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Proposed Regulation Agency Background Document

Agency name	Department for Aging and Rehabilitative Services
Virginia Administrative Code (VAC) citation(s)	22VAC30-20-90
Regulation title(s)	Provision of Vocational Rehabilitation Services
Action title	Amend Order of Selection Categories
Date this document prepared	July 9, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

In the event that the department cannot provide the full range of vocational rehabilitation services to all eligible individuals who apply because of insufficient resources, an order of selection may be implemented to determine those persons to be provided services. The amendment to this regulation will reduce the department's number of categories of eligible individuals from four to three.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

DARS - Department for Aging and Rehabilitative Services
RSA - Rehabilitation Services Administration

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Section 51.5-131 of the Code of Virginia gives power and duty to the Commissioner of the Department for Aging and Rehabilitative Services to promulgate regulations necessary to carry out the provisions of laws administered by the department.

Section 34 CFR 361.36 requires the department to develop and implement an order of selection if a lack of funds prevents it from providing the full range of vocational rehabilitation services to all eligible individuals.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The intent of this amendment is to reduce the priority categories for order of selection from four to three. The Rehabilitation Services Administration (RSA), the federal agency that regulates the state-federal vocational rehabilitation program, is requiring that DARS reduce the number of its categories for the order of selection for persons determined to be eligible for services. The reason given is that there is not enough difference between current priority category two and current priority category three. Therefore, RSA is requiring that priority category two and priority category three be combined into one category.

This action will protect the welfare of citizens because it more clearly stipulates the priority categories that are served by Virginia's vocational rehabilitation program. This regulatory action will ensure that the regulation content is clearly written. Clarity in regulation content is essential to ensuring that the individual's health and safety needs are most appropriately met.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.

When DARS does not have enough funds to serve all individuals eligible for the state-federal vocational rehabilitation program, it may elect to go on an order of selection. This requires that DARS establish an order of priority categories by which it will serve eligible individuals. Priority categories are based on the level of significance of the eligible person’s disability and the functional limitations imposed by that disability. By combining two previous categories into one, this amendment is reducing the number of priority categories from four to three. Thus, individuals who would have been in priority category three will now be placed into priority category two.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

The advantage to the public and to the Commonwealth is that this amendment will make the regulation simpler and easier to understand. There is no disadvantage to the public or the agency.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

Section 34 CFR 361.36 requires the department to develop and implement an order of selection if a lack of funds prevents it from providing the full range of vocational rehabilitation services to all eligible individuals. Thus, this restriction is permitted by federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality is expected to be particularly affected by this amendment.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Department for Aging and Rehabilitative Services is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Leah Mills, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, fax number (804) 662-7663, leah.mills@dars.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures	No additional cost to state to implement the amendment to the regulation.
Projected cost of the new regulations or changes to existing regulations on localities.	No cost to localities.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	
Agency's best estimate of the number of such	No small businesses will be affected.

<p>entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>a. no cost to small businesses or individuals. b. no specific costs the development of real estate.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>This amendment to the existing regulation will make the regulation simpler and easier to implement.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No other alternatives to this regulatory change have been considered. RSA, the federal agency that regulates the state-federal vocational rehabilitation program, is requiring this change. This change should not impact small businesses.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

No alternatives were considered. Other than simplifying them, this amendment does not affect overall reporting requirements.

Periodic review and small business impact review report of findings

If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Periodic review and small business impact review were not conducted

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

No public comments were received.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This amendment is not expected to have any impact on the institution of the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
90		<p>Priority I. An individual with a most significant disability in accordance with the definition in 22VAC30-20-10.</p> <p>b. Priority II. An individual with a significant disability that results in serious functional limitations in two functional capacities.</p> <p>c. Priority III. An individual with a significant disability that results in a serious functional limitation in one functional capacity.</p> <p>d. Priority IV. Other persons determined to be disabled, in order of eligibility determination.</p>	<p>Proposed change will combine priority categories II and III into the following one category:</p> <p>b. Priority II. An individual with a significant disability that results in a serious functional limitation in at least one functional capacity.</p> <p>d. the former priority category IV will become Priority III.</p> <p>RSA is requiring that this change be made.</p> <p>The impact of this change will make the implementation of priority categories easier for the public to understand and DARS staff to follow.</p>

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case “current section number” or “current chapter-section number” would refer to the **pre-emergency** regulation.

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation includes changes since the emergency regulation, please create two charts: 1) a chart describing changes from the **pre-emergency** regulation to the proposed regulation as described in the paragraph above, and 2) a chart describing changes from the **emergency** regulation to the proposed regulation. For the second chart please use the following title: “Changes from the Emergency Regulation.” In this case “current section number” or “current chapter-section number” would refer to the **emergency** regulation.