling are provided at TRCS for a variety of vocational areas that lead to a certificate, credential, or industry certification and achievement of an employment outcome.
- (4) Rehabilitation services provides supports based on an individual's disability and rehabilitation need that may include cognitive, behavioral, sensory, physical and occupational, and recreation therapies.
- (5) Wellness management services provides management for an individual's medical and psychological needs due to the individual's disability.
- (6) Pre-employment transition services are provided for students with disabilities in accordance with the student's need for such services.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.38 and 361.51; and Executive Order No. 43 (1983).

Newly renumbered Rule 1240-08-05-.08, currently titled Community Tennessee Rehabilitation Centers, is amended so that the title of the rule shall now be Community VR Services. Additionally, newly renumbered Rule 1240-08-05-.08 is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

1240-08-05-.08 Community VR Services.

- (1) Community VR services for applicants and eligible individuals to prepare for and achieve competitive integrated employment and pre-employment transition services for students with disabilities are provided by the VR Community Services Unit (CSU). Services include, but are not limited to, individualized pre-plan assessments, career readiness services, individualized services based on rehabilitation need, and pre-employment transition services for students with disabilities that consists of information or activities regarding potential employment, post-secondary training, and self-advocacy.
- (2) Services are provided in accordance with the individual's rehabilitation needs.
- (3) The CSU maintains standards for the provision of services.
- (4) The CSU may also offer services to employers including, but not limited to, marketability, recruitment, industry outsourcing, internships, and services to injured workers.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 49-11-701, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. § 361.51; and Executive Order No. 43 (1983).

Chapter 1240-08-05  
Services to Individuals: Related Provisions  
New

1240-08-05-.02 Financial Needs Assessment.

- (1) VR will consider the financial need of each eligible individual in determining the extent of the individual's participation in the cost of services that require such participation.
- (2) A financial need assessment (FNA) is based on an individual's household income and financial circumstances, the number of individuals living in the household, allowed deductions, approved exceptions, and the current financial need level established by VR. The FNA will be conducted prior to development of an individual's IPE and annually thereafter or sooner if there are changes in an individual's financial circumstances.
  - (a) Household income includes the adjusted gross income (AGI) of the household contributors providing more than half of the individual's support as shown on the most recent completed joint or separate federal income tax returns regardless of whether the individual is claimed on the tax return or lives with the individuals; other individual and/or spouse income sources such as paycheck stubs, bank statements, business income receipts or fixed income deposits; and other income from household contributors other than the eligible individual such as SSA benefits, Families First benefits or other sources.
  - (b) Deductions include current out-of-pocket payments being made at the time the initial FNA or an annual financial need review is completed for non-reimbursed household medical or dental expenses; medical insurance premiums for which the individual is included in the coverage; court ordered obligations other than alimony; and post-secondary educational loans of the individual, not other household members.
  - (c) Exceptions to participating in the cost of services may include the amount of benefit for fixed income, payments for disability-related expenses, or similar financial circumstances.
- (3) Individuals who are determined to meet financial need are exempt from participating in the cost of most VR services using personal funds but are not exempt from applying for and using comparable services and benefits or from paying additional costs when services chosen by the individual exceed the allowable fees established by VR. Individuals who are determined to meet financial need include individuals:
  - (a) Whose household income, financial circumstances, number of individuals living in the household and deductions have been verified and documented and, based on the FNA conducted in accordance with VR policy, the financial need level is not exceeded;
  - (b) Who have been determined eligible for and verified and documented to be receiving SSI or SSDI benefits based on the individual's own disability or blindness; or
  - (c) Who have been determined eligible for and verified and documented to be receiving Families First cash benefits.
- (4) Individuals who are determined to be over financial need are required to participate in the cost of services subject to need unless an exception has been approved by VR. Individual participation in the cost of services cannot exceed the amount that the individual is over need.
- (5) VR may not apply a financial needs test, or require the financial participation of the individual as a condition for furnishing the following VR services:
  - (a) Assessment for determining eligibility and priority except those non-assessment services that are provided to an individual with a significant disability during either an exploration of the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences;
  - (b) Assessment for determining vocational rehabilitation needs;
  - (c) Vocational rehabilitation counseling and guidance;
  - (d) Referral and other similar services;

- (e) Job-related services;
- (f) Personal assistance services;
- (g) Any auxiliary aid or service (e.g., interpreter services), reader services that an individual with a disability requires under section 504 of the Rehabilitation Act (29 U.S.C. 794) or the Americans with Disabilities Act (42 U.S.C. 12101, et seq.), or regulations implementing those laws, in order for the individual to participate in the VR program as authorized under this part; or
- (h) If the individual in need of a service has been determined eligible for Social Security benefits under titles II or XVI of the Social Security Act.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; and 34 C.F.R. § 361.54.

#### 1240-08-05-.05 Auxiliary Aids and Services.

- (1) A public accommodation may be necessary to ensure that no individual with a disability can be excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the accommodation would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense. The term "auxiliary aids and services" includes:
  - (a) Qualified interpreters, notetakers, computer-aided transcription services, written materials, foreign language interpreters, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
  - (b) Qualified readers, taped texts, audio recordings, brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;
  - (c) Acquisition or modification of equipment or devices; and
  - (d) Other similar services and actions.
- (2) VR will not assume the responsibility of other programs or vendors, such as post-secondary training institutions, community rehabilitation programs, physicians, psychologists, and placement agencies for providing auxiliary aids and services for public accommodation requirements.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 49-11-701, et seq., 49-11-801, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 28 CFR 36.303; 34 C.F.R. § 361.5; and Executive Order No. 43 (1983)

New Rule 1240-08-05-.06 Right to Administrative Review, Mediation, and Fair Hearing is added and subsequent rules renumbered, so that the new rule shall read as follows:

#### 1240-08-05-.06 Right to Administrative Review, Mediation, and Fair Hearing.

- (1) VR will provide timely due process for applicants or recipients of services or, as appropriate, their representatives who may be dissatisfied with any determination made by VR that affects the provision of VR services.
- (2) Due process may include an informal administrative review by appropriate VR supervisory staff, mediation by a qualified Mediator, or fair hearing by an Impartial Hearing Officer.
- (3) VR must provide written notice in accordance with VR requirements of due process to individuals, including their representatives when appropriate, and potentially eligible students with disabilities referred for pre-employment transition services:



- (a) At the time the individual applies for VR services or at the first meeting for potentially eligible students with disabilities;
  - (b) At the time the individual is assigned to a priority category, if VR has established an order of selection;
  - (c) At the time the IPE is developed; and
  - (d) Whenever VR services for an individual are reduced, suspended, or terminated.
- (4) The request for a review of a determination made by VR that affects the provision of VR services may be either oral, written or on-line. The request must be made no later than thirty (30) calendar days after the date of notification of a determination by VR. This includes a determination made as the result of an Informal Administrative Review or Mediation.
  - (5) Unless otherwise requested by the individual or, as appropriate, the individual's representative, the default method for review will be by Informal Administrative Review.
  - (6) The VR Director must approve mediation and the availability of a qualified Mediator.
  - (7) Reviews requested by individuals, including their representatives when appropriate, must be conducted timely in accordance with VR requirements, including reporting to an individual or, as appropriate, the individual's representative the outcome of the review.
  - (8) VR may not institute a suspension, reduction, or termination of VR services being provided to an applicant or recipient, including evaluation and assessment services and IPE development, pending a resolution through mediation, pending a decision by a hearing officer, or reviewing official, or pending informal resolution under this section unless the individual or, in appropriate cases, the individual's representative, requests a suspension, reduction, or termination of services, or VR has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative.
  - (9) An individual or, as appropriate, the individual's representative, may request a fair hearing by an Impartial Hearing Officer at any time during an informal administrative review or mediation or no later than thirty (30) calendar days after the date of notification of a determination of an informal administrative review or mediation.
  - (10) An individual has the right to be represented by legal counsel or other representative and the right to submit evidence and other supporting information.
  - (11) Review made by an Impartial Hearing Officer is conducted in accordance with the requirements of the Division of Appeals and Hearings.

Authority: T.C.A. §§ 4-5-202, 4-5-301 et seq., 49-11-601, et seq., and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; and 34 C.F.R. §§ 361.5, 361.13, and 361.57.



Chapter 1240-08-11  
Supported Employment Services Program  
Amendments

Rule 1240-08-11-.01 Purpose is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

The Department of Human Services, Division of Rehabilitation Services (DRS), Vocational Rehabilitation (VR) Program is the designated state entity for the administration of Supported Employment Services under Title VI of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act. This chapter sets forth the guidelines of the VR Program for Supported Employment Services.

Authority: T.C.A. §§ 4-5-202 and 71-1-105(a)(12); PL 93-112, as amended by PL 99-506; and 34 C.F.R. §§ 361 and 363.1, et seq.

Rule 1240-08-11-.02 Definitions is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) "Supported Employment" means competitive integrated employment including customized employment when appropriate, 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 and extended services after the transition from support provided by VR, in order to perform this work; or
  - (c) Who may require transitional employment services for individuals with the most significant disabilities due to mental illness consisting of sequential placement and support, coordination with mental health services to integrate an individual's mental health treatment with career development and placement, and job stabilization.
- (2) "Extended Services" means ongoing job supports 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 IPE;
  - (d) Provided by a State agency other than VR, a private nonprofit organization, employer, or any other appropriate resource, including natural supports, after an individual is stable on the job and has made the transition from support from VR;
  - (e) Provided at a minimum, twice-monthly monitoring at the worksite, or under specific circumstances, off-site monitoring, of each individual in supported employment to assess employment stability and to provide for the coordination and provision of specific services at or away from the worksite that are needed to maintain employment stability;
  - (f) Provided to a youth with a most significant disability 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, whichever occurs first. VR may not provide extended services to an individual with a most significant disability who is not a youth with a most significant disability.

- (3) "Plan for Supported Employment" means an IPE developed in accordance with Rule 1240-08-04-.03 that also:
- (a) Specifies the supported employment services to be provided by VR;
  - (b) Specifies the expected extended services needed, which may include natural supports;
  - (c) Identifies the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the IPE is developed, includes a description of the basis for concluding that there is a reasonable expectation that those sources will become available;
  - (d) Provides for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the IPE by the time of transition to extended services;
  - (e) Provides for the coordination of services provided under an IPE with services provided under other individualized plans established under other Federal or State programs;
  - (f) To the extent that job skills training is provided, identifies that the training will be provided on site; and
  - (g) Includes placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities.

Authority: T.C.A. §§ 4-5-202 and 71-1-105(a)(12); PL 93-112, as amended by PL 99-506; and 34 C.F.R. §§ 361, 361.5, and 363.6.

Rule 1240-08-11-.03 Eligibility for Supported Employment is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) The VR Counselor determines eligibility for supported employment based on an exploration, including a review of existing information, of the individual's abilities, capabilities, and capacity to perform in work situations.
- (2) An individual who is eligible for supported employment must meet the eligibility criteria for VR services in Rule 1240-08-04-.02. The individual must also be placed in the Most Significantly Disabled Category as outlined in Rule 1240-08-05-.01.

Authority: T.C.A. §§ 4-5-202 and 71-1-105(a)(12); PL 93-112, as amended by PL 99-506; and 34 C.F.R. §§ 361, 361.5, and 363.1, et seq.

Rule 1240-08-11-.04 Provision of Services is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Supported employment services are provided on-the-job following a determination by VR and a registered CRP of an eligible individual's rehabilitation, employment, and ongoing support needs and described in an IPE plan for supported employment. Supported employment services under the federal grant include job training, services required because of the individual's intensive support needs on the job, and ongoing job supports.
- (2) Supported employment services may be provided by VR for a period of time not to exceed twenty-four (24) months unless, under special circumstances, the eligible individual and the VR Counselor jointly agree to extend the time to achieve the employment outcome identified in the IPE.
- (3) Supported employment services must be provided in accordance with VR requirements by a registered CRP with the appropriate training certification.
- (4) Part-time placements of less than fifteen (15) hours per week must be approved by VR for meeting all CIE requirements.

- (5) Ongoing job supports are based on individual need required to support and maintain an individual with a most significant disability in supported employment and furnished by VR from the time of job placement until the individual is stable on the job and transitions from VR services to extended services. An individual is considered to be stable on the job when ongoing job supports have been reduced to a minimum for the individual to maintain employment.
- (6) Post-employment services may be provided in accordance with Rule 1240-08-04-.07.
- (7) Extended services determined to be necessary for an individual to maintain employment are provided by a State agency other than VR, a private nonprofit organization, employer, or any other appropriate resource, including natural supports.
- (8) Extended services for youth may be funded by a State agency other than VR or other resources; provided by natural supports; or funded by VR provided there are no other means of funding for providing the extended services and the youth has not declined VR providing extended services. If VR funds extended services for a youth with a disability, the case will not be closed until the time period for providing extended services ends.

Authority: T.C.A. §§ 4-5-202 and 71-1-105(a)(12); PL 93-112, as amended by PL 99-506; and 34 C.F.R. §§ 361, 361.5, and 363.1, et seq.

Rule 1240-08-11-.05 Case Closure is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) An individual is considered to have achieved a successful supported employment outcome when the individual has achieved CIE; completed all supported employment services based on the individual's strengths, abilities and interests and as listed on the individual's IPE; transitioned to extended services; and maintained employment for at least ninety (90) days after transitioning to extended services.
- (2) The decision for closing a case will be made by VR on an individual basis in accordance with VR policy.

Authority: T.C.A. §§ 4-5-202 and 71-1-105(a)(12); PL 93-112, as amended by PL 99-506; and 34 C.F.R. §§ 361 and 363.1, et seq.

Chapter 1240-08-12  
Independent Living  
New

1240-08-12-.01 Purpose.

The Department of Human Services, Division of Rehabilitation Services (DRS), Vocational Rehabilitation (VR) Program is the designated state entity for the administration of the Independent Living and Independent Living Older Blind (age 55 and older) Federal grant authorized by the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014, 29 U.S.C. §§ 720 et seq. for whom significant visual impairments make competitive employment extremely difficult to attain but for whom independent living goals are feasible through services that enable individuals to live as independently as possible in their homes and communities. This chapter sets forth the guidelines for Independent Living Services.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); Rehabilitation Act of 1973 Sections 751-753, as amended (codified in 29 U.S.C. 796j-7961); 34 C.F.R. Parts 361, 364, 365 and 367; 45 C.F.R. Part 1329; and Executive Order No. 43 (1983).

1240-08-12-.02 Definitions.

- (1) Independent Living Services Plan (ILSP) means a plan of service that is developed jointly with the individual and the Rehabilitation Teacher that has intermediate objectives, planned corresponding services, equipment needed to enhance independence, and the duration of services designed to permit individuals to carry out their daily living activities, to manage their lives more efficiently within their environment, and to reach their potential for independence, self-esteem and productivity.
- (2) Rehabilitation Teacher means qualified staff that assist and support individuals with visual impairments to maximize their ability to live independently in the home and the community.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); Rehabilitation Act of 1973 Sections 751-753, as amended (codified in 29 U.S.C. 796j-7961); 34 C.F.R. Parts 361, 364, 365 and 367; 45 C.F.R. Part 1329; and Executive Order No. 43 (1983).

1240-08-12-.03 Eligibility for Independent Living.

- (1) The Rehabilitation Teacher determines eligibility for Independent Living and Independent Living Older Blind services based on:
  - (a) The presence of a significant disability related to the loss of vision;
  - (b) The presence of a severe limitation in the ability to function independently in family and/or community; and
  - (c) There is a reasonable expectation that Rehabilitation Teaching services will significantly assist the individual to improve his/her ability to function independently in the family, and/or community.
- (2) For purposes of determining eligibility for services, an individual is considered to be significantly disabled if one of the following criteria is met:
  - (a) Blindness, both eyes, no light perception.
  - (b) Blindness, both eyes, with correction no more than 20/200 in the better eye or limitation in visual field within 20 degrees.
  - (c) Blindness, one eye, other eye defective (better eye with correction 20/60 or less, or corresponding loss in visual field (60 degrees or less).
  - (d) Other visual impairment wherein the corrected vision will not permit the individual to obtain a driver's license for visual reasons.

- (3) Referrals of individuals whose goal is competitive employment should be coordinated with the appropriate VR staff.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); Rehabilitation Act of 1973 Sections 751-753, as amended (codified in 29 U.S.C. 796j-7961); 34 C.F.R. Parts 361, 364, 365 and 367; 45 C.F.R. Part 1329; and Executive Order No. 43 (1983).

#### 1240-08-12-.04 Provision of Services.

- (1) Independent living services are based on individual need and are provided in the individual's home and community in accordance with the ILSP. Independent living services may include counseling and guidance, assessment for eligibility and to identify needs, independent living training, low vision training and devices, assistive devices and equipment, information about and referral for other appropriate services, basic mobility training, certified orientation and mobility evaluation and training, and transportation training.
- (2) Services are provided or coordinated by the Rehabilitation Teacher.
- (3) The availability of comparable services and benefits must be determined for purchased services.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); Rehabilitation Act of 1973 Sections 751-753, as amended (codified in 29 U.S.C. 796j-7961); 34 C.F.R. Parts 361, 364, 365 and 367; 45 C.F.R. Part 1329; and Executive Order No. 43 (1983).

#### 1240-08-12-.05 Case Closure.

- (1) A case may be closed if the individual has completed an ILSP insofar as possible and has been determined to have improved the ability to function independently in the home, or to engage in employment, or until the ILSP has been terminated due to death or a determination has been made that the individual has not or will not be expected to function more independently in the family and/or community.
- (2) The decision for closing a case will be made by the Rehabilitation Teacher on an individual basis.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); Rehabilitation Act of 1973 Sections 751-753, as amended (codified in 29 U.S.C. 796j-7961); 34 C.F.R. Parts 361, 364, 365 and 367; 45 C.F.R. Part 1329; and Executive Order No. 43 (1983).

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services (board/commission/ other authority) on 2/27/2024, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: (08/04/2023)

Rulemaking Hearing(s) Conducted on: (add more dates). (09/19/23)

Date: 2/27/2024

Signature: \_\_\_\_\_

*K. R. Wright*

Digitally signed by Kevin R Wright  
Date: 2024.02.27 15:53:22 -06'00'

Name of Officer: Kevin R. Wright

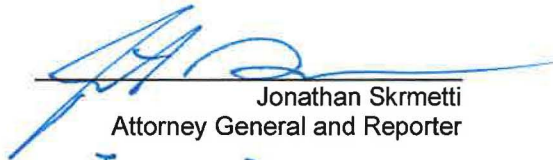
Assistant Commissioner, Division of Rehabilitation

Title of Officer: Services

Agency/Board/Commission: Department of Human Services

Rule Chapter Number(s): 1240-08-01, 1240-08-02, 1240-08-03, 1240-08-04, 1240-08-05, 1240-08-11, 1240-18-12

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

  
Jonathan Skrmetti  
Attorney General and Reporter  
Feb. 28, 2024  
Date

#### Department of State Use Only

Filed with the Department of State on: 2/29/2024

Effective on: 5/29/2024

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## **Public Hearing Comments**

No public comments were received on these rules.

### **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule will not impact small businesses.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

This rule will not impact local governments and there is no financial impact.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rule revisions make a number of changes including removing chapter 1240-08-01 as no longer needed. In chapter 1240-08-02, definitions were updated and expanded upon, and minor language revisions were made to the procedures. In the legal basis chapter, minor language revisions and updates were made emphasizing that VR is the sole State agency to administer the VR Services portion of the Unified or Combined State Plan. In chapter 1240-08-03, minor language revisions and updates were made emphasizing the purpose of achieving competitive integrated employment and obtaining independent living skills and including pre-employment transition services. The financial needs assessment rule was moved to chapter 1240-08-05. In the staff and training provision, minor language revisions were made for development of training plans and curricula. The background check chapter was revised to include individuals completing internships.

In chapter 1240-08-04-.01, minor language revisions were made to include clarifications on residency and adjoining states, submitting an application, serving minors, and eligibility to work in the United States. Within chapter 1240-08-04-.02, a new section was added to include eligibility and disability priority in accordance with the Vocational Rehabilitation Services Procedures Manual. In the IPE section, minor language revisions and updates were made to requirements for IPE development and employment outcome, student IPEs, individual responsibilities, and amendments. In the counseling and guidance section, minor language revisions were made to include person-centered practices.

In chapter 1240-08-04-.05, language revisions and updates were made to include fee and procurement processes and a comprehensive list of VR diagnostic, contributing, and support services. In the post-employment services section, revisions were made in accordance with RSA changes for the provision of post-employment services. In the case closure chapter, language revisions and updates were made to expand on requirements for case closure in accordance with the VRPM. In the order of selection provisions, edits were made to define order of selection and serving customers under an order of selection. In the financial needs assessment provisions, the prior chapter 1240-08-03-.02 was moved and updates were made to expand upon conducting a financial need assessment. Additionally, language was added specifying services that are not subject to a financial need assessment. Chapter 1240-08-08-.05 was renamed and language revisions and updates were made to expand on determining comparable services and benefits and clarification for subrogation. A new section was added to define auxiliary aids and services. Chapter 1240-08-05-.06 was added to define administrative review, mediation, and fair hearing.

The section on the TRC at Smyrna was renamed and updated to conform with changes in the service delivery model. Section 1240-08-05-.08 was revised to change the section name, and revise language to conform with changes in CTRC service delivery.

Chapter 1240-08-11 was amended by expounding upon definitions, eligibility, provision of services, and case closure in accordance with the VRPM.

A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. §§ 4-5-202, 71-1-104, and 71-1-105(a)(12); 34 C.F.R. Part 361. These rules follow within state and federal guidelines and authority for the Department of Human Services to administer the Vocational Rehabilitation Services program.

Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons most impacted by these rule changes are Division of Rehabilitation Services customers. The Department did not receive any public comments on these rules, so we are unaware of any opposition to these changes.

Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

No Attorney General opinions or judicial rulings impact these rules.

An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There is no increase or decrease in state or local revenues or expenditures.

Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Mary Dobbs, Legislative Liaison, Department of Human Services, [Mary.Dobbs@tn.gov](mailto:Mary.Dobbs@tn.gov); 615-741-0278.

Identification of the appropriate agency representative or representatives who will explain the rule at scheduled meeting of the committees;

Mary Dobbs, Legislative Liaison, Department of Human Services, [Mary.Dobbs@tn.gov](mailto:Mary.Dobbs@tn.gov); 615-741-0278.

Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

505 Deaderick Street, Nashville, TN 37243; [Mary.Dobbs@tn.gov](mailto:Mary.Dobbs@tn.gov); 615-741-0278,

Any additional information relevant to the rule proposed for continuation that the committee requests;

N/A.

**TENNESSEE DEPARTMENT OF HUMAN SERVICES  
REHABILITATION SERVICES DIVISION**

**CHAPTER 1240-08-01  
DOG GUIDE CERTIFICATION FOR THE HEARING IMPAIRED**

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1240-08-01-.01 Dog Guide Certification by the Tennessee Council for the Hearing Impaired

**~~1240-08-01-.01 DOG GUIDE CERTIFICATION BY THE TENNESSEE COUNCIL FOR THE HEARING IMPAIRED~~**

- ~~(1) — Certification of dog guides for the hearing impaired shall be issued by the Tennessee Council for the Hearing Impaired upon receipt of documentation from an accredited school or recognized agency providing training attesting that the animal has been trained to aid the hearing impaired, and the owner will submit an affidavit certifying that he/she needs the assistance of this dog and the animal has been trained to perform the following work (a minimum of three required):~~
- ~~(a) — Fetches owner to answer knock, bell or buzzer at door;~~
  - ~~(b) — Fetches owner to answer telephone (TTY) ring;~~
  - ~~(c) — Fetches owner to crying child;~~
  - ~~(d) — Fetches owner to unattended running water;~~
  - ~~(e) — Carries notes from owner to other person (or other person to owner);~~
  - ~~(f) — Notifies owner of fire or smoke alarm;~~
  - ~~(g) — Notifies owner of intruder at dwelling;~~
  - ~~(h) — Fetches another person to owner;~~
  - ~~(i) — Fetches specific object to owner;~~
  - ~~(j) — Notifies owner of boil-over on stove;~~
- ~~(2) — In lieu of documentation from an accredited school or recognized agency for training dog guides, application for certification must be accompanied by an affidavit from the owner and from someone involved in the training of the dog, or a representative or TCHI who has witnessed the animal's performance, certifying that the animal has demonstrated training in basic obedience skills and can perform the following work (a minimum of three required):~~
- ~~(a) — Fetches owner to answer knock, bell or buzzer at door;~~
  - ~~(b) — Fetches owner to answer telephone (TTY) ring;~~
  - ~~(c) — Fetches owner to crying child;~~



- ~~(d) — Fetches owner to unattended running water;~~
- ~~(e) — Carries notes from owner to other person (or other person to owner);~~
- ~~(f) — Notifies owner of fire or smoke alarm;~~
- ~~(g) — Notifies owner of intruder at dwelling;~~
- ~~(h) — Fetches another person to owner;~~
- ~~(i) — Fetches specific object to owner;~~
- ~~(j) — Notifies owner of boil-over on stove;~~
- ~~(3) — The owner will also submit an affidavit certifying that he or she needs the assistance of this dog. Upon receipt of this documentation, the Tennessee Council for the Hearing Impaired will issue to the owner within ten (10) working days credentials certifying the animal as a "guide dog for the hearing impaired".~~

Authority: T.C.A. § 62-7-112.

**TENNESSEE DEPARTMENT OF HUMAN SERVICES  
REHABILITATION SERVICES DIVISION**

**CHAPTER 1240-08-02  
GENERAL RULES**

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**1240-08-02-.01 PURPOSE.**

~~The Department of Human Services, Division of Rehabilitation Services is the designated State unit that is primarily concerned with vocational and other rehabilitation of individuals with physical, mental and sensory disabilities. The Division of Rehabilitation Services (the Division) is responsible for the Vocational Rehabilitation (VR) Program which includes the determination of eligibility, the determination of the nature and scope of services, and the provision of services for individuals consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice so that they may prepare for employment.~~

The Department of Human Services, Division of Rehabilitation Services is the designated State unit that is primarily concerned with vocational and other rehabilitation of individuals with physical, cognitive, mental, and sensory disabilities. The Division of Rehabilitation Services (the Division or DRS) is responsible for the Vocational Rehabilitation (VR) Program which includes the determination of eligibility, the determination of the nature and scope of VR services, and the provision of services for individuals consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice so that they may prepare for, secure, retain, advance in, or regain employment.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, and 71-1-105(a)(12); 34 C.F.R. Part 361; and Executive Order No. 43 (1983).

**1240-08-02-.02 DEFINITIONS.**

~~The words and terms as used herein have the following meanings:~~

- (1) ~~"Act" means the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014, 29 U.S.C. §§ 720 et seq. Words and terms defined in federal law and regulations are adopted by reference into these rules;~~
- (2) ~~"Applicant" means an individual who applies to the Division for vocational rehabilitation services;~~
- (3) ~~"Blind" means a person who had been determined to have not more than 20/200 vision acuity in the better eye with best correction, or an equally disabling loss of the visual field as evidenced by~~

a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees;

~~(4) "Combined/Unified State Plan" means the plan for vocational rehabilitation services submitted by the Division to the Rehabilitation Services Administration in compliance with Title I, Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014.~~

~~(5) "Commissioner" means the executive head of the Department of Human Services;~~

~~(6) "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:~~

~~1. 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.S. 206 (a)(1)) or the rate required under the applicable State or local minimum wage law for the place of employment;~~

~~2. 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~~

~~3. 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~~

~~4. Is eligible for the level of benefits provided to other employees; and~~

~~(b) Is at a location:~~

~~1. Typically found in the community; and~~

~~2. Where the employee with a disability interacts for the purpose of performing the duties of the position with the employees with 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 interacts 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.~~

~~(7) "Contributing Services" means services that help or cause to bring about the rehabilitation of an individual's functional limitations in order to achieve an employment objective, but do not include support services.~~

~~(8) "Counselor" means an employee of the Tennessee Division of Rehabilitation Services who is designated in the job description as a counselor;~~

~~(9) "Department" means the Tennessee Department of Human Services;~~

- (10) ~~"Designated State Unit" means the Division of Rehabilitation Services, which is primarily concerned with vocational and other rehabilitation of individuals with disabilities and is responsible for the administration of the State's VR program;~~
- (11) ~~"Division" means the Division of Rehabilitation Services (the Division or DRS);~~
- (12) ~~"Employment Outcome" means entering or retaining full-time or, if appropriate, part-time competitive employment in an integrated labor market to the greatest extent practicable; that meets the definition for competitive integrated employment; including supported, customized and self-employment employment; or any other type of employment that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;~~
- (13) ~~"Fair Hearing" means a contested case proceeding before an impartial hearing officer designated by the Commissioner of the Department of Human Services who shall afford the individual and the Division, or their authorized representatives, the opportunity to present their case, with or without witnesses, to determine whether action or inaction by the county, area, regional, district, or state office is erroneous and should be corrected. Each party has an opportunity to disclose all relevant facts and issues, respond to and present evidence, conduct cross-examination, and submit rebuttal evidence as permitted under the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq. Hearings may be conducted by telephone, television, or other electronic means, and shall be open to public observation unless otherwise provided by state or federal law. Hearings are conducted in accordance with the Uniform Administrative Procedures Act codified at T.C.A. §§ 4-5-101 et seq. An aggrieved party may obtain a review of any final order by appealing to chancery court in Davidson County, the county of the official residence of the commissioner, or the county where one or more of the petitioners resides, in accordance with T.C.A. § 4-5-322. If dissatisfied with the chancery court's decision, the individual may appeal further to the court of appeals of Tennessee, in accordance with T.C.A. § 4-5-323.~~
- (14) ~~"Individual" means person who has been referred or has applied for services and/or determined eligible for receives services from the Division;~~
- (15) ~~"Maximum Effort" means a specific method or action to achieve a particular benefit to pay for specified rehabilitation services. It may consist of a set policy or process which may be applied in appropriate cases. For example, the Division could have a cooperative agreement with State university officials for financial assistance officers to interview and evaluate the financial need of all Division of Rehabilitation Services sponsored students;~~
- (16) ~~"Qualified Personnel" means personnel possessing those specific qualifications and/or credentials for persons providing a function for which such qualifications are required;~~
- (17) ~~"Recipient" means an individual that is receiving Pre-Employment Transition Services. This individual is eligible or potentially eligible for VR services.~~
- (18) ~~"Student with disability" means an individual with a disability who is no younger than 14 and no older than 22. The individual must be participating in an educational program.~~
- (19) ~~"Unsupervised access" means the right or ability of a person to be left alone with funds, personal property, or personal identification information of a VR client or program participant with no other adults present and includes those whose employment duties include direct supervisory responsibility for individuals with such access.~~

- (20) ~~"Unsupervised contact" means the right or ability of a person to meet with or be left alone with a VR client or program participant one-on-one with no other adults present and includes those whose employment duties include direct supervisory responsibility for such individuals.~~
- (21) ~~"Vocational Rehabilitation Program" means the publicly funded program authorized by the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014, 29 U.S.C. §§ 720 et seq., including: the Tennessee Business Enterprise (TBE), the Tennessee Rehabilitation Center (TRC), the Community Tennessee Rehabilitation Centers (CTRC), Independent Living (IL), and those funded wholly or in part through this authorization to provide employment related services consistent with the abilities, skills and interest of individuals with disabilities in a competitive, integrated setting.~~
- (22) ~~"Youth with disability" means an individual with a disability who is no younger than 14 and no older than 24. The individual may or may not be participating in an educational program.~~

The words and terms as used herein have the following meanings:

- (1) "Act" means the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014, 29 U.S.C. §§ 720 et. seq. Words and terms defined in federal law and regulations are adopted by reference into these rules.
- (2) "Applicant" means an individual who applies to the VR Program for vocational rehabilitation (VR) services.
- (3) "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, Braille and large print materials, foreign language interpreters, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.
- (4) "Blind" means a person who has been determined to have not more than 20/200 vision acuity in the better eye with best correction, or an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.
- (5) "Business licenses" are defined as any license, permit, or other written authority required by a state, city, or other governmental entity in order to enter into an occupation or operate a business.
- (6) "CART (Communication Access Realtime Translation)" is defined as the instant translation of the spoken word into English text using real-time software to display text on a television, video screen, or other visual display.
- (7) "Client Assistance Program (CAP)" means a program available to help an individual understand the services and benefits available from VR services; request and pursue an appeal of a decision made by VR that affects the provision of VR services; and understand his or her rights and responsibilities under the law. The CAP is provided by Disability Rights Tennessee. Contact the CAP by mail at 2 International Plaza, Suite 825, Nashville, TN 37217; by phone (1-800) 342-1660 or TTY (1-888) 852-2852; or by email [GetHelp@disabilityrightstn.org](mailto:GetHelp@disabilityrightstn.org).
- (8) "Combined/Unified State Plan" means the plan for VR services submitted by the Division to the Rehabilitation Services Administration in compliance with Title I, Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014.

(9) "Commissioner" means the executive head of the Department of Human Services.

(10) "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:

1. 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;

2. 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

3. 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

4. Is eligible for the level of benefits provided to other employees; and

(b) Is at a location:

1. Typically found in the community; and

2. Where the employee with a disability interacts for the purpose of performing the duties of the position with the employees with 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 interacts 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.

(11) "Contributing Services" means VR services that help or cause to bring about the rehabilitation of an individual's functional limitations in order to achieve an employment objective but does not include VR support services.

(12) "Counselor" means an employee of the Division who is designated in the job description as a VR Counselor.

(13) "Customer" or "Individual" means a person who has been referred or has applied for VR services or has been determined eligible for and receives services from VR.

(14) "Customized Employment" means competitive integrated employment, for an individual with a significant disability, that is:

(a) Based on an individualized determination of the unique strengths, needs, and interests of the individual with a significant disability;



- (b) Designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer; and
- (c) Carried out through flexible strategies, such as:
1. Job exploration by the individual; and
  2. 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.
- (15) "Department" means the Tennessee Department of Human Services.
- (16) "Designated State Unit" means the Division of Rehabilitation Services, which is primarily concerned with vocational and other rehabilitation of individuals with disabilities and is responsible for the administration of the State's VR Program.
- (17) "Disability" means any physical, cognitive, mental, or sensory impairment that limits an individual's work activities and interaction with the world around them.
- (18) "Disability Priority" means the order to be followed in determining eligible individuals to be provided VR services when an order of selection has been implemented.
- (19) "Division" or "DRS" means the Division of Rehabilitation Services.
- (20) "Due Process" means a course of informal or legal proceedings according to established rules and regulations for the enforcement and protection of customer rights.
- (21) "Eligible Individual" means a person who meets the basic requirements for eligibility and whose disability priority has been determined to be in an open priority category.
- (22) "Eligible Student" means a student that meets the definition of a Student with a Disability and is eligible for VR services under an Individualized Plan for Employment (IPE).
- (23) "Employment Outcome" means entering or retaining full-time or, if appropriate, part-time competitive employment in an integrated labor market to the greatest extent practicable; that meets the definition for competitive integrated employment; including supported employment, customized employment, and self-employment; or any other type of employment that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- (24) "Fair Hearing" means a contested case proceeding before an impartial hearing officer designated by the Commissioner of the Department of Human Services who shall afford the individual and the

Division, or their authorized representatives, the opportunity to present their case, with or without witnesses, to determine whether action or inaction by the county, area, regional, district, or state office is erroneous and should be corrected. Each party has an opportunity to disclose all relevant facts and issues, respond to and present evidence, conduct cross-examination, and submit rebuttal evidence as permitted under the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq. Hearings may be conducted by telephone, television, or other electronic means, and shall be open to public observation unless otherwise provided by state or federal law. Hearings are conducted in accordance with the Uniform Administrative Procedures Act codified at T.C.A. §§ 4-5-101 et seq. An aggrieved party may obtain a review of any final order by appealing to the chancery court in Davidson County, the county of the official residence of the commissioner, or the county where one or more of the petitioners resides, in accordance with T.C.A. § 4-5-322. If dissatisfied with the chancery court's decision, the individual may appeal further to the court of appeals of Tennessee, in accordance with T.C.A. § 4-5-323.

(25) "Full- or Part- Time Employment" means the number of hours considered by an employer to be full-time or part-time.

(26) "Impartial Hearing Officer" 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 for the designated State unit;
- (c) Has not been involved previously in the vocational rehabilitation of the applicant or recipient of services;
- (d) Has knowledge of the delivery of VR services, the VR services 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 objectivity of the individual.

(27) "Individual with a Significant Disability" means an individual:

- (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 VR 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.

- (28) "Informed Choice" means an ongoing counseling and guidance and person-centered practice that ensures an individual or, as appropriate, the individual's representative has a range of options from which to make decisions and has the skills or, to the extent possible, the opportunity to develop such skills or support for evaluating options and for making decisions that reflect the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests, including the consequences of choosing various options, in a manner that is understandable to the individual.
- (29) "Individual's Representative" means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, 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.
- (30) "Legal Representative" means a court-appointed representative or parent of an individual under 18 years of age.
- (31) "Maximum Effort" means a specific method or action to achieve a particular benefit to pay for specified VR services. It may consist of a set policy or process which may be applied in appropriate cases. For example, the Division could have a cooperative agreement with State university officials for financial assistance officers to interview and evaluate the financial need of all VR sponsored students.
- (32) "Most Significantly Disabled" means an individual with a significant disability who meets VR's criteria for an individual with a most significant disability.
- (33) "Non-significantly Disabled" means an individual who does not have a significant disability.
- (34) "Potentially Eligible" means a student that meets the definition of a Student with Disability and is receiving Pre-employment Transition Services.
- (35) "Qualified Personnel" means personnel possessing those specific qualifications and/or credentials for persons providing a function for which such qualifications are required.
- (36) "Student with a Disability" means an individual with a disability who is no younger than 14 and no older than 22 and is eligible for, and receiving, special education or related services under Part B of the Individuals with Disabilities Education Act (IDEA) or is a student who is an individual with a disability for purposes of section 504 of the Rehabilitation Act.
- (37) "Unsupervised Access" means the right or ability of a person to be unattended with funds, personal property, or personal identification information of a VR customer or program participant with no other adults present and includes those whose employment duties include direct supervisory responsibility for individuals with such access.
- (38) "Unsupervised Contact" means the right or ability of a person to meet with or be unattended with a VR customer or program participant one-on-one with no other adults present and includes those whose employment duties include direct supervisory responsibility for such individuals.
- (39) "Vocational Rehabilitation Counselor" or "VR Counselor" means qualified staff that assist individuals with disabilities to overcome barriers to employment and meet their employment goals by preparing for entry or re-entry into competitive integrated employment.
- (40) "Vocational Rehabilitation Director" or "VR Director" means the individual who has been appointed in accordance with the hiring directives of the State's Department of Human Resources as the head of the VR Program.

(41) "Vocational Rehabilitation Program" or "VR Program" or "VR" means the publicly funded program authorized by the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014, 29 U.S.C. §§ 720 et seq., including the Tennessee Rehabilitation Center at Smyrna (TRCS), the VR Community Services Unit (CSU), and those funded wholly or in part through this authorization to provide employment related services consistent with the abilities, skills and interest of individuals with disabilities in a competitive, integrated setting.

(42) "Youth with a Disability" means an individual with a disability who is no younger than 14 and no older than 24. The individual may or may not be eligible for an educational program under IDEA.

Authority: T.C.A. §§ 4-3-1208, 4-5-202, 4-5-301, et seq., 49-11-601, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. Part 361; 34 C.F.R. §§ 370.1, et seq.; and Executive Order No. 43 (1983).

#### **1240-08-02-.04 PROCEDURES.**

~~(1) Procedures governing the provision of services are developed by the Division of Rehabilitation Services in accordance with these rules and the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act.~~

(1) Procedures are developed by VR in accordance with the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, and federal regulations.

(2) Procedures define the requirements for service delivery and associated case management practices including allowable fees and specific requirements for authorizing services.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; and 34 C.F.R. Part 361.

#### **1240-08-02-.05 LEGAL BASIS.**

~~The Tennessee Department of Human Services, Division of Rehabilitation Services is the sole state entity designated to administer the State's VR Program and is authorized to submit the VR Services portion of the combined/unified plan as a condition for receipt of federal funds under Title I of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, and agrees to administer the VR program in accordance with the Combined/Unified State Plan, the Act, and all applicable regulations, policies, and procedures established by the Secretary.~~

The Department of Human Services, Division of Rehabilitation Services has designated the State's VR Program as the sole State agency to administer the VR Services portion of the Unified or Combined State Plan and as such is authorized to submit the VR Services portion of the combined/unified plan as a condition for receipt of federal funds under Title I and Title VI of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, and agrees to administer the VR Program in accordance with the Combined/Unified State Plan, the Act, and all applicable regulations, policies, and procedures established by the Secretary.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. § 361.13; and Executive Order No. 43 (1983).

**TENNESSEE DEPARTMENT OF HUMAN SERVICES  
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**1240-08-03-.01 STATE AND LOCAL ORGANIZATION AND ADMINISTRATION.**

- ~~(1) — It is the responsibility of the Division of Vocational Rehabilitation VR Program to provide services necessary for the rehabilitation and habilitation of individuals with disabilities of Tennessee.~~
- ~~(2) — The authority and responsibility for administration of the VR Program affecting eligibility for, the nature and scope of available vocational rehabilitation services, and the provision of these services, is vested in the head of the designated State Division of Rehabilitation Services. This responsibility may not be delegated to any other entity or individual.~~
- ~~(3) — Supervisors are assigned to supervise the work of vocational rehabilitation counselors, Tennessee Business Enterprise counselors, and rehabilitation teachers.~~
- ~~(4) — Any person who believes he or she may be eligible for vocational rehabilitation services may contact any VR office or employee for assistance. Also, individuals may seek assistance from the Client Assistance Program (CAP) established under 34 C.F.R. §§ 370.1 et seq.~~
- ~~(5) — Vocational rehabilitation counselors have the assigned responsibility to make the initial eligibility determination for vocational rehabilitation services or for the provision of Pre-Employment Transition Services and to provide such services in accordance with the policies and procedures of the Division's VR Program.~~
- ~~(6) — Affirmative action for equal employment opportunity:
  - ~~(a) — Executive Order No. 8, an Order pertaining to Equal Employment Opportunity, is provided to all employees of the combined state entity of general and blind services. The Department of Human Services fully supports the policy of achieving equal employment opportunity for persons of every race, color, sex, religion, creed, or physical or mental impairment;~~
  - ~~(b) — Services of Tennessee's Division of Rehabilitation Services within the Department of Human Services are provided on a non-discriminatory basis without regard to disability, race, color, sex, religion, creed, or national origin in compliance with Title VI of the Civil Rights Act of 1964 and Title V of the Vocational Rehabilitation Act of 1973, as amended.~~~~
- (1) — It is the responsibility of the Division's VR Program to provide services necessary for the rehabilitation of individuals with disabilities of Tennessee for the purpose of achieving competitive integrated employment.
- (2) — The authority and responsibility for administration of the VR Program affecting eligibility for the nature and scope of VR services and the provision of these services is vested in the head of the

Division and the VR Program. This responsibility may not be delegated to any other entity or individual.

- (3) Supervisory staff are assigned to supervise the work of VR Counselors, Pre-employment Transition Specialists, TRCS and CSU staff, and other appropriate staff.
- (4) Qualified staff in accordance with VR requirements have assigned responsibilities for determining eligibility for and the provision of services in accordance with VR Program policies and procedures.
- (5) Any applicant or individual who is eligible for VR services may contact any VR office or employee for assistance and may also seek assistance from the Client Assistance Program (CAP) established under 34 C.F.R. §§ 370.1 et seq.
- (6) Services of the Division are provided on a non-discriminatory basis without regard to disability, race, color, sex, religion, creed, or national origin in compliance with Title VI of the Civil Rights Act of 1964 and Title V of the Vocational Rehabilitation Act of 1973, as amended.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); 34 C.F.R. Part 361; 34 C.F.R. § 370.1, et. seq.; and Executive Order No. 43 (1983).

#### **~~1240-08-03-.02 FINANCIAL NEED ASSESSMENT.~~**

- ~~(1) The Division's Vocational Rehabilitation (VR) Program will consider the financial need of each individual in determining the extent of his or her participation in the cost of specific services. The resources of the individual's family unit will be assessed annually or sooner if necessary. Prior to expenditure of agency funds for services that are based on financial need (except as may be required for assessments), VR must conduct a financial need assessment to determine the extent of an eligible individual's participation in the cost of those services that require such participation.~~
- ~~(2) There is no requirement of financial participation for an eligible individual using personal resources if the individual has been determined eligible to receive Social Security disability benefits (SSDI) or Supplemental Security Income disability benefits (SSI) based on the individual's own disability or Families First (TANF) cash benefits.~~

~~Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(12); 29 U.S.C. §§ 720, et seq.; and 34 C.F.R. § 361.54.~~



**TENNESSEE DEPARTMENT OF HUMAN SERVICES  
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~~**1240-08-04-.01 REFERRALS AND APPLICATIONS FOR VR SERVICES.**~~

- ~~(1) — The Division's Vocational Rehabilitation Program will receive referrals of individuals from any source by any means as long as the individual is present in the State. The referral source must provide the individual's name and contact information.~~
- ~~(2) — An individual who has been referred to VR will be considered an applicant when the individual has completed and signed a VR application form or has otherwise requested services from VR and has provided VR information necessary to initiate an assessment to determine eligibility and priority for services and is available to complete the assessment process.~~

~~Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.30 and 361.41; and Executive Order No. 43.~~

~~**1240-08-04-.02 INDIVIDUALIZED PLAN FOR EMPLOYMENT.**~~

- ~~(1) — An Individualized Plan for Employment (IPE) is initiated for each eligible individual in an open priority category and reviewed annually and amended as needed. Vocational rehabilitation (VR) services are provided in accordance with the approved IPE.~~
- ~~(2) — The IPE is developed by the eligible individual or, as appropriate, his or her representative, with assistance available, to the extent determined appropriate by the eligible individual, from the vocational rehabilitation counselor or through other technical assistance. A copy of the IPE will be provided to each individual.~~
- ~~(3) — The IPE must be designed to achieve a specific employment outcome that is selected by the individual that is consistent with the individual's unique strengths, resources, priorities, concerns,~~

abilities, capabilities, interests, and informed choice, and that will result in competitive integrated employment.

- ~~(4) For students with disabilities, the IPE will include coordination with the goals, objectives and pre-employment transition services identified by the individualized education program determined necessary to contribute towards obtaining competitive integrated employment and a projected post-school employment outcome.~~

~~Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 49-11-604(b), 71-1-104, and 71-1-105(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.5, 361.41, 361.42, 361.45, and 361.46; and Executive Order No. 43.~~

#### ~~1240-08-04 .03 COUNSELING, GUIDANCE, AND REFERRAL SERVICES.~~

- ~~(1) An individual with a disability is provided counseling, guidance, and referral services that are necessary to develop or implement his or her vocational rehabilitation (VR) program.~~
- ~~(2) Counseling and guidance is provided by the VR Counselor throughout the life of a case to facilitate the provision of services and achievement of competitive integrated employment. It is a process in which a vocational rehabilitation counselor works one-to-one with an individual with a disability.~~
- ~~(3) Referral means directing the individual to other entities for assistance and/or services not available from VR.~~

~~Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, and 71-1-105(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.37, 361.41, 361.42, 361.43, and 361.48; and Executive Order No. 43.~~

#### ~~1240-08-04 .04 VOCATIONAL REHABILITATION SERVICES.~~

- ~~(1) The provision of vocational rehabilitation (VR) services and support needs is based on the vocational rehabilitation and support needs of the individual consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, informed choice and VR policy and procedures as determined by an appropriate assessment conducted by the appropriate staff and identified in the individual's Individualized Plan for Employment.~~
- ~~(2) VR services comprise services that contribute to the achievement of competitive integrated employment and support services that enable an eligible individual to participate in contributing services.~~
- ~~(3) VR services must be provided in accordance with VR policy and procedure.~~
- ~~(4) Prior to providing VR services, a determination must be made by VR as to the availability of comparable services and benefits and the extent to which the comparable services or benefits can be utilized to provide or pay for the VR services.~~
- ~~(5) The provision of some VR services is based on the financial need of the individual as determined by VR in accordance with Rule 1240-08-03-.02. Based on the FNA some individuals must participate in the cost of some VR services.~~

~~Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, and 71-1-105(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.5, 361.5(b)(5), 361.43, 361.47, and 361.48; and Executive Order No. 43.~~

## **~~1240-08-04-.05 STANDARDS FOR CLOSING CASES.~~**

- ~~(1) The Division's VR Program may close a case from applicant status prior to making an eligibility determination if the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and VR has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative, to encourage the applicant's participation.~~
- ~~(2) VR may close a case from trial work experiences if 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 an individual's disability.~~
- ~~(3) VR may close a case because of a determination that applicant is ineligible for vocational rehabilitation services or that an eligible individual receiving services under an IPE is no longer eligible for services.~~
- ~~(4) VR may close a case of an individual who has achieved a successful employment outcome if all of the following requirements are met:
  - ~~(a) The individual has achieved competitive integrated employment described in the individual's IPE that is: consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice and is at a location typically found in the community (in the competitive labor market) where the client:
    - ~~1. Is compensated at not less than the legal minimum wage or at the customary rate for the same or similar work performed by employees who are not individuals with disabilities;~~
    - ~~2. Is eligible for the level of benefits provided to other employees who are not individuals with disabilities;~~
    - ~~3. Interacts with fellow employees for the purpose of performing the job duties within the work unit who are not individuals with disabilities;~~
    - ~~4. Has the opportunity for advancement that is similar for other employees who are not individuals with disabilities and who have similar positions.~~~~
  - ~~(b) The employment outcome has been maintained for an appropriate period of time, but not less than ninety (90) days, to ensure the stability of the employment outcome; and the individual no longer needs vocational rehabilitation services;~~
  - ~~(c) At the end of the appropriate period described in (b), the individual and the VR counselor consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment; and~~
  - ~~(d) The individual is informed through appropriate modes of communication of the availability of post-employment services.~~~~

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq.; 71-1-104, and 71-1-105(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.5, 361.44, 361.45, 361.46, 361.55, and 361.56; and Executive Order No. 43.

**~~1240-08-04-.06 POST-EMPLOYMENT SERVICES.~~**

- ~~(1) Post-employment services are one or more vocational rehabilitation services that are provided subsequent to the achievement of a successful employment outcome that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.~~
- ~~(2) Post-employment services must be provided under the terms of an Individualized Plan for Employment (IPE).~~
- ~~(3) Post-employment services are subject to the same requirements as services leading to employment including the requirement to consider and seek comparable benefits and services available under other programs and for a financial assessment.~~

~~Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, and 71-1-105(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.5, 361.37, and 361.48; and Executive Order No. 43.~~

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**1240-08-04-.01 REFERRAL AND APPLICATION FOR VR SERVICES.**

- (1) The VR Program will receive referrals of individuals from any source and by any means, including individuals who believe they may be eligible for VR services. The referral source must provide appropriate contact information.
- (2) An individual is considered to have submitted an application when the individual or, as appropriate, the individual's representative:
  - (a) Has completed an agency application form;
  - (b) Has completed a common intake application form in a one-stop center requesting VR services; or
  - (c) Has otherwise requested services from VR;
  - (d) Has provided to VR information necessary to initiate an assessment to determine eligibility and priority for services; and
  - (e) Is available in the State to complete the application process.
- (3) VR must make application information widely available throughout the State, including one-stop centers under section 121 of the Workforce Innovation and Opportunity Act.
- (4) An individual's residence may be in an adjoining state. If the individual is receiving services from the VR program in the adjoining state, the VR Counselor must contact the individual's VR Counselor in that state to coordinate services to prevent duplication of services.

- (5) Individuals seeking VR services who are minors (under 18 years of age) and who are legally emancipated from their parents or guardians must provide appropriate court documentation.
- (6) Individuals applying for services must be eligible to work in the United States. An applicant who cannot be identified as a natural citizen must provide an unexpired credential of eligibility to work on the United States. Credentials may include Permanent Resident Card (I-551), U.S. Citizen ID Card (I-197), Employment Authorization Document that contains a photograph of the individual (I-766), or Identification Card for Use of Resident Citizen in the United States (I-179). An I-9 work visa may be determined acceptable when warranted for the type of employment objective.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.30 and 361.41; and Executive Order No. 43 (1983).

#### **1240-08-04-.02 ELIGIBILITY AND DISABILITY PRIORITY.**

- (1) Following completion of the application process in Rule 1240-08-04-.01, an eligibility determination must be made within 60 days, unless:
  - (a) Exceptional and unforeseen circumstances beyond the control of VR preclude making an eligibility determination within 60 days and VR and the individual agree to a specific extension of time; or
  - (b) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out through trial work experiences in accordance with VR requirements.
- (2) An individual is eligible for VR services when the individual meets the basic requirements for eligibility and whose disability priority has been determined to be in an open priority category in accordance with Rule 1240-08-05-.01.
- (3) The basic requirements for eligibility are:
  - (a) The individual has a physical, cognitive, mental, or sensory impairment that constitutes or results in a substantial impediment to employment;
  - (b) The individual requires VR 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; and
  - (c) The individual can benefit in terms of an employment outcome from the provision of VR services.
- (4) Disability priority is based on the federal definition of an individual with a significant disability in accordance with Rule 1240-08-05-.01. Each individual who meets the basic requirements for eligibility will be placed into the highest disability priority category in accordance with Rule 1240-08-05-.01.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 49-11-604(b), 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.5 and 361.36; and Executive Order No. 43 (1983).

#### **1240-08-04-.03 INDIVIDUALIZED PLAN FOR EMPLOYMENT.**



- (1) An Individualized Plan for Employment (IPE) is initiated for each eligible individual in an open priority category in a timely manner, but not later than 90 days after the date of determination of eligibility, unless VR and the eligible individual agree to the extension of that deadline to a specific date by which the IPE must be completed. VR services are provided in accordance with the approved IPE.
- (2) The IPE is developed by the eligible individual or, as appropriate, the individual's representative, with assistance available, to the extent determined appropriate by the eligible individual, from the VR Counselor or through other technical assistance. A copy of the IPE will be provided to each individual, or, as appropriate, to the individual's representative.
- (3) The IPE must be designed to achieve a specific employment outcome that is selected by the individual that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, and that will result in competitive integrated employment. It is presumed that individuals with disabilities determined eligible for VR services are capable of working in competitive integrated employment until proven otherwise.
- (4) IPE development includes determining the extent of an individual's participation in the cost of services that require such participation in accordance with Rule 1240-08-05-.02.
- (5) For eligible students with disabilities, the IPE will include coordination with the goals, objectives and pre-employment transition services identified by the IDEA program determined necessary to contribute towards a projected post-school employment outcome and may be amended subsequently as necessary for services and an employment objective that will lead to competitive integrated employment. A student's IPE must be developed, signed, and approved before the student exits the school system.
- (6) An employment outcome must meet the requirements for competitive integrated employment and be consistent with the customer's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice and where the customer is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals and services must have been provided under an IPE that contributed to the achievement of the employment outcome. An individual must maintain employment for ninety (90) days for a successful employment outcome and case closure in accordance with Rule 1240-08-04-.06.
- (7) An individual is responsible for following the terms identified in the IPE Participant Responsibilities.
- (8) The IPE must be reviewed annually to assess an individual's progress in achieving the identified employment outcome and may be amended when a change in services or service providers is warranted and approved by VR.
- (9) An individual may choose to not pursue competitive integrated employment. VR must provide an individual referral to community resources that may include extended (sheltered) employment where appropriate rehabilitation services may be provided by an entity other than VR. VR will close the case in accordance with Rule 1240-08-04-.06. An individual in extended (sheltered) employment may return to VR at any time to pursue competitive integrated employment.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 49-11-604(b), 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.5, 361.41, 361.42, 361.45, and 361.46; and Executive Order No. 43 (1983).

#### **1240-08-04-.04 COUNSELING AND GUIDANCE, PERSON-CENTERED PRACTICES, AND REFERRAL SERVICES.**

- (1) The VR Program will provide counseling and guidance and person-centered practices for applicants and eligible individuals or, as appropriate, their representatives throughout the life of the case in order to facilitate informed choice and actively directing, planning, and participating in making decisions about VR services, supports, and employment outcomes.
- (2) Counseling and guidance is provided by the VR Counselor for each applicant and eligible individual or, as appropriate, the individual's representative through one-on-one discussions with the individual and by specific activities to facilitate the provision of services and achievement of competitive integrated employment and to assist the individual or, as appropriate, the individual's representatives to exercise informed choice.
- (3) Person-centered practices are provided for applicants and eligible individuals or, as appropriate, their representative to promote an ongoing person-oriented approach that empowers an individual or, as appropriate, the individual's representative to be actively involved in directing, planning, and participating in making decisions about the individual's VR program by focusing on the individual's unique strengths, abilities, capabilities, interests, personal choices, and informed choice.
- (4) Referral services are provided to direct an individual to other entities for assistance and/or services not available from VR that may contribute to achievement of an employment outcome.
- (5) The customer will be informed of his or her rights of appeal and how to contact a CAP representative in accordance with 1240-08-05-.06.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 49-11-604(b), 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.37, 361.41, 361.42, 361.43, and 361.48; and Executive Order No. 43 (1983).

#### **1240-08-04-.05 VOCATIONAL REHABILITATION SERVICES.**

- (1) The provision of VR services and support needs is based on the vocational rehabilitation and support needs of applicants and eligible individuals consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, informed choice and VR policy and procedures as determined by an appropriate assessment conducted by the appropriate staff and identified in the individual's IPE.
- (2) VR services comprise diagnostic and assessment services necessary for the diagnosis of impairments and determining rehabilitation need, services that contribute to the achievement of competitive integrated employment, and support services that enable an eligible individual to participate in diagnostic and assessment and contributing services.
- (3) VR diagnostic and assessment, contributing, and support services must be provided in accordance with VR policies and procedures.

- (4) Prior to providing VR services, a determination must be made by VR as to the availability of comparable services and benefits in accordance with Rule 1240-08-05-.04 and the extent to which the comparable services or benefits can be utilized to provide or pay for the VR services.
- (5) The provision of VR contributing and support services, with the exception of support services provided during diagnostic services, may be subject to the financial need of the individual as determined by VR in accordance with Rule 1240-08-05-.03. Based on the financial need assessment, some individuals may be required to participate in the cost of VR services that are subject to financial need. Refer to Rule 1240-08-05-.03 for services that are not subject to financial need.
- (6) Except for diagnostic and assessment services and diagnostic and assessment support services, VR services must be provided under an IPE in accordance with Rule 1240-08-04-.03.
- (7) VR has established a fee schedule for individual purchases of goods and services. Fees are authorized for payment by VR in accordance with the rules, policies, and procedures of the State's Central Procurement Office, or in accordance with fees established by the Centers for Medicare and Medicaid Services.
- (8) Goods and services may be procured through approved vendors, a federal or state funded program, contracted pre-paid services, journal voucher for another state agency, in-house service, or direct purchase by an individual by reimbursement or advanced payment in accordance with VR requirements.
- (9) Price quotes in accordance with VR requirements are required prior to the purchase of tangible (material) items that exceed \$5,000.
- (10) Any goods or equipment purchased for a customer who later becomes unable to complete a training program or achieve an employment outcome must be returned by the customer to VR.
- (11) VR services must be provided by appropriately credentialed professionals or approved service providers in accordance with VR requirements.
- (12) Some VR services cannot be provided while a customer is not participating in VR services, such as during breaks between school terms or during summer vacations or while a customer is otherwise unable to participate.
- (13) The individual may be required to participate in testing, training or an evaluation prior to receiving VR services.
- (14) Diagnostic and assessment services are not subject to financial need and are based on individual need for determining eligibility and priority for services in accordance with Rule 1240-08-04-.02 and for IPE development in accordance with Rule 1240-08-04-.03. Diagnostic and assessment services are not provided under an IPE. Diagnostic and assessment services may be needed to diagnose physical, psychological, cognitive, neuropsychological, and sensory impairments, which includes disability-related examinations and testing when existing records do not adequately describe an individual's current condition and to assess rehabilitation need.
  - (a) Diagnostic services must be provided by appropriately credentialed professionals and may not be used as a means for identifying impairments that the individual does not report.
  - (b) Assessment services to determine rehabilitation need may be provided in accordance with VR requirements by a registered Community Rehabilitation Provider (CRP).

- (c) Financial assistance with transportation, temporary lodging, and meals necessary to participate in a diagnostic service may be provided, when justified, and is not subject to financial need.
- (15) Contributing VR services and service providers are based on individual need for achieving competitive integrated employment. Contributing VR services may be provided for physical and mental restoration, training, employment, supported and customized employment, self-employment, rehabilitation technology, students with disabilities, and other services developed by VR that have been determined necessary for an individual to achieve an employment outcome.
- (a) Physical and mental restoration may be necessary to eliminate, reduce, or modify the effects of stable or slowly progressive physical or mental or emotional disorders so that an individual can return to previous work or achieve another employment outcome and includes corrective surgery or therapeutic treatment, nursing care, hospitalization, drugs and supplies, prosthetic and orthotic devices, eyeglasses and visual services, physical, occupational, and speech or hearing therapy, other medical or medically related services, and mental health services which includes therapy, medication, and treatment for substance use by voluntary referral to treatment services provided at no cost to VR.
1. Physical and mental restoration services do not include services to prolong life, prevent premature death, alleviate pain, or reduce or prevent disease unless these services may be expected to lead to or contribute to an employment outcome.
  2. VR is not responsible for the treatment of conditions that are unrelated to the disability and the resulting impediment to employment.
  3. Physical and mental restoration services must be completed within a reasonable period of time and will not be provided for an extended period of time.
  4. Individuals who are able to return to previous work following physical and mental restoration services will not be provided post-secondary training for the purpose of changing jobs.
  5. VR may purchase prescribed medications recommended by the treating physician.
  6. Mental restoration services may include treatment for substance use by treatment programs licensed by the State. Treatment services must be paid through comparable services and benefits. VR will not pay for substance use treatment.
  7. Some contributing services for physical or mental restoration services must be prescribed by an appropriately credentialed professional.
- (b) Training includes vocational and other training services, including personal and vocational adjustment training, advanced training in, but not limited to, a field of science, technology, engineering, mathematics (including computer science), medicine, law, or business; except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing or any other post-secondary education institution) may be paid for with VR funds unless maximum efforts have been made by VR and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

1. Personal adjustment training is disability-related and is provided to train or adapt an individual in the use of personal and adaptive equipment and techniques for the purpose of participating in VR services and to secure and maintain employment.
2. Vocational adjustment training is provided to develop and maintain an individual's capacities necessary for achievement of an employment outcome.
3. A post-secondary training institution is approved for VR funding if the institution is:
  - (i) A state-operated vocational school, two-year community college, or four-year college or university located in any of the fifty (50) U.S. states;
  - (ii) Approved by the U.S. Department of Education to disburse Federal Aid (Pell grant, FSEOG, etc.);
  - (iii) Accredited by an accrediting association recognized by the Federal Department of Education;
  - (iv) Registered with the State's Higher Education Commission;
  - (v) Licensed by the appropriate State licensing agency; or
  - (vi) Approved by VR.
4. Post-secondary, graduate, and post-graduate training services may be provided based on the individual's aptitudes, abilities, capabilities, interests and work experience and the entry education level for the approved specific employment outcome. The continuing provision of post-secondary, graduate, and post-graduate training services must be based on a review of the individual's progress and participation in services.
5. VR may not sponsor individuals in undergraduate, graduate, or post-graduate training who are in default of a Title IV school loan or who have failed to repay an overpayment of a Pell grant.
6. VR may not sponsor training services for individuals whose disabling conditions may be or have been corrected through physical or mental restoration services and who are able to return to previous or similar employment using existing or transferable skills.
7. VR will not sponsor any individual for classes that are not included in the curriculum approved by the school that is required for the degree that is necessary to achieve the specific employment outcome.
8. VR probation or suspension of post-secondary, graduate, and post-graduate training services may occur when an individual does not meet certain requirements for VR funding. These requirements include maintaining a grade point average (GPA) established by the school and for the course of study, whichever is greater, or maintain satisfactory academic progress necessary to remain in good standing with the school or complying with VR requirements for attendance, completion of classes as required, and providing grade reports and class schedules.

9. The individual must provide documentation for the purchase of any training-related items required for a course.
- (c) Employment includes job-related services, including job search and placement assistance, job retention services, and follow-up services and follow-along services after the completion of employment services. Employment services must result in full- or part-time competitive integrated employment (CIE) at a location typically found in the community.
1. With the exception of job retention services, employment services may be provided by VR staff, in accordance with VR requirements by a registered CRP, or other qualified employment service.
  2. Part-time placements of less than fifteen (15) hours per week must be approved by VR for meeting all CIE requirements.
  3. VR will determine whether a job position is typically found in the community and whether the job position is integrated for the purpose of performing the job duties.
- (d) Job retention services comprise a program of VR services in order for an individual to maintain current employment or return to employment from extended leave with the same employer. Services may include workplace adjustments, accommodations, assistive technology, or orientation and mobility training necessary to perform the essential job duties.
1. Job retention services may only be provided for eligible individuals with a disability that creates permanent functional limitations and who require such services.
  2. Job retention services are not subject to financial need and do not require a determination of comparable services and benefits.
  3. An assessment to determine the nature and scope of job retention services must utilize the least intrusive method and be in accordance with customer choice.
  4. Job retention services may not be provided for physical, mental, or sensory restoration requiring surgery and/or hospitalization or counseling services for the purpose of eliminating, reducing, or modifying the effects of a stable or slowly progressive disabling condition; to replace aging assistive technology that continues to work for the intended purpose; to assist an individual with being more independent outside of work or at the individual's place of work where there is no effect on job duties; to assist an individual with getting to work or back home; or to assist an individual with changing jobs.
- (e) Supported employment will be provided in accordance with Rule 1240-08-11.
- (f) Customized employment is based on an individualized determination of the unique strengths, abilities, interests, and informed choice of an individual with a significant disability; is designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer; and is carried out through flexible strategies such as: job exploration and working with an employer to facilitate placement through task assignment, job carving, and job sharing. Customized employment services must be provided in accordance with VR requirements by a registered CRP with the appropriate training certification and must result in full- or part-time CIE at a location typically found in the community.



- (g) Self-employment may be provided for eligible individuals who want to operate and/or expand a for-profit business for the purpose of manufacturing a product or providing a service for public sale in the competitive market. Self-employment services include the purchase of goods, services, and apparatus necessary for an individual to start or expand a business based on a business plan approved by VR and the cost of goods, services and apparatus approved by VR. Self-employment services do not include investments or cash funding; the purchase of vehicles, land, or franchises; the construction of buildings; interior or exterior building improvements; underwriting of loans; funding of illegal activities; or hobby ventures.
1. An assessment of an individual requesting self-employment services and the proposed business must be conducted by VR to determine if the proposed business will more than likely result in a successful employment outcome for VR. An assessment may include but is not limited to:
    - (i) The business proposal and the individual's experiences, learned skills, and abilities to perform the major tasks needed to operate the proposed business.
    - (ii) The individual's capability of performing the majority of work required to operate the proposed business, including the number of hours required to operate similar businesses operated by individuals who do not have disabilities.
    - (iii) The business's expected income must be comparable to the income received by individuals who are not individuals with disabilities, who are self-employed in similar businesses and who have similar training, experiences, and skills.
  2. An individual must have the aptitudes, abilities and capabilities necessary for the operation of the business. VR may provide training to assist an individual with obtaining the skills necessary for the operation of the business. If an individual is unable to obtain the skills necessary for the operation of the business, VR will conduct an appropriate assessment to develop a more appropriate employment objective that will lead to CIE consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
  3. Individuals who have been determined to have the aptitudes, abilities and capabilities necessary for the operation of the business must develop a business plan. The individual must seek assistance from a Small Business Development Center; the Service Corps of Retired Executives; Chamber of Commerce; similar business owner; or other recognized community resources or business council to research and develop a business plan.
  4. An individual's business plan is reviewed by a team consisting of VR staff or area professionals as determined appropriate based on the type and complexity of the business. The team will make a recommendation for approval and for developing an IPE for self-employment. After an individual's business plan is approved, changes will not be made without approval by VR.
  5. If an individual's business plan is not approved, the individual may correct identified deficiencies and re-submit the business plan for approval. If the re-submitted business plan is not approved, other types of businesses consistent with the

individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice may be considered or VR may determine a more appropriate employment objective other than self-employment.

6. Costs paid by VR to purchase goods, services, and apparatus to start or expand a business are based on the specific needs of the business as documented in an approved business plan and will not exceed \$10,000 unless approved by the VR Director.
  7. VR will not purchase goods, services, or apparatus different in type, specification, quantity or use from what is approved by VR in the business plan. All goods, services and apparatus approved and purchased by VR must be included in the customer's IPE prior to VR authorizing services. The individual must coordinate with VR for the purchase and delivery of all goods, services, and apparatus.
  8. Pre-owned or used apparatus that may be used in the business operation must be included in the business plan. VR will not replace pre-owned or used apparatus unless an authorized authority has certified the equipment unusable for the approved business.
  9. VR may assist with the purchase of additional goods, services, and apparatus in accordance with the approved business plan for up to three (3) months after business operation begins.
  10. The individual must provide evidence of income for the business to VR using standard bookkeeping methods every three (3) months to document when a successful self-employment outcome is achieved.
  11. If after ninety (90) days of business operation the business's income does not meet the requirement for a successful case closure, VR will review the business's income as provided by the individual every three (3) months thereafter for up to eighteen (18) months to determine when the business's income meets the requirement for successful case closure.
  12. If after eighteen (18) months the business's gross annual income has not reached the requirement for a successful case closure, VR will consider the individual's business unsuccessful. VR will discuss with the individual the possibility of other VR services.
  13. For unsuccessful businesses, VR will determine the continuation of VR services based on a more appropriate employment objective, excluding self-employment, that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice will lead to CIE.
  14. If the individual is unable to continue with the business operation and goods and apparatus purchased by VR will no longer be used for their intended purpose, the individual is required to return the goods and apparatus to VR.
- (h) 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.

1. 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.
  2. Assistive technology, devices, and services includes:
    - (i) Assistive technology designed for use in an assistive technology device or assistive technology service.
    - (ii) Assistive technology devices, equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.
    - (iii) Assistive technology services that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.
  3. Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices is exempt from a determination of the availability of comparable services and benefits.
  4. Assistive technology devices and services do not include auxiliary aids and services required for public accommodation in accordance with Rule 1240-08-05-.06.
  5. VR will evaluate an applicant's or eligible individual's need for assistive technology, devices, and services contemporaneously with its evaluation of the individual's rehabilitation potential or trial work experiences. VR will reevaluate an individual's need for assistive technology, devices, and services throughout the rehabilitation process on an annual basis.
- (i) Students with disabilities who meet the definition in Rule 1240-08-02-.02 must, with coordination with Local Education Agencies, be provided pre-employment transition services (pre-ets) that include job exploring counseling, work-based learning experiences, counseling on opportunities for enrollment in post-secondary educational programs, workplace readiness training, and instruction in self-advocacy.
1. Students with disabilities are not required to have an eligibility of determination or priority for service or an IPE in order to receive pre-employment transition services. Pre-ets cases are managed by pre-ets specialists.
  2. Students with disabilities may be referred for VR services. For students who are determined eligible for VR services, pre-ets services can continue under the pre-ets case until the IPE is completed and the provision and documentation of pre-ets services is transferred to the VR case.
  3. Recognized education programs may include but are not limited to secondary and post-secondary education programs, non-traditional or alternative secondary education programs, including home schooling, post-secondary education

programs providing transitional learning or similar programs, and other recognized educational programs, such as those offered through the juvenile justice system.

4. VR services will not take the place of academic or pre-vocational training that is the responsibility of the school system. This may include the purchase of equipment and/or assistive devices used primarily for educational purposes and/or transportation. Consideration may be given when the equipment or service is directly related to an employment service or to the achievement of an employment outcome.
  5. Auxiliary aids and services required to meet ADA and Section 504 accommodations may be provided for students with sensory and communicative disorders.
  6. Students enrolled in a secondary school system cannot also be enrolled in post-secondary training at VR's expense.
  7. A pre-ets case ends when a student ages out, graduates, is no longer enrolled or eligible for secondary school services, is no longer interested in receiving services, cannot be located, has been determined ineligible for VR services, or has been determined eligible for VR services and an IPE has been completed.
- (j) Other services developed by VR are based on factors that have been determined necessary for an individual to participate in VR services and/or achieve an employment outcome and includes but is not limited to medical, mental, optical, speech, and audiology care and treatment and therapy, deaf-blind, surgery, hospitalization, dental, durable medical equipment, electronic equipment, job coaching, on-the-job training, physical and occupational therapy, prosthetics and orthotics, service animals, transitional and specialized services to support students in a post-secondary setting, tools and equipment, business licenses, vehicle modification, family member services, worksite and home modifications, service animals, Braille and orientation and mobility training, and comprehensive rehabilitation centers for evaluations and/or training.
1. Electronic equipment includes, but is not limited to, computer systems, CCTVs, and other electronic assistive technology devices required to accommodate a disability for the purpose of participating in a VR service or for employment, including the provision of upgrades and repairs to existing equipment. Electronic equipment must be prescribed by a qualified professional or approved by VR self-employment or for educational purposes in accordance with VR policy and procedures.
  2. Family member services may only be provided for an individual who either is a relative or guardian of an applicant or eligible individual or lives in the same household as an applicant or eligible individual who has a substantial interest in the well-being of that individual and whose receipt of VR services is necessary to enable the applicant or eligible individual to achieve an employment outcome.
  3. Vehicle modification services may be provided if an individual is unable to effectively and reasonably use other modes of transportation and requires appropriate transportation to prepare for, secure, retain or regain employment.
  4. Worksite and home modification services may be necessary to modify a work site to permit job retention or job placement or to construct a ramp, widen a door, install

handrails, etc. in an individual's home so that the individual can participate in VR services.

- (16) Support services and service providers are based on individual need for participating in contributing services as determined during IPE development or annual review of the IPE. Support services may also be provided for diagnostic services. Support services include but are not limited to:
- (a) Transportation in-state or out-of-state in order to participate in a contributing service or secure employment. An individual's own vehicle may be used for transportation.
  - (b) Meals in-state or out-of-state necessary to participate in a contributing service or secure employment.
  - (c) Housing or lodging in-state or out-of-state necessary to participate in a contributing service or secure employment.
  - (d) Books, supplies, training materials, and wardrobe in order to participate in a training program.
  - (e) Personal supports in order to participate in a contributing service such as medication, drivers, child care, interpreters, readers and note takers, tutors, auxiliary aids, vehicle repair, professional dues, and disability-related supports.
  - (f) Drug screens for compliance with abstinence from substance use, to meet the requirements of employment, or, under certain circumstances, for an individual's attendant care provider. Drug screens require approval from the individual.
  - (g) Background checks for program planning or for employment or, under certain circumstances, for an individual's attendant care provider. Background checks require approval from the individual.
  - (h) Vehicle repair for limited repair work or parts replacement in accordance with VR policy and as determined by an ASE certified mechanic necessary to return a customer's car to a drivable safe condition.
  - (i) Medication required for an individual's impairment and to support participation in VR services and prescribed by a treating or other credentialed physician.
  - (j) Tutorial services determined necessary by VR to provide an individual participating in post-secondary training assistance or guidance for an individual to become an independent learner and maintain a school's academic standard. A tutor will not be used to help an individual excel in an academic subject or to be an accommodation for academic deficiencies.
  - (k) Uniforms or wardrobe necessary to participate in a contributing service or secure employment.
  - (l) Attendant care services 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; to increase the individual's ability to perform everyday activities on or off the job; necessary to the achievement of an employment outcome; and provided only while the individual is receiving other VR services. Attendant care services are not intended to supplement or replace services that would be

provided regardless of participation in VR services. Attendant care services may not be provided if the intended employment outcome on the IPE will not provide the customer the ability to pay for attendant care services with the exception that attendant care services will more than likely be available through other resources after achievement of the employment outcome.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 49-11-701, et seq., 49-11-801, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.5, 361.43, 361.47, and 361.48; and Executive Order No. 43 (1983).

#### **1240-08-04-.06 STANDARDS FOR CLOSING CASES.**

- (1) VR may close a case from applicant status prior to making an eligibility determination if the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and VR has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative, to encourage the applicant's participation.
- (2) VR may close a case if an applicant does not meet eligibility requirements for VR services, the eligible individual receiving services under an IPE is incapable of achieving an employment outcome due to the severity of the individual's disability, or the individual has chosen to not pursue competitive integrated employment.
  - (a) An individual does not meet eligibility requirements if:
    - 1. There is no diagnosable impairment;
    - 2. There is a diagnosable impairment but no substantial impediment to employment;
    - 3. There is a diagnosable impairment and substantial impediments to employment but there are no expected VR services that will reduce, eliminate, or accommodate the participant's impediment to employment and contribute to an employment outcome; or
    - 4. It is determined through trial work experiences that the individual will not benefit from VR services in terms of an employment outcome.
  - (b) A case will not be closed because an individual is unable to achieve an employment outcome due to the severity of the individual's disability without documenting by Trial Work Experiences clear and convincing evidence that the individual is incapable of benefiting from VR services in terms of an employment outcome due to the severity of the individual's disability.
  - (c) Cases that are closed due to extended employment in a non-integrated or sheltered setting or in other employment compensated in accordance with section 14c of the Fair Labor Standards Act (sub-minimum wage) must be provided career counseling and information services at the time of case closure and every six (6) months for the first year following case closure and annually thereafter for the duration of such employment.
  - (d) Cases that are closed due to the severity of the individual's disability must be reviewed twelve (12) months from case closure and annually thereafter if requested by the individual to determine potential for competitive integrated employment.



- (3) VR may close a case of an individual who has achieved a successful employment outcome if all of the following requirements are met:
- (a) The individual has achieved competitive integrated employment described in the individual's IPE that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice and is at a location typically found in the community (in the competitive labor market) where the individual:
    - 1. Is compensated at not less than the legal minimum wage or at the customary rate for the same or similar work performed by employees who are not individuals with disabilities;
    - 2. Is eligible for the level of benefits provided to other employees who are not individuals with disabilities;
    - 3. Interacts with fellow employees for the purpose of performing the job duties within the work unit who are not individuals with disabilities;
    - 4. Has the opportunity for advancement that is similar for other employees who are not individuals with disabilities and who have similar positions; and
  - (b) The employment outcome has been maintained for an appropriate period of time, but not less than ninety (90) days, to ensure the stability of the employment outcome, and the individual no longer needs VR services; and
  - (c) At the end of the appropriate period described in (b), the individual and the VR Counselor consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment.
- (4) VR may close a case due to intervening reasons in which the individual is not available for diagnostic assessments or continuation of services because the individual has died, has moved out of state and shows no intention of continuing with the VR program, has not been contacted after required efforts, has been institutionalized for an indefinite or extended period of time, has refused services, or is no longer interested in VR services after reasonable counseling and guidance efforts by the VR Counselor.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.5, 361.44, 361.45, 361.46, 361.55, and 361.56; and Executive Order No. 43 (1983).

#### **1240-08-04-.07 POST-EMPLOYMENT SERVICES.**

- (1) Post-employment services are one or more VR services limited in scope and duration that are necessary subsequent to the achievement of a successful employment outcome. The services must be necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- (2) Post-employment services must be provided under the terms of an amended IPE.
- (3) Post-employment services are subject to the same requirements for services provided prior to employment in accordance with 1240-08-04-.05. Services are subject to financial need in

accordance with 1240-08-05.-02, with the exception that post-employment services are exempt from a determination of the availability of comparable services and benefits.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.5, 361.37, and 361.48; and Executive Order No. 43 (1983).

**TENNESSEE DEPARTMENT OF HUMAN SERVICES  
REHABILITATION SERVICES DIVISION**

**CHAPTER 1240-08-05  
SERVICES TO INDIVIDUALS: RELATED PROVISIONS**

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**1240-08-05-.01 ORDER OF SELECTION AND PRIORITY FOR SERVICES.**

- ~~(1) — The purpose of an Order of Selection is to provide an organized method of prioritizing eligible individuals that may be provided Vocational Rehabilitation (VR) services if resources are not available to serve all eligible individuals who apply. The Division's VR Program shall determine when and if an Order of Selection will be implemented.~~
- ~~(2) — Individuals previously determined eligible for vocational rehabilitation services and receiving services under an Individualized Plan for Employment (IPE) are not affected when an Order of Selection is implemented. An Order of Selection shall not regulate the provision or authorization of diagnostic assessments.~~
- ~~(3) — After implementation of an Order of Selection, each individual determined eligible for services will be placed into the highest category justified according to paragraph (5).~~
- ~~(4) — Each eligible individual who is assigned a priority category that is closed will be notified in writing and must be referred to other federal and state programs, including programs that are part of the one-stop service delivery system under the Workforce Innovation and Opportunity Act.~~
  - ~~(a) — If VR cannot continue to serve all new cases in Priority Category 1, services will be provided to new Priority Category 1 cases based upon date of application.~~
  - ~~(b) — If VR is able to open a closed priority category but is unable to serve all eligible individuals on the waiting list, services will be provided based upon the date of application.~~
- ~~(5) — The Order of Selection Priorities is determined by VR based on the federal definition and is as follows, with the lowest numerical category being the highest priority:~~
  - ~~(a) — Category I:~~

- ~~Eligible individuals who have the most significant disabilities.~~
- ~~(b) Category II:~~
- ~~Eligible individuals who have significant disabilities.~~
- ~~(c) Category III:~~
- ~~Eligible individuals who do not have significant disabilities, but whose vocational rehabilitation is expected to require multiple vocational rehabilitation services.~~
- ~~(d) Category IV:~~
- ~~Eligible individuals who do not have significant disabilities who cannot be classified into a higher priority category.~~
- ~~(6) An individual who is eligible to receive SSI or SSDI based on disability or blindness is presumed to be an individual with a significant disability.~~
- ~~(7) When an Order of Selection is implemented, those individuals who are placed into an open priority category may be served under an IPE. Those individuals who are placed in a closed priority category may not be served until the Order of Selection is lifted or the category is opened.~~
- (1) When VR is unable to provide the full range of VR services to all individuals who meet the basic requirements for eligibility, VR is required to implement an Order of Selection to be followed in prioritizing individuals who meet the basic requirements for eligibility for the provision of VR services. VR determines when and if an Order of Selection will be implemented.
- (2) When an Order of Selection is implemented, individuals previously determined eligible for VR services and receiving services under an IPE are not affected. An Order of Selection does not regulate the provision or authorization of diagnostic assessments.
- (3) After implementation of an Order of Selection, each individual who meets the basic requirements for eligibility will be placed into the highest category justified according to paragraph (4).
- (4) Disability Priority Categories and definitions for an Order of Selection are determined by VR and are based on the federal definition of an individual with a significant disability and are as follows, with the lowest numerical category being the highest priority that must be considered first for the provision of services:
- (a) Disability Priority Category 1 - Most Significantly Disabled.
- (b) Disability Priority Category 2 - Significantly Disabled.
- (c) Disability Priority Category 3 - Not Significantly Disabled.
- (d) Disability Priority Category 4 - Cannot be categorized into a higher Disability Priority Category.
- (5) An individual who is eligible to receive Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) based on disability or blindness is presumed to be an individual who is Disability Priority Category 2 - Significantly Disabled.

- (6) VR determines which disability priority categories are open for the provision of services.
- (7) When an Order of Selection is implemented, those individuals who are placed into an open priority category may be served under an IPE. Those individuals who are placed in a closed priority category may not be served until the Order of Selection is lifted, the category is opened to provide services, or cases are released for the provision of services.
- (8) Individuals who are assigned a disability priority category that is closed, meaning services will not be provided, will be notified in writing and must be referred to other federal and state programs, including programs that are part of the one-stop service delivery system under the Workforce Innovation and Opportunity Act.
- (9) If VR will not continue to serve all individuals determined to be Disability Priority Category 1, services will be provided to new Disability Priority Category 1 individuals based upon date of application.
- (10) If VR is able to open a closed disability priority category or release cases to be provided services but is unable to serve all individuals in that category, services will be provided based upon the date of application.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.5 and 361.36; and Executive Order No. 43 (1983).

**1240-08-05-.02 ~~RESERVED~~ [FINANCIAL NEEDS ASSESSMENT].**

- (1) VR will consider the financial need of each eligible individual in determining the extent of the individual's participation in the cost of services that require such participation.
- (2) A financial need assessment (FNA) is based on an individual's household income and financial circumstances, the number of individuals living in the household, allowed deductions, approved exceptions, and the current financial need level established by VR. The FNA will be conducted prior to development of an individual's IPE and annually thereafter or sooner if there are changes in an individual's financial circumstances.
  - (a) Household income includes the adjusted gross income (AGI) of the household contributors providing more than half of the individual's support as shown on the most recent completed joint or separate federal income tax returns regardless of whether the individual is claimed on the tax return or lives with the individuals; other individual and/or spouse income sources such as paycheck stubs, bank statements, business income receipts or fixed income deposits; and other income from household contributors other than the eligible individual such as SSA benefits, Families First benefits or other sources.
  - (b) Deductions include current out-of-pocket payments being made at the time the initial FNA or an annual financial need review is completed for non-reimbursed household medical or dental expenses; medical insurance premiums for which the individual is included in the coverage; court ordered obligations other than alimony; and post-secondary educational loans of the individual, not other household members.
  - (c) Exceptions to participating in the cost of services may include the amount of benefit for fixed income, payments for disability-related expenses, or similar financial circumstances.

- (3) Individuals who are determined to meet financial need are exempt from participating in the cost of most VR services using personal funds but are not exempt from applying for and using comparable services and benefits or from paying additional costs when services chosen by the individual exceed the allowable fees established by VR. Individuals who are determined to meet financial need include individuals:
- (a) Whose household income, financial circumstances, number of individuals living in the household and deductions have been verified and documented and, based on the FNA conducted in accordance with VR policy, the financial need level is not exceeded;
  - (b) Who have been determined eligible for and verified and documented to be receiving SSI or SSDI benefits based on the individual's own disability or blindness; or
  - (c) Who have been determined eligible for and verified and documented to be receiving Families First cash benefits.
- (4) Individuals who are determined to be over financial need are required to participate in the cost of services subject to need unless an exception has been approved by VR. Individual participation in the cost of services cannot exceed the amount that the individual is over need.
- (5) VR may not apply a financial needs test, or require the financial participation of the individual as a condition for furnishing the following VR services:
- (a) Assessment for determining eligibility and priority except those non-assessment services that are provided to an individual with a significant disability during either an exploration of the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences;
  - (b) Assessment for determining vocational rehabilitation needs;
  - (c) Vocational rehabilitation counseling and guidance;
  - (d) Referral and other similar services;
  - (e) Job-related services;
  - (f) Personal assistance services;
  - (g) Any auxiliary aid or service (e.g., interpreter services), reader services that an individual with a disability requires under section 504 of the Rehabilitation Act (29 U.S.C. 794) or the Americans with Disabilities Act (42 U.S.C. 12101, et seq.), or regulations implementing those laws, in order for the individual to participate in the VR program as authorized under this part; or
  - (h) If the individual in need of a service has been determined eligible for Social Security benefits under titles II or XVI of the Social Security Act.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; and 34 C.F.R. § 361.54.

**1240-08-05-.03 CONSIDERATION OF COMPARABLE SERVICES OR BENEFITS AND SUBROGATION [COMPARABLE SERVICES BENEFITS AND SUBROGATION].**

- ~~(1) In determining what services are provided to an individual and the scope of such services, the Division's VR Program will consider the availability of comparable services or benefits from other sources, except as exempt by law. If comparable services or benefits exist, they must be used to meet, in whole or in part, the cost of VR rehabilitation services. Such comparable services or benefits to be considered must be adequate, timely, and not delay the provision of VR services.~~
- ~~(2) Vocational and other training services in institutions of higher education may not be paid for with funds under this part unless maximum efforts have been made by the state entity and the individual to secure grant assistance in whole or in part from other sources to pay for the training. Institutions of higher education include universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing. Comparable services and benefits do not include awards and scholarships based on merit.~~
- ~~(3) When the eligible individual is entitled to money or benefits in compensation for an accident which caused or contributed to the vocational rehabilitation eligibility, the entity requires reimbursement for the cost of rehabilitation services, except as exempt by law.~~
- ~~(4) When VR funds are expended on behalf of an individual for goods or services that a third party is or becomes legally obligated to pay, the Division is subrogated to the rights of the individual to receive such payment. By accepting or receiving such VR funds, the individual is deemed to have agreed to and authorized such subrogation.~~
- ~~(5) The following services are exempt from a determination of comparable services:~~
- ~~(a) Evaluation to determine eligibility, rehabilitation needs, or priority for services;~~
  - ~~(b) Counseling, guidance, and referral services;~~
  - ~~(c) Vocational and other training, including vocational adjustment training, books, tools, and other training materials not provided in institutions of higher education;~~
  - ~~(d) Placement services;~~
  - ~~(e) Rehabilitation engineering services;~~
  - ~~(f) Post-employment services consisting of the services listed in (a) through (e) above.~~
- (1) In determining what VR services are provided to an individual and the scope of such services, the VR Program will consider the availability of comparable services or benefits from other sources to pay, in whole or in part, the cost of VR services unless such a determination would interrupt or delay:
- (a) The progress of the individual toward achieving the employment outcome identified in the IPE;
  - (b) An immediate job placement; or
  - (c) The provision of VR services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.
- (2) The following VR services are exempt from a determination of comparable services:



- (a) Evaluation to determine eligibility, rehabilitation needs, or priority for services;
  - (b) Counseling, guidance, and referral services;
  - (c) Vocational and other training, including vocational adjustment training, books, tools, and other training materials not provided in institutions of higher education;
  - (d) Placement services;
  - (e) Rehabilitation engineering services; and
  - (f) Post-employment services consisting of the services listed in (a) through (e) above.
- (3) Vocational and other training services in institutions of higher education may not be paid for with funds under this part unless maximum efforts have been made by VR and the individual to secure grant assistance in whole or in part from other sources to pay for the training. Institutions of higher education include universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing. Comparable benefits include Pell Grants, Supplemental Educational Opportunity Grants, Tennessee Student Assistance Awards, Tennessee post-secondary education scholarships and awards administered by the Tennessee Student Assistance Corporation, and institutional grants, awards or scholarships, including fellowships or other awards. Comparable services and benefits do not include educational awards and scholarships based on merit except when an award or scholarship is earmarked to credit a student's account.
- (4) Federal and state educational grants awarded to an individual must be used to pay for educational expenses in accordance with appropriate federal, state and institutional guidelines.
- (5) Comparable services and benefits may also be available for individuals eligible for Medicare or Medicaid (TennCare), Children's Special Services, or private health insurance.
- (6) If comparable services or benefits are not available to pay for VR services at the time needed, VR may pay for services until those comparable services and benefits become available.
- (7) If, during the provision of services, comparable services or benefits become available or an individual's circumstances change in such a way as to impact entitlement, VR will determine the extent of entitlement and availability and the effect on payment for the services.
- (8) When an individual's comparable services or benefits for a service are exhausted, VR may pay for the cost of the service.
- (9) When VR funds are expended on behalf of an eligible individual for goods or services that a third party is or becomes legally obligated to pay in compensation for an accident or injury which caused or contributed to the vocational rehabilitation eligibility, VR may exercise the right of recovery of such funds through subrogation. By accepting or receiving VR funds to pay the cost of goods and services, the individual is deemed to have agreed to and authorized such subrogation.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, 71-1-105(a)(12), and 71-1-123; 29 U.S.C. §§ 720, et seq.; 34 C.F.R. § 361.53; and Executive Order No.43 (1983).

**1240-08-05-.04 CONFIDENTIALITY [PROTECTION, USE, AND RELEASE OF PERSONAL INFORMATION].**

- ~~(1) All information as to personal facts involving individuals applying for or receiving services given or made available to VR employees, in the course of the administration of the VR program, is confidential. Confidentiality extends to electronic information, photographs, and lists of names.~~
- ~~(2) The use of such information and records is limited to purposes directly connected with the administration of the VR program.~~
- ~~(3) Information is not to be disclosed directly or indirectly, other than in the administration of the VR program, unless the informed consent of the individual has been obtained in writing.~~
- ~~(4) The Division's VR Program shall, upon the individual's written request, release all information in the individual's record to the individual or the individual's representative, except that medical, psychological or other information deemed harmful to the individual will only be released to the individual through a designated third party. If the information comes from a separate entity, the state must follow the conditions for release of such information established by that entity.~~
- ~~(5) VR may release confidential information, including medical and psychological data, without the written consent of the individual when the person or entity receiving the information is providing a VR-sponsored service to the individual and provides assurances that:
  - ~~(a) The confidential nature of the information shall be preserved;~~
  - ~~(b) The information is used for the purpose for which it was made available; and~~
  - ~~(c) The use of the information is related to the purpose and functions of the entity to which it is given.~~~~
- ~~(6) VR may release information to an individual or organization engaged in research when the purpose is directly connected with the administration of the state VR program, and only after the individual or organization has furnished satisfactory assurances that the information shall be used only for the purpose it was provided, and:
  - ~~(a) It shall not be released to persons not connected with the study under consideration, and~~
  - ~~(b) The final product of the research shall not reveal any information that may identify any person who did not provide written consent to release the information.~~~~
- ~~(7) Reports, surveys, case studies, research projects, and other information released to entities/organizations and individuals by counselors and other VR personnel may contain statistical information and data essential to the advancement of the program, but no information identifiable with any individual shall be included without the written consent of that individual.~~
- ~~(8) Release of Personal Information.
  - ~~(a) VR may release personal information to an organization, state entity, or individual engaged in audit, evaluation, or research for purposes directly connected with the administration of the VR program, or for purposes that would significantly improve the quality of life for applicants and eligible individuals, and only if the organization, entity, or individual assures that:
    - ~~1. The information will be used only for the purposes for which it is being provided;~~~~~~

- ~~2. The information will be released only to individuals officially connected with the audit, evaluation, or research;~~
  - ~~3. The information will not be released to the involved individual, but will be managed in a manner to safeguard confidentiality; and~~
  - ~~4. The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.~~
- ~~(b) Personal information will be released 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.~~
- ~~(c) Personal information may be released in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.~~
- ~~(9) All documents containing information about the individual and possessed by the Division are property of the Division of Rehabilitation Services.~~
- ~~(10) An individual who believes that information in the record is inaccurate or misleading may request that the record be amended. If the information is not amended, the request for amendment must be documented in the record.~~
- ~~(11) The Division may charge a reasonable fee for providing copies of records for purposes other than those of the rehabilitation program in accordance with the rules of the Department at Chapter 1240-09 and state law.~~
- (1) All information of individuals applying for or receiving services given or made available to VR employees, in the course of the administration of the VR Program, is confidential. Confidentiality extends to electronic information, photographs, lists of names, and personal identifiable information.
- (2) The use of such information and records is limited to purposes directly connected with the administration of the VR Program.
- (3) Information is not to be disclosed directly or indirectly, other than in the administration of the VR Program, unless the informed consent of the individual has been obtained in writing.
- (4) Upon the individual's written request, VR must release all information in the individual's record to the individual or the individual's representative, except that medical, psychological or other information deemed harmful to the individual will only be released to the individual through a designated third party. If the information comes from a separate entity, VR must follow the conditions for release of such information established by that entity.
- (5) VR may release personal identifiable information to another agency or organization, in accordance with an individual's written agreement, for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

- (6) VR may release information to an individual or organization engaged in research when the purpose is directly connected with the administration of the VR Program, and only after the individual or organization has furnished satisfactory assurances that the information shall be used only for the purpose it was provided, and:
- (a) It shall not be released to persons not connected with the study under consideration, and
  - (b) The final product of the research shall not reveal any information that may identify any person who did not provide written consent to release the information.
- (7) Reports, surveys, case studies, research projects, and other information released to entities/organizations and individuals by counselors and other VR personnel may contain statistical information and data essential to the advancement of the program, but no information identifiable with any individual shall be included without the written consent of that individual.
- (8) Release of Personal Identifiable Information.
- (a) VR may release personal identifiable information to an organization, state entity, or individual engaged in an audit, evaluation, or research for purposes directly connected with the administration of the VR Program, or for purposes that would significantly improve the quality of life for applicants and eligible individuals, and only if the organization, entity, or individual assures that:
    - 1. The information will be used only for the purposes for which it is being provided;
    - 2. The information will be released only to individuals officially connected with the audit, evaluation, or research;
    - 3. The information will not be released to the involved individual, but will be managed in a manner to safeguard confidentiality; and
    - 4. The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.
  - (b) Personal identifiable information will be released 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.
  - (c) Personal identifiable information may be released in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.
- (9) All documents containing information about the individual and possessed by the Division or VR are property of the Division.
- (10) An individual who believes that information in the record is inaccurate or misleading may request that the record be amended. If the information is not amended, the request for amendment must be documented in the record.
- (11) VR employees, contractors, service providers, cooperating agencies, and interested persons must secure all customer information in appropriate locations that is overseen by qualified personnel.

- (12) The Division may charge a reasonable fee for providing copies of records for purposes other than those of the VR Program in accordance with the rules of the Department at Chapter 1240-09 and state law.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. § 361.38; and Executive Order No. 43 (1983).

#### **1240-08-05-.05 REPEALED [AUXILIARY AIDS AND SERVICES].**

- (1) A public accommodation may be necessary to ensure that no individual with a disability can be excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the accommodation would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense. The term "auxiliary aids and services" includes:
- (a) Qualified interpreters, notetakers, computer-aided transcription services, written materials, foreign language interpreters, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
  - (b) Qualified readers, taped texts, audio recordings, brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;
  - (c) Acquisition or modification of equipment or devices; and
  - (d) Other similar services and actions.
- (2) VR will not assume the responsibility of other programs or vendors, such as post-secondary training institutions, community rehabilitation programs, physicians, psychologists, and placement agencies for providing auxiliary aids and services for public accommodation requirements.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 49-11-701, et seq., 49-11-801, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 28 CFR 36.303; 34 C.F.R. § 361.5; and Executive Order No. 43 (1983).

#### **1240-08-05-.06 RIGHT TO ADMINISTRATIVE REVIEW, MEDIATION, AND FAIR HEARING.**

- (1) VR will provide timely due process for applicants or recipients of services or, as appropriate, their representatives who may be dissatisfied with any determination made by VR that affects the provision of VR services.
- (2) Due process may include an informal administrative review by appropriate VR supervisory staff, mediation by a qualified Mediator, or fair hearing by an Impartial Hearing Officer.
- (3) VR must provide written notice in accordance with VR requirements of due process to individuals, including their representatives when appropriate, and potentially eligible students with disabilities referred for pre-employment transition services:

- (a) At the time the individual applies for VR services or at the first meeting for potentially eligible students with disabilities;
- (b) At the time the individual is assigned to a priority category, if VR has established an order of selection;
- (c) At the time the IPE is developed; and
- (d) Whenever VR services for an individual are reduced, suspended, or terminated.
- (4) The request for a review of a determination made by VR that affects the provision of VR services may be either oral, written or on-line. The request must be made no later than thirty (30) calendar days after the date of notification of a determination by VR. This includes a determination made as the result of an Informal Administrative Review or Mediation.
- (5) Unless otherwise requested by the individual or, as appropriate, the individual's representative, the default method for review will be by Informal Administrative Review.
- (6) The VR Director must approve mediation and the availability of a qualified Mediator.
- (7) Reviews requested by individuals, including their representatives when appropriate, must be conducted timely in accordance with VR requirements, including reporting to an individual or, as appropriate, the individual's representative the outcome of the review.
- (8) VR may not institute a suspension, reduction, or termination of VR services being provided to an applicant or recipient, including evaluation and assessment services and IPE development, pending a resolution through mediation, pending a decision by a hearing officer, or reviewing official, or pending informal resolution under this section unless the individual or, in appropriate cases, the individual's representative, requests a suspension, reduction, or termination of services, or VR has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative.
- (9) An individual or, as appropriate, the individual's representative, may request a fair hearing by an Impartial Hearing Officer at any time during an informal administrative review or mediation or no later than thirty (30) calendar days after the date of notification of a determination of an informal administrative review or mediation.
- (10) An individual has the right to be represented by legal counsel or other representative and the right to submit evidence and other supporting information.
- (11) Review made by an Impartial Hearing Officer is conducted in accordance with the requirements of the Division of Appeals and Hearings.

Authority: T.C.A. §§ 4-5-202, 4-5-301 et seq., 49-11-601, et seq., and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; and 34 C.F.R. §§ 361.5, 361.13, and 361.57.

**1240-08-05-.06[07] TENNESSEE REHABILITATION CENTER [AT SMYRNA].**

- ~~(1) The Tennessee Rehabilitation Center ("TRC") is a statewide comprehensive rehabilitation and training center for applicants and eligible individuals receiving services from the Division's Vocational Rehabilitation Program.~~

- ~~(2) TRC is a residential facility that provides services including, but not limited to, cognitive, physical and occupational therapy, medical services, employment and life skills, vocational evaluation, vocational training and counseling, and pre-employment transition services.~~
- (1) The Tennessee Rehabilitation Center at Smyrna (TRCS) is a statewide comprehensive rehabilitation and training center for applicants and eligible individuals receiving services from the Division's VR Program.
- (2) TRCS is a day and residential facility that provides services including, but not limited to, vocational training and counseling, rehabilitation services, wellness management services, and pre-employment transition services for students with disabilities.
- (3) Vocational training and counseling are provided at TRCS for a variety of vocational areas that lead to a certificate, credential, or industry certification and achievement of an employment outcome.
- (4) Rehabilitation services provides supports based on an individual's disability and rehabilitation need that may include cognitive, behavioral, sensory, physical and occupational, and recreation therapies.
- (5) Wellness management services provides management for an individual's medical and psychological needs due to the individual's disability.
- (6) Pre-employment transition services are provided for students with disabilities in accordance with the student's need for such services.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.38 and 361.51; and Executive Order No. 43 (1983).

#### **1240-08-05-.07[08] COMMUNITY ~~TENNESSEE REHABILITATION CENTERS~~ [VR SERVICES].**

- ~~(1) The Community Tennessee Rehabilitation Centers are comprised of centers located across the state that provide an array of services including, but not limited to, comprehensive vocational evaluation, employee development services, and community employment services.~~
- ~~(2) Generally, referrals are made by the vocational rehabilitation counselor and consist of applicants, individuals receiving Pre-Employment Transition Services, or individuals determined eligible by VR.~~
- ~~(3) The Community Tennessee Rehabilitation Centers maintain standards for the provision of services.~~
- ~~(4) The Community Tennessee Rehabilitation Centers offer services to employers including, but not limited to, marketability, recruitment, industry outsourcing, internships, and services to injured workers.~~
- (1) Community VR services for applicants and eligible individuals to prepare for and achieve competitive integrated employment and pre-employment transition services for students with disabilities are provided by the VR Community Services Unit (CSU). Services include, but are not limited to, individualized pre-plan assessments, career readiness services, individualized services based on rehabilitation need, and pre-employment transition services for students with disabilities that consists of information or activities regarding potential employment, post-secondary training, and self-advocacy.
- (2) Services are provided in accordance with the individual's rehabilitation needs.



(3) The CSU maintains standards for the provision of services.

(4) The CSU may also offer services to employers including, but not limited to, marketability, recruitment, industry outsourcing, internships, and services to injured workers.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 49-11-701, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. § 361.51; and Executive Order No. 43 (1983).

**TENNESSEE DEPARTMENT OF HUMAN SERVICES  
REHABILITATION SERVICES DIVISION**

**CHAPTER 1240-08-11  
SUPPORTED EMPLOYMENT SERVICES PROGRAM**

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**1240-08-11-.01 PURPOSE.**

~~The Department of Human Services, Division of Rehabilitation Services (DRS), is the designated state entity for the administration of the Supported Employment Services Program. This chapter sets forth the guidelines of the Tennessee Division of Rehabilitation Services (DRS) to be used for administering the State's Supported Employment Services Program.~~

The Department of Human Services, Division of Rehabilitation Services (DRS), Vocational Rehabilitation (VR) Program is the designated state entity for the administration of Supported Employment Services under Title VI of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act. This chapter sets forth the guidelines of the VR Program for Supported Employment Services.

Authority: T.C.A. §§ 4-5-202 and 71-1-105(a)(12); PL 93-112, as amended by PL 99-506; and 34 C.F.R. §§ 361 and 363.1, et seq.

**1240-08-11-.02 DEFINITIONS.**

~~(1) "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:~~

- ~~1. 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;~~
- ~~2. 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~~
- ~~3. 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~~

~~4. Is eligible for the level of benefits provided to other employees; and~~

~~(b) Is at a location:~~

~~1. Typically found in the community; and~~

~~2. 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.~~

~~(2) "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.~~

~~These are individuals:~~

~~(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 and extended services after the transition from support provided by Vocational Rehabilitation, in order to perform this work.~~

~~(3) "Extended services" means services that are provided by other public agencies, private nonprofit organizations, or other sources, including employers and other natural supports, following the provision of authorized supported employment services of Vocational Rehabilitation that are needed to maintain an individual with a most significant disability in supported employment.~~

(1) "Supported Employment" means competitive integrated employment including customized employment when appropriate, 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 and extended services after the transition from support provided by VR, in order to perform this work; or
  - (c) Who may require transitional employment services for individuals with the most significant disabilities due to mental illness consisting of sequential placement and support, coordination with mental health services to integrate an individual's mental health treatment with career development and placement, and job stabilization.
- (2) "Extended Services" means ongoing job supports 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 IPE;
  - (d) Provided by a State agency other than VR, a private nonprofit organization, employer, or any other appropriate resource, including natural supports, after an individual is stable on the job and has made the transition from support from VR;
  - (e) Provided at a minimum, twice-monthly monitoring at the worksite, or under specific circumstances, off-site monitoring, of each individual in supported employment to assess employment stability and to provide for the coordination and provision of specific services at or away from the worksite that are needed to maintain employment stability;
  - (f) Provided to a youth with a most significant disability 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, whichever occurs first. VR may not provide extended services to an individual with a most significant disability who is not a youth with a most significant disability.
- (3) "Plan for Supported Employment" means an IPE developed in accordance with Rule 1240-08-04-.03 that also:
  - (a) Specifies the supported employment services to be provided by VR;
  - (b) Specifies the expected extended services needed, which may include natural supports;
  - (c) Identifies the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the IPE is developed, includes a description of the basis for concluding that there is a reasonable expectation that those sources will become available;
  - (d) Provides for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the IPE by the time of transition to extended services;
  - (e) Provides for the coordination of services provided under an IPE with services provided under other individualized plans established under other Federal or State programs;

- ~~(f) To the extent that job skills training is provided, identifies that the training will be provided on site; and~~
- ~~(g) Includes placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities.~~

Authority: T.C.A. §§ 4-5-202 and 71-1-105(a)(12); PL 93-112, as amended by PL 99-506; and 34 C.F.R. §§ 361, 361.5, and 363.6.

#### **1240-08-11-.03 ELIGIBILITY FOR SUPPORTED EMPLOYMENT.**

~~The rehabilitation counselor determines eligibility for supported employment based on an exploration, including a review of existing information, of the individual's abilities, capabilities, and capacity to perform in work situations.~~

- ~~(1) An individual who is eligible for supported employment must meet the eligibility criteria for vocational rehabilitation services:~~
  - ~~(a) The individual has a physical or mental impairment that constitutes or results in a substantial impediment to employment;~~
  - ~~(b) The individual 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; and~~
  - ~~(c) The individual can benefit in terms of an employment outcome from the provision of vocational rehabilitation services; and~~
- ~~(2) Must be an individual with a most significant disability:~~
  - ~~(a) For whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of significant disabilities; and~~
  - ~~(b) Who, because of the nature and severity of their disabilities, needs intensive supported employment and extended services after transitioning from VR services in order to perform this work; or~~
  - ~~(c) Who requires transitional employment for individuals with the most significant disabilities due to mental illness.~~
- ~~(1) The VR Counselor determines eligibility for supported employment based on an exploration, including a review of existing information, of the individual's abilities, capabilities, and capacity to perform in work situations.~~
- ~~(2) An individual who is eligible for supported employment must meet the eligibility criteria for VR services in Rule 1240-08-04-.02. The individual must also be placed in the Most Significantly Disabled Category as outlined in Rule 1240-08-05-.01.~~

Authority: T.C.A. §§ 4-5-202 and 71-1-105(a)(12); PL 93-112, as amended by PL 99-506; and 34 C.F.R. §§ 361, 361.5, and 363.1, et seq.

#### 1240-08-11-.04 PROVISION OF SERVICES.

- ~~(1) Supported employment services may be provided by VR for a period of time not to exceed twenty-four (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 IPE.~~
- ~~(2) Supported employment services include:~~
  - ~~(a) Evaluation to determine rehabilitation needs and to develop the Individualized Plan for Employment (IPE);~~
  - ~~(b) Job placement, job training, stabilization, and other intensive services;~~
  - ~~(c) Ongoing support services, defined as:~~
    - ~~1. Services needed to support and maintain an individual with a most significant disability in supported employment;~~
    - ~~2. Services based on a determination by VR of the individual's needs;~~
    - ~~3. Services identified in an Individualized Plan for Employment (IPE);~~
    - ~~4. Services furnished by VR from the time of job placement until transition from VR services (transition occurs when ongoing support needs are minimal and job stability is maintained); and/or~~
    - ~~5. Services that consist of:~~
      - ~~(i) At a minimum, twice-monthly monitoring at the worksite, or under specific circumstances, off-site monitoring, of each individual in supported employment to assess employment stability and to provide for the coordination and provision of specific services at or away from the worksite that are needed to maintain employment stability;~~
      - ~~(ii) Particularized assessments to determine rehabilitation needs;~~
      - ~~(iii) Services provided by skilled job trainers and job developers;~~
      - ~~(iv) Social skills training and regular observation or supervision of the individual;~~
      - ~~(v) Follow-up services to reinforce and stabilize the job placement;~~
      - ~~(vi) Facilitation of natural supports at the worksite; and~~
      - ~~(vii) Any other service within the scope of vocational rehabilitation services.~~
  - ~~(d) Transitional employment;~~
  - ~~(e) Extended services.~~

- (1) Supported employment services are provided on-the-job following a determination by VR and a registered CRP of an eligible individual's rehabilitation, employment, and ongoing support needs and described in an IPE plan for supported employment. Supported employment services under the federal grant include job training, services required because of the individual's intensive support needs on the job, and ongoing job supports.
- (2) Supported employment services may be provided by VR for a period of time not to exceed twenty-four (24) months unless, under special circumstances, the eligible individual and the VR Counselor jointly agree to extend the time to achieve the employment outcome identified in the IPE.
- (3) Supported employment services must be provided in accordance with VR requirements by a registered CRP with the appropriate training certification.
- (4) Part-time placements of less than fifteen (15) hours per week must be approved by VR for meeting all CIE requirements.
- (5) Ongoing job supports are based on individual need required to support and maintain an individual with a most significant disability in supported employment and furnished by VR from the time of job placement until the individual is stable on the job and transitions from VR services to extended services. An individual is considered to be stable on the job when ongoing job supports have been reduced to a minimum for the individual to maintain employment.
- (6) Post-employment services may be provided in accordance with Rule 1240-08-04-.07.
- (7) Extended services determined to be necessary for an individual to maintain employment are provided by a State agency other than VR, a private nonprofit organization, employer, or any other appropriate resource, including natural supports.
- (8) Extended services for youth may be funded by a State agency other than VR or other resources; provided by natural supports; or funded by VR provided there are no other means of funding for providing the extended services and the youth has not declined VR providing extended services. If VR funds extended services for a youth with a disability, the case will not be closed until the time period for providing extended services ends.

Authority: T.C.A. §§ 4-5-202 and 71-1-105(a)(12); PL 93-112, as amended by PL 99-506; and 34 C.F.R. §§ 361, 361.5, and 363.1, et seq.

#### **1240-08-11-.05 CASE CLOSURE.**

- ~~(1) An individual who is receiving supported employment services is considered to be successfully rehabilitated if the individual maintains a supported employment placement for ninety (90) days after making the transition from DRS services.~~
- ~~(2) The decision for closing a case will be made on an individual client basis by DRS. DRS services shall end at case closure unless post-employment services are necessary and can be provided in accordance with DRS policy.~~
- (1) An individual is considered to have achieved a successful supported employment outcome when the individual has achieved CIE; completed all supported employment services based on the individual's strengths, abilities and interests and as listed on the individual's IPE; transitioned to extended services; and maintained employment for at least ninety (90) days after transitioning to extended services.



(2) The decision for closing a case will be made by VR on an individual basis in accordance with VR policy.

Authority: T.C.A. §§ 4-5-202 and 71-1-105(a)(12); PL 93-112, as amended by PL 99-506; and 34 C.F.R. §§ 361 and 363.1, et seq.

**TENNESSEE DEPARTMENT OF HUMAN SERVICES**  
**REHABILITATION SERVICES DIVISION**

**CHAPTER 1240-08-12**  
**INDEPENDENT LIVING**

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**1240-08-12-.01 PURPOSE.**

The Department of Human Services, Division of Rehabilitation Services (DRS), Vocational Rehabilitation (VR) Program is the designated state entity for the administration of the Independent Living and Independent Living Older Blind (age 55 and older) Federal grant authorized by the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014, 29 U.S.C. §§ 720 et seq. for whom significant visual impairments make competitive employment extremely difficult to attain but for whom independent living goals are feasible through services that enable individuals to live as independently as possible in their homes and communities. This chapter sets forth the guidelines for Independent Living Services.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); Rehabilitation Act of 1973 Sections 751-753, as amended (codified in 29 U.S.C. 796j-7961); 34 C.F.R. Parts 361, 364, 365 and 367; 45 C.F.R. Part 1329; and Executive Order No. 43 (1983).

**1240-08-12-.02 DEFINITIONS.**

- (1) Independent Living Services Plan (ILSP) means a plan of service that is developed jointly with the individual and the Rehabilitation Teacher that has intermediate objectives, planned corresponding services, equipment needed to enhance independence, and the duration of services designed to permit individuals to carry out their daily living activities, to manage their lives more efficiently within their environment, and to reach their potential for independence, self-esteem and productivity.
- (2) Rehabilitation Teacher means qualified staff that assist and support individuals with visual impairments to maximize their ability to live independently in the home and the community.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); Rehabilitation Act of 1973 Sections 751-753, as amended (codified in 29 U.S.C. 796j-7961); 34 C.F.R. Parts 361, 364, 365 and 367; 45 C.F.R. Part 1329; and Executive Order No. 43 (1983).

**1240-08-12-.03 ELIGIBILITY FOR INDEPENDENT LIVING.**

- (1) The Rehabilitation Teacher determines eligibility for Independent Living and Independent Living Older Blind services based on:
  - (a) The presence of a significant disability related to the loss of vision;
  - (b) The presence of a severe limitation in the ability to function independently in family and/or community; and
  - (c) There is a reasonable expectation that Rehabilitation Teaching services will significantly assist the individual to improve his/her ability to function independently in the family, and/or community.
- (2) For purposes of determining eligibility for services, an individual is considered to be significantly disabled if one of the following criteria is met:
  - (a) Blindness, both eyes, no light perception.
  - (b) Blindness, both eyes, with correction no more than 20/200 in the better eye or limitation in visual field within 20 degrees.
  - (c) Blindness, one eye, other eye defective (better eye with correction 20/60 or less, or corresponding loss in visual field (60 degrees or less).
  - (d) Other visual impairment wherein the corrected vision will not permit the individual to obtain a driver's license for visual reasons.
- (3) Referrals of individuals whose goal is competitive employment should be coordinated with the appropriate VR staff.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); Rehabilitation Act of 1973 Sections 751-753, as amended (codified in 29 U.S.C. 796j-7961); 34 C.F.R. Parts 361, 364, 365 and 367; 45 C.F.R. Part 1329; and Executive Order No. 43 (1983).

#### **1240-08-12-.04 PROVISION OF SERVICES.**

- (1) Independent living services are based on individual need and are provided in the individual's home and community in accordance with the ILSP. Independent living services may include counseling and guidance, assessment for eligibility and to identify needs, independent living training, low vision training and devices, assistive devices and equipment, information about and referral for other appropriate services, basic mobility training, certified orientation and mobility evaluation and training, and transportation training.
- (2) Services are provided or coordinated by the Rehabilitation Teacher.
- (3) The availability of comparable services and benefits must be determined for purchased services.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); Rehabilitation Act of 1973 Sections 751-753, as amended (codified in 29 U.S.C. 796j-7961); 34 C.F.R. Parts 361, 364, 365 and 367; 45 C.F.R. Part 1329; and Executive Order No. 43 (1983).

**1240-08-12-.05 CASE CLOSURE.**

- (1) A case may be closed if the individual has completed an ILSP insofar as possible and has been determined to have improved the ability to function independently in the home, or to engage in employment, or until the ILSP has been terminated due to death or a determination has been made that the individual has not or will not be expected to function more independently in the family and/or community.
- (2) The decision for closing a case will be made by the Rehabilitation Teacher on an individual basis.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); Rehabilitation Act of 1973 Sections 751-753, as amended (codified in 29 U.S.C. 796j-7961); 34 C.F.R. Parts 361, 364, 365 and 367; 45 C.F.R. Part 1329; and Executive Order No. 43 (1983).