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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department for Aging and Rehabilitative Services
<b>Virginia Administrative Code (VAC) citation</b>	___22_ VAC_30__ - __20__
<b>Regulation title</b>	Provision of Vocational Rehabilitation Services
<b>Action title</b>	Regulatory Review
<b>Date this document prepared</b>	February 19, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The Commissioner of the Department for Aging and Rehabilitative Services (DARS), in response to the Governor's Regulatory Reform Initiative, seeks to review and amend its current regulations regarding the Provision of Vocational Rehabilitation Services to repeal unnecessary or no longer used regulations, remove unnecessary requirements in the regulations, and, in some instances, bring the regulations in line with federal vocational rehabilitation regulations.

### 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.*

The Commissioner of DARS has authority to promulgate regulations pursuant to Code of Virginia § 51.5-131.

## Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

The DARS vocational rehabilitation program provides needed services to individuals with significant disabilities to assist them in obtaining or retaining gainful employment, therefore resulting in greater independence and improved quality of life. The proposed amendments focus on a general, but comprehensive, review of the vocational rehabilitation regulations. As pertains to health, safety and welfare, these amendments will eliminate unnecessary or no longer used regulations, eliminate unnecessary requirements regarding timeframes and approvals for services as well as “caps” on the cost of service provision. These changes conform the regulations to current practices and policies that have evolved over the years to better serve vocational rehabilitation consumers.

## Substance

*Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

22VAC30-20-10. Definitions. Proposed amendments to remove definitions that are obsolete or no longer used in the regulation, and to change definitions to ensure that they consistent with current laws and existing practices.

22VAC30-20-20. Processing referrals and applications. Proposed amendment to no longer require a face to face meeting between the vocational rehabilitation counselor and an applicant when applying for services.

22VAC30-20-30. Assessment for determining eligibility and priority for services. No change.

22VAC30-20-40. Eligibility requirements. No change.

22VAC30-20-50. Evaluation of vocational rehabilitation potential. Repeal as no longer necessary or relevant.

22VAC30-20-60. Extended evaluation for individuals with significant disabilities. No change.

22VAC30-20-70. Certification of eligibility. No change.

22VAC30-20-80. Procedures for ineligibility determination. No change.

22VAC30-20-90. Order of selection for services. No change.

22VAC30-20-95. Information and referral services. No change.

22VAC30-20-100. The individualized plan for employment procedures. Proposed amendment to clarify the abbreviation of IEP.

22VAC30-20-110. Individualized plan for employment content. No change.

22VAC30-20-120. Scope of vocational rehabilitation services for individuals.

- Proposed amendment to remove definitions of some services, as these definitions are listed in Sec. 10 of the regulations.
- Proposed amendments to remove some time limits on services and remove the required prior approval of the Commissioner for some services.
- For training services, proposed amendment to change the grade requirement from a grade of “C” to the minimum grade required of the training institution to successfully complete the training program. If the institution has no grade requirement, the current grade of “C” average for an academic year will be maintained in the regulation.
- Proposed amendment to remove the requirement that only Virginia colleges and universities will be utilized for training, but adds that the department will only allow the maximum costs to attend a state supported school when calculating how much financial support the department will provide for an individual’s post secondary training, unless the training needed cannot be obtained at a state supported institution.
- Proposed amendment to remove the “board” as there no longer is a Board of Rehabilitative Services.
- Proposed amendment to delete the requirement that the department will assist only individuals with severe disabilities in obtaining a graduate degree.
- Proposed amendment to add the requirement that the department may only assist with the cost of the local Virginia community college for the first two years of a college program unless there are program requirements or disability related supports that cannot be obtained at the local community college.
- Proposed amendment to remove the specific dollar amounts for department financial assistance for required text books and supplies to the amount determined by the educational institution to be needed.
- Proposed amendment to delete the maximum amounts for room and board for training cases.
- Proposed amendment to remove the requirement that maintenance payments will be provided to an individual who lives at home when that individual’s income supports the family unit.
- Proposed amendment to change the amount an individual may be reimbursed for transportation from .12 cents per mile to an amount to be determined annually by the department, not to exceed the actual cost of the transportation.
- Proposed amendment to require that interpreters for the deaf hold a certification recognized by the Department for the Deaf and Hard of Hearing.
- Proposed amendment to delete, as unnecessary, the statements that certain hearing aids will be purchased only when justified on the basis of the vocational objective as the vocational objective relates to the purchase of all vocational rehabilitation services. Proposed amendment to delete the requirement that eyeglasses and hearing aids will not be purchased unless comparable in performance and cost to other hearing aids because the purchase of hearing aids is subject to change with technology and is addressed in department’s policy.
- Proposed amendment to change the citation for eligibility from the federal regulations to 22VAC30-20-40.
- Proposed amendment to change the term most severe disabilities to most significant disabilities.
- Proposed amendment to change the term that refers to ongoing supported employment services from follow-up services to extended services.
- Proposed amendment to delete \$3,500 as the department’s maximum financial participation amount for tools and equipment for an individual. Proposed amendment to delete \$7,500 as the department’s maximum financial participation for home and vehicle modifications.

22VAC30-20-130. Individuals determined to have achieved an employment outcome. No change.

22VAC30-20-140. Authorization of services. No change.

22VAC30-20-150. Written standards for facilities and providers of services. No change.

22VAC30-20-160. Participation of individuals in the cost of services based on financial need.

- Proposed amendment to change the term economic needs test to financial needs test.

- Proposed amendment to provide that the family income and resources shall be considered when determining financial need if the individual is counted as a dependent on the last federal tax return.
- Proposed amendment to delete the table that lists the percentage by which gross income can be adjusted for calculating financial participation as this table must change annually. Proposed amendment that gross income shall be adjusted by an amount specified in departmental policy.
- Proposed amendment to delete an obsolete table that contains poverty guidelines used by the U.S. Dept. of Health and Human Services and add a statement that income exclusions based on family size will use the poverty guidelines updated periodically by the U.S. Dept. of Health and Human Services.

22VAC30-20-170. Availability of comparable services and benefits. Proposed amendment to change the term “achieve the rehabilitation objective” to “ensuring the progress of the individual toward achieving the employment outcome”.

22VAC30-20-181. Review of rehabilitation counselor or coordinator determinations.

- Proposed amendment to delete the terms “commissioner of the Department for Aging and Rehabilitative Services” and “the Department for Aging and Rehabilitative Services” and inserts “state unit”.
- Proposed amendment to change the term “informal resolution” to informal dispute resolution”.
- Proposed amendment to add notification requirements to the applicant, or eligible individual, or, as appropriate, the individual’s representative of their rights regarding the review of a rehabilitation counselor or coordinator determination and when such notification must be made.

22VAC30-20-190. Protection, use, and release of personal information. Proposed amendment to change the amount charged for copying records from 15 cents per page to an amount determined annually by the department.

22VAC30-20-200. Review of extended employment and other employment under special certificate provisions of the Fair Labor Standards Act. No change.

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

The department considered repealing the regulation and relying on federal regulations to administer the state-federal vocational rehabilitation program in Virginia. However, certain options are allowed in implementing the federal regulations. Therefore, the department decided to amend the existing regulation in order to have the force of law behind the options it chose. Having written state regulations helps to reduce ambiguity and may reduce the expense involved in appealing nonspecific federal regulations.

**Public participation**

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

*Please also indicate pursuant to your Public Participation Guidelines whether a panel will be appointed to assist in the development of the proposed regulation. A panel will not be used. of this regulatory proposal.*

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also 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) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **Vanessa S. Rakestraw, Ph.D.,CRC; Dept. for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Henrico, VA 23229; fax number (804) 662-7663; Vanessa.Rakestraw@dars.virginia.gov**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A panel will not be used to develop this regulation. A public hearing will not be held following the publication of the proposed stage of this regulatory action.

**Family impact**

*Assess the potential impact of the proposed 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.*

The proposed changes to this regulation will have no negative family impact. The positive impact is removing outdated and unnecessary rules, having less restrictive rules in some instances, and ensuring that the rules conform to current practices and policies that help individuals with significant disabilities reach or retain gainful employment.

**Periodic review/small business impact review result**

*If this NOIRA is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, 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.*

A periodic review was conducted prior to issuing this NOIRA. No comments from the public were received. However, the required periodic review of this regulation revealed that technological and economic changes require amendments to make the regulation conform to current standards of practice.

Amendments to the regulation meets the criteria set out in Executive Order 14 will help the regulation be t easier to understand. The regulation is needed to interpret the federal and state laws that administer the public vocational rehabilitation program. However, it does not duplicate these laws because sections of this regulation are needed to implement the federal options allowed to states, e.g., Participation of individuals in the cost of services based on financial need.

No impact on small businesses is expected.